



Lawyers' Rights Watch Canada

VIET NAM

Human Rights Committee Consideration of the Implementation of the International Covenant on Civil and Political Rights by Viet Nam

Joint Thematic Report for the adoption of the List of Issues

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Lawyers Rights' Watch Canada

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I Introduction

1. Lawyers for Lawyers (“L4L”) is an independent Dutch foundation funded solely by lawyers’ donations. The foundation was established in 1986 and works to promote the proper functioning of the rule of law through a free and independent exercise of the legal profession, in conformity with international law.¹
2. Lawyers Rights’ Watch Canada (“LRWC”) is a committee of Canadian lawyers and human rights defenders who promote international human rights and the rule of law globally through advocacy, education, and legal research.²
3. L4L and LRWC both have special consultative status with the Economic and Social Council of the United Nations.
4. The submitting parties wish to provide their views to the Human Rights Committee (the “Committee”), in advance of the preparation of the list of issues for the upcoming review of the implementation of the International Covenant on Civil and Political Rights (“ICCPR”) by Viet Nam.

¹ For more information, please visit: <http://www.advocatenvooradvocaten.nl/about-us/>

² For more information, please visit: <https://www.lrwc.org/about/>

II Executive Summary

5. During Viet Nam's reporting cycle under the ICCPR in 2002, the Committee made several observations and recommendations regarding the Vietnamese legal system, access to justice, freedom of expression, and other human rights listed in the ICCPR. The recommendations are applicable to the protection of human rights defenders and lawyers.
6. This submission outlines LRWC and L4L's areas of concern about the failure of the Government of Viet Nam to comply with its international human rights commitments to:
 - 1) Guarantee effective access to legal services provided by an independent legal profession as set out in the United Nations Basic Principles on the Role of Lawyers (Basic Principles),³ which is required to ensure the right to equality before courts and tribunals and to a fair trial, in accordance with Article 14 of the ICCPR, and protect the right to freedom of expression of lawyers, in accordance with Article 19 of the ICCPR.
 - 2) Independence of the judiciary
7. It highlights, in particular, concerns in relation to the following issues:
 - (i) No effective guarantees for the functioning of lawyers:
 - a. Increasing harassment, intimidation and improper restrictions and infringements of lawyers (Article 14 ICCPR, Principles 16, 17, and 18 of the Basic Principle, Article 14 of the ICCPR and Article 1 of the Declaration on Human Rights Defenders
 - b. Increasing legal prosecution of, and disciplinary proceedings against lawyers on false charges and/or improper grounds (Article 14 ICCPR);
 - c. No effective protection to the right of freedom of expression of lawyers (Article 19 ICCPR, Article 23 of the Basic Principles and art. 6 of the UN Declaration on Human Rights Defenders), in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.

³ The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. Subsequently, the UN General Assembly "welcomed" the Basic Principles in their 'Human rights in the administration of justice' resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

(ii) No efficient procedures and responsive mechanisms for effective and equal access to lawyers at all stages of legal proceedings.

(iii) No independence of the judiciary and therefore no access to an independent, competent and impartial judiciary to determine criminal charges and rights.

III Recommendations

8. The endorsing organizations recommend that the List of Issues for Viet Nam include the continuing need for Viet Nam to:
 - a. ensure the right to fair trial including access to an independent, impartial and competent tribunal to determine criminal charges and rights and confidential and timely access to counsel of choice in compliance with Article 14 of the ICCPR and the Basic Principles;
 - b. ensure that lawyers can carry out their professional functions and human rights defenders are able to engage in human rights advocacy without intimidation, reprisal, harassment, or undue interference in line with Principles 16, 17, and 18 of the Basic Principle, Article 14 of the ICCPR and Article 1 of the Declaration on Human Rights Defenders;
 - c. prevent lawyers from being suffering or being threatened with prosecution, disciplinary action or other sanctions as a result of their legal advocacy or other improper grounds; and,
 - d. protect the right of freedom of expression of lawyers and human rights defenders, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action, in line with Article 19 of the ICCPR, Article 23 of the Basic Principles and Article 6 of the UN Declaration on Human Rights Defenders.

IV. Effective mechanisms for the protection of human rights

9. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are able to carry out their professional activities independently and without external pressures and interference⁴. This follows ICCPR and the Basic Principles.⁵
10. Interference in the work of lawyers may lead to violations of the right to a fair trial under Article 14 of the Covenant, as has been recognized by the Committee⁶. The Committee has stated that “lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter⁷”. Lawyers should also be able to ‘meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications’.⁸
11. In its task of promoting and ensuring the proper role of lawyers, the Government of Viet Nam should respect and take into account the Basic Principles within the framework of its national legislation and practice. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to legal assistance and representation.⁹
12. During the seventy-fifth session of the Committee in 2002, the Committee expressed concern about the independence of the judiciary in Viet Nam, and in particular the structure of the judicial appointment system that requires judges to seek opinions from the state and exposes judges to political pressure when rendering decisions.¹⁰ The Committee recommended that Viet Nam, in order to implement Article 14 of the Covenant, “take effective measures to strengthen the judiciary and to guarantee its independence, and ensure that all allegations of undue pressure on the judiciary are dealt with promptly”.¹¹
13. The Committee furthermore expressed concern that the legal rights of accused persons, particularly those detained, are not always respected, with regards to allowing

⁴ Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, submitted in accordance with Human Rights Council resolution 8/6, 28 July 2009, A/64/181 , par. 12: ‘lawyers are not expected to be impartial in the manner of judges yet they must be as free as judges from external pressures and interference. This is crucial if litigants are to have trust and confidence in them’

⁵ Basic Principles, Principle 16 in particular:

⁶ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, para.34.

⁷ *Idem*, par. 34

⁸ *Idem*, par. 34

⁹ Basic Principles, Preamble and paragraph 8 in particular.

¹⁰ HR COMMITTEE Observations, paras. 9 and 10.

¹¹ CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT, Concluding observations of the Human Rights Committee, CCPR/CO/75/VNM 5 August 2002, par. 9

detained individuals access to counsel, medical assistance, and visits from members of their family.¹²

14. With regard to the right to freedom of expression under Article 19 of the ICCPR, the Committee expressed concern at the “extensive” limitations placed on freedom of expression and recommended that Viet Nam should take “all necessary measures to put an end to direct and indirect restrictions on freedom of expression”.¹³
15. We welcome the fact that during the interactive dialogue in the Universal Periodic Review cycle of 2014, several recommendations with respect to the working conditions of lawyers and human rights defenders were accepted by the Government of Viet Nam. These recommendations called upon the Vietnamese government to ensure that human rights defenders can work in favorable environments.
16. However, as illustrated by the cases cited below, and by reports gathered by LRWC and L4L, the Government of Viet Nam does not always uphold the necessary guarantees and human rights for the proper functioning of the legal profession. As a consequence, lawyers encounter difficulties in carrying out their profession freely and independently, immediately impacting the rights to effective legal representation and freedom of expression as enshrined in Articles 14 and 19 of the ICCPR.

¹² HR COMMITTEE Observations, para. 13.

¹³ HR Committee Observations, para. 18.

V. No effective guarantees for the functioning of lawyers

a. Increasing harassment, intimidation and improper restrictions of lawyers

17. There are a small number of lawyers in Viet Nam who dare to represent those who speak out against the Government of Viet Nam, and who dare to contribute to the public debate about controversial topics such as having a future multiparty democracy system in Viet Nam. Lawyers in Viet Nam working on sensitive cases are the subject of threats, harassment and intimidation. Some of them are the victims of physical attacks. This is demonstrated by the following cases:

Example: Tran Thu Nam and Le Luan

On 3 November 2015, human rights lawyers Tran Thu Nam and Le Luan were attacked and beaten by eight masked men. There is reason to believe that Tran Thu Nam and Le Luan were targeted in connection to their legitimate activities as attorneys.

When the eight masked men on motorcycles attacked Tran Thu Nam and Le Luan, the lawyers tried to escape, but were caught and beaten. They recognized one of the attackers as a local police officer. Tran Thu Nam and Le Luan sustained several injuries, including to their faces, and received medical treatment in the local hospital.

Tran Thu Nam and Le Luan are Hanoi-based human rights lawyers providing legal support to the victims of police brutality and other human rights abuses by the authorities. At the time of the attack, they were supporting the family of Do Dang Du, who died on 10 October 2015 in police custody after being held there for two months on a charge of theft. The lawyers questioned the validity of the autopsy carried out on Do Dang Du's body as it failed to include an examination of internal organs, which could prove that he died as a result of injuries sustained in a beating.

The attack on Tran Thu Nam and Le Luan happened after the human rights lawyers had met with the family of Do Dang Du to discuss the legal proceedings regarding his death in police custody. Do Thi Mai, Du's mother, witnessed the attack.

Furthermore, on the morning of 12 November 2015, police officers arrested lawyer Tran Vu Hai and detained him at the Xuan La police station. Tran Vu Hai was part of a group of lawyers who planned to visit government offices to submit letters regarding the attack on Tran Thu Nam and Le Luan. Tran Vu Hai was released after 13 hours.¹⁴

Example: Vo An Don

Vo An Don provides free legal services to people who live in poverty, members of the

¹⁴ <http://www.advocatenvooradvocaten.nl/11293/vietnam-human-rights-lawyers-tran-thu-nam-and-le-luan-attacked/>

ethnic minorities and under-aged offenders. He has acted as legal representative in more than 200 court cases on a pro-bono basis.

In 2012, Vo An Don represented the wife of a victim of police brutality. Her husband was beaten to death by the police while in custody. As a result of his work as a defense lawyer against police brutality, Vo An Don has been subjected to harassment and retaliation by the authorities. He has received several death threats from the police and hired thugs. Moreover, on 8 January 2015, Vo An Don received an order from the authorities to audit his law practice. As his law office was the only law office in the city to be audited in 2015, this may constitute another act of harassment.

b. Increasing legal prosecution of, and disciplinary proceedings against lawyers on false charges and/or improper grounds

18. Article 16 of the Basic Principles, states that governments must ensure that lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. Some lawyers in Viet Nam have been subjected to arrests and legal prosecution on false charges. This is demonstrated by the following examples:

Example: Le Quoc Quan

Le Quoc Quan was arrested on 27 December 2012 on alleged charges of tax evasion. Following his arrest, he was held incommunicado and denied permission to see his lawyer for two months. Repeated requests by his family to visit him were also denied. Le Quoc Quan first saw a family member at his trial on 2 October 2013, at which he was convicted of evading corporate income tax and sentenced to 30 months imprisonment and a fine of 1.2 billion dong (approximately USD \$59,000).

In 2013, the United Nations Working Group on Arbitrary Detention ('UNWGAD') determined that the detention of Le Quoc Quan was arbitrary as being in violation of the ICCPR Articles 9 and 14. The UNWGAD stated that his detention might be the result of his peaceful exercise of human rights. It found that Le Quoc Quan had been targeted for his work as an activist and as a blogger and called for his immediate release or for his conviction to be reviewed by an independent court. It also recommended that Viet Nam pay damages to Le Quoc Quan for his arbitrary detention. The UNWGAD emphasized Viet Nam's obligations as a state party to the ICCPR and urged Viet Nam to bring its laws in conformity with international law, in particular international human rights law.

The Government of Viet Nam has not responded to this decision. On 18 February 2014, the Court of Appeal in Hanoi upheld Le Quoc Quan's conviction. The decision

of the UNWGAD was not taken into account in the judgment.¹⁵

Le Quoc Quan served his full sentence of 30 months in jail. He was released from prison on 27 June 2015. He has been under continuous surveillance since that time. His license to practice law has not been reinstated. Effectively, this means that he is unable to work as a lawyer.

Example: Nguyen Van Dai

For over ten years, Nguyen Van Dai has undertaken human rights work in Viet Nam in the face of harassment, surveillance, imprisonment and acts of violence against him. Prior to 2007, Nguyen Van Dai worked as a human rights lawyer representing clients in court to defend their right to religious freedom. In 2007, Nguyen Van Dai was charged and convicted of ‘Conducting Propaganda against the Socialist Republic of Viet Nam’ and his license to practice law was revoked. Nguyen Van Dai served an eight-year prison term from March 2007 until March 2015, in prison and under house arrest. Nguyen Van Dai continued with his human rights work while under house arrest, co-founding the ‘Brotherhood for Democracy’ in 2013, an organization that provides training to community members on their legal rights in Viet Nam.

From his release in March 2015, Nguyen Van Dai was involved in advocating for stronger human rights protection in Viet Nam. Nguyen Van Dai wrote widely in blogs and on social media about the need for Viet Nam to transition from a one-party state to a multi-party democracy. He organized and conducted seminars to educate community members on their human rights and met with an international delegation from the European Union to discuss the state of human rights protection in Viet Nam.

On 16 December 2015, when Nguyen Van Dai was scheduled to attend further meetings with delegates of the European Union, he was arrested by state authorities ostensibly in connection with ‘Conducting Propaganda against the Socialist Republic of Viet Nam’, contrary to Article 88 of the Viet Nam Penal Code – the same provision under which he was convicted and detained in 2007.

On November 2016, a petition was filed with the UNWGAD regarding the arrest and current detention of Nguyen Van Dai.¹⁶ International media have reported on Nguyen Van Dai’s arrest and detention.¹⁷ The United Nations’ High Commissioner for Human

¹⁵ On 16 September 2014, L4L made an oral statement¹⁵ during the General Debate of the Human Rights Council. L4L pointed at the fact that Viet Nam is a member¹⁵ of the Human Rights Council and called on Council to insist:

- that Viet Nam protect its lawyers, instead of detaining them,
- that Viet Nam comply with the Opinions of the WGAD, and
- That Viet Nam release Le Quoc Quan immediately.

¹⁶ <http://www.advocatenvooradvocaten.nl/wp-content/uploads/2016/11/25-UNWGAD-Petition-on-behalf-of-Nguyen-Van-Dai-for-submission.pdf>

¹⁷ See, for example, Radio Free Asia, *Vietnam Detains Dissident Lawyer For ‘Anti-State Propaganda’* (16 December 2015), available at <http://www.rfa.org/english/news/vietnam/lawyer-12162015152342.html>; Reuters, *U.S. ‘deeply concerned’ by arrest of Vietnam rights activist* (21 December 2015), available at: <http://www.reuters.com/article/us-usa-vietnam-rights-idUSKBN0U42L420151221>; Huffington Post, *No Trade Without Freedom of Information* (12 February 2016), available at: http://www.huffingtonpost.com/christophe-deloire/no-trade-without-freedom_b_9220010.html; Los Angeles Times, *Wife of jailed*

Rights ('UNHCHR'),¹⁸ the European Parliament,¹⁹ the United States' State Department²⁰ and a coalition 26 non-government organizations²¹ have criticized Nguyen Van Dai's ongoing detention and called for his release. In October 2016, the UNHCHR called for all individuals detained in Viet Nam in connection with Article 88 of the Penal Code and similar provisions to be released.²²

On 8 June 2017, the UNWGAD released an opinion on the arbitrary detention of Nguyen Van Dai. They found that Nguyen Van Dai's detention was arbitrary, and that it violated both international law and Viet Nam's own laws with respect to detaining individuals under investigation. The UNWGAD also noted that this case, and additional similar cases of arbitrary detention that have been brought before the UNWGAD suggest that, "under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity"²³.

On 20 March 2018, government authorities gave notice that Nguyen Van Dai (in addition to Pham Van Troi, Nguyen Trung Ton, Nguyen Bac Truyen, Truong Minh duc, and Le Thu Ha) would stand trial on 5 April 2018, facing charges under Article 79 of the Vietnamese Penal Code for 'Attempting to Overthrow the Government', with sentences from 12 years imprisonment, up to the death penalty. The charges were all based on the involvement of the defendants with the human rights organization, Brotherhood for Democracy (also known as Hoi Anh Em Dan Chu—HAEDC) and activities promoting a multi-party democracy in Viet Nam. On April 2018 after a one-day court appearance all six were summarily convicted and sentenced as follows: lawyer and co-founder of HAEDC, Nguyen Van Dai, was sentenced to 15 years in prison and five years of house arrest; journalist Truong Minh Duc and blogger Nguyen Trung Ton were sentenced to 12 years in prison and three years of house arrest; Nguyen Bac Truyen, co-founder of HAEDC, was sentenced to 11 years in prison and three years of house arrest. Le Thu Ha, a woman blogger, was sentenced to nine years in prison and two years of probation; Pham Van Troi was sentenced to seven years in prison and one year of house arrest.

19. Governments must protect lawyers from unfair or arbitrary disciplinary proceedings. Disciplinary action against lawyers must be based solely upon a code of professional

Vietnamese human rights activist comes to U.S. with a plea (17 April 2016), available at: <http://www.latimes.com/local/california/la-me-adv-viet-activist-20160417-story.html>; Australian Broadcasting Corporation, *Wife of jailed Vietnamese lawyer asks Australians to push for her husband's release* (15 June 2016), available at: <http://www.abc.net.au/pm/content/2016/s4482360.htm>.

¹⁸ OHCHR, *UN Human Rights Chief urges Viet Nam to halt crackdown on bloggers and rights defenders* (14 October 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20679&LangID=E>.

¹⁹ European Parliament Resolution on Vietnam, Adopted on 7 June 2016, (2016/2755(RSP)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2016-0767&language=EN>.

²⁰ U.S. Department of State, Daily Press Briefing, Spokesperson: John Kirby (21 December 2015), available at: <http://www.state.gov/r/pa/prs/dpb/2015/12/250813.htm#VIETNAM>

²¹ Joint Statement Calling for the Release of Nguyen Van Dai and Le Thu Ha, 6 January 2016, available at: http://www.ishr.ch/sites/default/files/documents/final_joint_statement_-_nguyen_van_dai_and_le_thu_ha_-_final.pdf.

²² OHCHR, *UN Human Rights Chief urges Viet Nam to halt crackdown on bloggers and rights defenders* (14 October 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20679&LangID=E>.

²³ UNWGAD Van Dai Opinion, para. 67.

conduct which is consistent with recognized ethical and professional standards including the Basic Principles. Some lawyers in Viet Nam have been disbarred, or are facing disbarment or other disciplinary actions on improper grounds. This is demonstrated by the following cases:

Example: Vo An Don

Vo An Don provides free legal service to people who live in poverty, members of the ethnic minorities and under-aged offenders. He has acted as legal representative in more than 200 court cases on a pro-bono basis.

In 2012, Vo An Don represented the wife of a victim of police brutality. Her husband was beaten to death by the police while in custody. Several Vietnamese government offices, such as the police, prosecutors and the court of Tuy Hoa City, where the trial took place requested the Phu Yen Bar Association to cancel Vo An Don's license to practice law. On 21 January, the Phu Yen Bar Association sent a communication to the police, prosecutors and court of Tuy Hoa city, in which they asked authorities to withdraw the request for cancellation of Vo An Don's license to practice law. According to the Phu Yen Bar Association, the request to withdraw Vo An Don's license was ill-founded and authorities had no jurisdiction to make such a request.

On 26 November 2017, the Phu Yen Bar Association announced its decision to disbar Vo An Don. Vo An Don was part of the legal team representing Nguyen Ngoc Nhu Quynh (also known as Me Nam, or Mother Mushroom), and was set to represent his client on 30 November 2017. The Phu Yen Bar Association gave the following reasons for the disbarment: “[for] abusing freedom of speech, producing many articles, video clips, speeches, and giving interviews to foreign newspapers and foreign entities, making up stories to denigrate lawyers and judicial offices, the Party, and the State of Viet Nam. [He] aimed to stir, propagandize, and distort the truth, which seriously blackened the prestige of the Party, the State, judicial offices, and Vietnamese lawyers”.²⁴

20. Additionally, it has been reported that sections of the revised Viet Nam Penal Code may make it illegal for lawyers to maintain solicitor-client privilege²⁵. In cases where a client faces specific charges under the Penal Code, a lawyer may be held criminally responsible for not reporting a client to the authorities. These provisions would severely limit the ability of lawyers to conduct their professional activities.

c. No effective protection for the right of freedom of expression of lawyers

²⁴ From Human Rights Watch's article "Vietnam: EU should press for release of political prisoners" 28 November 2017, (available at: <https://www.hrw.org/news/2017/11/28/vietnam-eu-should-press-release-political-prisoners>)

²⁵ From Human Rights Watch's article "Vietnam: New Law Threatens Right to a Defense" 21 June 2017 (Available at: <https://www.hrw.org/news/2017/06/21/vietnam-new-law-threatens-right-defense>)

21. Lawyers, like any other individual, have the right to freedom of expression. In particular, they have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.²⁶ This right is guaranteed under Article 19 of the ICCPR. The freedom of expression that lawyers enjoy in connection to their professional functions should not only be guaranteed in light of the rights of the lawyer, but also in protection of the rights of their clients. The lawyer should be enabled to effectively protect the rights and interests of his or her client.
22. As this Committee stated in General Comment No.34 on Article 19: “States Parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. [...] Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including [...] lawyers”.²⁷
23. Reports state that the Government of Viet Nam is considered one of the most repressive in the world.²⁸ Many international human rights groups have condemned the country for non-compliance with international standards of freedom of expression.²⁹ Viet Nam has a propensity to use overly broad and vague criminal provisions, including Articles 79 and 88 of the Penal Code, to limit freedom of expression and penalize those who raise concerns about the protection of human rights. Individuals are prosecuted for the lawful and peaceful exercise of the rights guaranteed by the ICCPR and the Universal Declaration on Human Rights (UDHR). Viet Nam ranks among the worst ten countries with respect to press freedom³⁰, and among the top five countries that have imprisoned the highest number of journalists in 2017.³¹
24. Viet Nam authorities do not always protect the rights of lawyers to freedom of expression and to take part in public discussion of matters concerning the protection of

²⁶ This follows from Article 23 of the Basic Principles

²⁷ Human Rights Committee General comment No. 34 Article 19: Freedoms of opinion and expression, 102nd session Geneva, 11-29 July 2011, CCPR/C/GC/34, available on: <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

²⁸ HRW, *Letter to President Obama re: Vietnam* (19 May 2016), available at: <https://www.hrw.org/news/2016/05/19/letter-president-obama-re-vietnam>. See also, Committee to Protect Journalists, *10 Most Censored Countries: 2015*, <https://cpj.org/2015/04/10-most-censored-countries.php>.

²⁹ See, for example: HRW, *World Report 2018: Vietnam, Events of 2017* <https://www.hrw.org/world-report/2018/country-chapters/vietnam>: ‘Vietnam frequently used vaguely worded penal code provisions during the year to crack down on dissent...during 2017, authorities arrested at least 21 rights bloggers and activists...for exercising their civil and political rights in a way that the government views as threatening national security...at least 10 additional people had already been put on trial, convicted, and sentenced to between 5 to 10 years in prison’; Amnesty International, *Annual Report 2017/2018: Vietnam*, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>: ‘The crackdown on freedom of expression and criticism of government actions and policies intensified, causing scores of peaceful activists to flee the country. At least 29 activists were arrested during the year.’ OHCHR, *Summary prepared by the OHCHR in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Viet Nam*, Human Rights Council Working Group on the Universal Periodic Review, 18th Sess., UN Doc. No. A/HR Committee/WG.6/18/VNM/3 (4 November 2013), (‘OHCHR Summary for the UPR Viet Nam November 2013’) par. 52; See also Amnesty International, *Annual Report 2017/2018: Vietnam*, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>; Freedom House, *Freedom in the World 2018: Vietnam*, <https://freedomhouse.org/report/freedom-world/2018/vietnam>.

³⁰ Reporters without Borders, *2017 World Press Freedom Index*, available at <https://rsf.org/en/ranking>.

³¹ See Committee to Protect Journalists, *Journalists Imprisoned 2017*, available at https://cpj.org/data/imprisoned/2017/?status=Imprisoned&end_year=2017&group_by=location

human rights. The prosecution and disbarment of Le Quoc Quan, Nguyen Van Dai and Vo An Don, cited above, constitute violations of the rights to freedom of expression as stated in Article 19 of the ICCPR.

VI. No efficient procedures and responsive mechanisms for effective and equal access to lawyers at all stages of legal proceedings.

25. The right to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law³². Fundamental to improving human rights for the people of Viet Nam is a justice system that provides due process for rights holders.

26. The Constitution of Viet Nam guarantees the right to a fair trial³³ and prohibits arbitrary detention.³⁴ However, in practice, Viet Nam does not always uphold the right to a fair trial as laid down in Article 14 ICCPR. Reports state that trials of human rights activists consistently failed to meet international fair standards³⁵. The rights notice, to be presumed innocent, liberty and freedom from arbitrary detention, to cross-examine witnesses and timely and confidential access to counsel of choice are in many cases denied. Viet Nam has faced extensive criticism by international NGOs for its failure to ensure due process within the criminal legal system and basic fair trial guarantees.³⁶

27. As demonstrated by examples above, lawyers that have been arrested in connection to their legitimate activities have been denied due process rights and a fair trial.

Example: Le Quoc Quan

Le Quoc Quan was arrested on 27 December 2012 on alleged charges of tax evasion. Following his arrest, he was held incommunicado and denied permission to see his lawyer for two months. Repeated requests by his family to visit him were also denied. Le Quoc Quan first saw a family member at his trial on 2 October 2013, at which he was convicted of evading corporate income tax and sentenced to 30 months imprisonment and a fine of 1.2 billion dong (approximately USD \$59,000).

In 2013, the UNWGAD determined that the detention of Le Quoc Quan was arbitrary as being in violation of the ICCPR Articles 9 and 14 and recommended his immediate release. Viet Nam has not responded to the UNWGAD recommendations.³⁷

³² Human Rights Committee, General Comment No.32, CCPR/C/GC/32, para.1.

³³ Art. 31 Constitution of the Socialist Republic of Vietnam (2013).

³⁴ Ibid, Art. 20.

³⁵ <https://www.hrw.org/world-report/2018/country-chapters/vietnam>

³⁶ See, for example: Human Rights Watch (HRW) *World Report 2016: Vietnam, Events of 2015*, <https://www.hrw.org/world-report/2016/country-chapters/vietnam>: ‘Vietnamese courts remained firmly under the control of the government and Communist Party, and trials of political and religious dissidents consistently failed to meet international fair trial standards. Police regularly intimidated and in some cases detained family members and friends who tried to attend trials.’

³⁷ Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26–30 August 2013, No. 33/2013 (Viet Nam), A/HR Committee/WGAD/2103/, 12 November 2013, paras. 33 and 34. The WGAD opinion referred to the Body of Principles for

Example: Nguyen Van Dai

Nguyen Van Dai is a human rights lawyer, blogger and advocate for multiparty democracy.

On 16 December 2015, when Nguyen Van Dai was scheduled to attend further meetings with delegates of the European Union, he was arrested by state authorities ostensibly in connection with ‘Conducting Propaganda against the Socialist Republic of Viet Nam’, contrary to Article 88 of the Viet Nam Penal Code – the same provision under which he was convicted and detained in 2007. His house was searched, items of property seized, and he was transferred immediately to a detention centre. Nguyen Van Dai was held incommunicado most of the time.

The violations of Nguyen Van Dai’s human rights are numerous: no evidence was provided to support his arrest or detention, he was held incommunicado, denied access to legal representation and denied contact with his family. Nguyen Van Dai was not brought before a court at any stage to consider his right to pre-trial release.

In the Opinion released on 8 June 2017, the UNWGAD determined that the detention of Nguyen Van Dai³⁸ violates ICCPR Articles 9, 14, 19, 21 and 22 and is arbitrary under categories I, II, III and IV. The WGAD recommended his immediate release which recommendation Viet Nam ignored. Noting additional similar cases of arbitrary detention in Viet Nam, the UNWGAD observed that, “under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity”³⁹.

28. The examples above demonstrate that Viet Nam has continued to deny failed to ensure efficient procedures and responsive mechanisms for effective and equal access to lawyers. This does not only impede the right of all those arrested of access to a lawyer, but also makes it difficult for lawyers to exercise their professional activities.

VII. Independence of the Judiciary

29. In its 2002 Concluding Observations on Viet Nam, the Committee (CCPR) stated a number of concerns that it had regarding the lack of independence between the

the Protection of All Persons under Any Form of Detention or Imprisonment, which provide that communication with the outside world, particularly with family, ‘shall not be denied for more than a matter of days’ (Principle 15) and that a detained or imprisoned person shall have the right to be visited by and communicate with members of his family in particular, and be given adequate opportunity to communicate with the outside world (Principle 19).

http://www.mediadefence.org/sites/default/files/UN%20WGAD%20decision_Le%20Quoc%20Quan.pdf

³⁸ Human rights Council Working Group on Arbitrary Detention, Opinion No. 26/2017 Regarding Nguyen Van Dai (Viet Nam) A/HR Committee/WGAD/2017/26. Available at (http://www.lrwc.org/ws/wp-content/uploads/2017/06/A_HR_Committee_WGAD_2017_26.pdf) (the “UNWGAD Van Dai Opinion”).

³⁹ UNWGAD Van Dai Opinion, para. 67.

judiciary in Viet Nam and the Vietnamese government in response to Viet Nam's second periodic report. The Committee discussed three issues in particular:

9. The Committee is concerned that the judicial system remains weak owing to the scarcity of qualified, professionally trained lawyers, lack of resources for the judiciary and its susceptibility to political pressure. The Committee is also concerned that the Supreme People's Court is not independent of government influence. It is further concerned that the judiciary seeks the opinion of the National Assembly's Standing Committee in regard to the interpretation of laws and that the Standing Committee is responsible for setting criteria and instructions which are binding for the judiciary.

...

10. The Committee is concerned about the procedures for the selection of judges as well as their lack of security of tenure (appointments of only four years), combined with the possibility, provided by law, of taking disciplinary measures against judges because of errors in judicial decisions. These circumstances expose judges to political pressure and jeopardize their independence and impartiality.

...

11. The Committee is concerned that the State party has not yet established an independent, legally constituted body with power to oversee and investigate complaints of human rights violations, including complaints against members of the police and the security services and prison guards. This fact may account for the small number of recorded complaints, in contrast to the information about large numbers of violations received from non-governmental sources (arts. 2, 7 and 10).⁴⁰

30. Unfortunately, research suggests that judicial independence in Viet Nam has not improved significantly since the Committee's 2002 Concluding Observations on Viet Nam. Viet Nam continues to be a single-party country operating under a civil law system.⁴¹ Viet Nam's sole political party is the Vietnamese Communist Party (the "VCP").⁴² The VCP delegates some of its power to the Vietnamese Fatherland Front (the "VFF") and the National Assembly.⁴³ The VFF is a political coalition whose

⁴⁰ Human Rights Committee (CCPR), Concluding observations of the Human Rights Committee, 5 August 2002 at paras 9-11.

⁴¹ Office of The Honourable Senator Thanh Hai Ngo, "Human Rights Situation in Vietnam: 2015-2016 Report", at pp 5-6, available online: <http://senatorngo.ca/wp-content/uploads/2012/08/FINAL-English-HR-Booklet.compressed.pdf> [Senator Ngo 2015-2016 Report].

⁴² *Ibid* at p 5.

⁴³ *Ibid*.

function on paper is to represent the views of Vietnamese citizens.⁴⁴ However, since the VCP controls the VFF, the two entities are not separate and therefore the VFF's ability to carry out its mandate is susceptible to the VCP's influence.⁴⁵

31. The Vietnamese state is divided into three branches: (1) the government, (2) the People's Office of Supervision and Control, and (3) the judiciary.⁴⁶ The Vietnamese court system "is composed of the Supreme People's Court, provincial people's courts, and district people's courts. The district courts are the lowest level of judiciary and rule on criminal, civil, administrative and economic cases."⁴⁷
32. There is no separation between the VCP and the three branches of government because the VCP controls the National Assembly, which in turn is responsible for overseeing the work of the government, the People's Office of Supervision and Control, and the judiciary.⁴⁸ Thus, the Vietnamese judiciary has no meaningful independence from the VCP or the other branches of government. The judiciary is highly vulnerable to the VCP's political influence.⁴⁹ It is difficult to see how the Human Rights Committee's concerns about the Vietnamese judiciary's lack of independence, as expressed in its 2002 Concluding Observations, can be properly addressed when the relationship between the Vietnamese judiciary and the rest of the government and the VCP has remained largely unchanged since that time.
33. Concern about the lack of judicial independence in Viet Nam is not limited to western scholars or legal practitioners outside of Viet Nam. Vietnamese human rights and legal activists living in the country have protested, and continue to protest, the Vietnamese judiciary's vulnerability to political pressure. Consider, for example, the case of legal activist Dr. Cu Huy Ha Vu, who was arrested and detained in November 2010 and tried in April 2011.⁵⁰ Dr. Vu was indicted for, in part, "defaming the [Vietnamese] government for writing that:

...The government, the court and the National Assembly, all executive, judiciary and legislative branches conspire to harm the people, [which is] a 180 degree opposition to the Constitution's Article 2...Who can suggest a solution to save those "bee-like, diligent" civilians from the collective harm of the "three non-independent branches;" in other words, the "three un-separate branches" in Vietnam..."⁵¹

34. For his work, the Hanoi People's Court sentenced Dr. Vu to "seven years in prison on the charge of conducting propaganda against the government under Article 88 of Viet Nam's penal code."⁵² This would be followed by an additional three years on

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Office of The Honourable Senator Thanh Hai Ngo, "Human Rights Situation in Vietnam: 2016-2017 Report", at p 6, available online: <http://senatorngo.ca/wp-content/uploads/2015/12/Human-Rights-Report-2016-2017-Office-of-Senator-Ngo.pdf>.

⁴⁸ Senator Ngo 2015-2016 Report, *supra* note 2, at p 5.

⁴⁹ *Ibid* at p 7.

⁵⁰ Human Rights Watch, "Vietnam: The Party vs. Legal Activist Cu Huy Ha Vu", (2011 Human Rights Watch: United States), at p 1, available online: <https://www.hrw.org/sites/default/files/reports/vietnam0511W.pdf>.

⁵¹ *Ibid* at p 45.

⁵² *Ibid* p 60.

probation after Dr. Vu's release.⁵³ The arrest and imprisonment of activists such as Dr. Vu indicates that the issue of lack of judicial independence continues to be of concern in Viet Nam, and that it has real and grave consequences for activists who raise awareness about it.

35. TCdata360 is “an initiative of the World Bank Group’s Macroeconomics, Trade & Investment Global Practice, which helps countries achieve the Bank Group’s twin goals, ending extreme poverty and boosting shared prosperity, through rapid and broad-based economic growth, centered on strong contributions from the private sector.”⁵⁴ TCdata360 ranks countries based on their level of judicial independence on a scale of 1 to 7, where an index of “7” is the highest degree of judicial independence.⁵⁵ As of 2016, Viet Nam had a judicial independence index of only 3.48.⁵⁶
36. The Oxford Business Group recently published a report entitled “The Report: Viet Nam 2017” (the “Report”). This Report discusses, in part, Viet Nam’s legal system. According to this Report, the “[VCP] and state are making great efforts to improve the legal environment, developing the rule of law, especially for business, to turn Viet Nam into an attractive investment destination. Continuous legal reform is being made to liberalise the business environment, and equally important is the restructuring of the economy to improve growth, productivity and competitiveness.”⁵⁷ For example, the Report notes that on January 1, 2017, Viet Nam’s new Civil Code 2015 came into force.⁵⁸ This new Civil Code is in part meant to “enhance consistency in the legal system of Viet Nam and protect civil rights of entities in a better manner.”⁵⁹ One of the new Civil Code’s provisions states, for example, that “courts in Viet Nam shall not deny solving civil issues, because there are no existing regulations governing such issues. The Civil Code also allows courts to make decisions based on certain court precedents issued by the Supreme Court or based on the principle of fairness when there are no regulations, Customs [*sic*] or analogous laws that can be applied to solve the legal issue.”⁶⁰ Given that this new Civil Code only came into force in January 2017, it is perhaps too soon to say whether these legislative changes are or will be beneficial to the citizens of Viet Nam. Even if these legislative changes seem positive on paper, we remain concerned that such changes will only prove to be superficial if the structure of Viet Nam’s government remains unchanged and the judiciary continues to be deprived of judicial independence.

⁵³ *Ibid* at p 23.

⁵⁴ The World Bank, “TCdata360”, available online: <https://tcdata360.worldbank.org>.

⁵⁵ The World Bank, “TCdata360: “Indicator: Judicial independence, 1-7 (best)”, available online: https://tcdata360.worldbank.org/indicators/entrp.law.ind?country=CAN&indicator=3369&viz=line_chart&years=2012,2016.

⁵⁶ *Ibid* at: https://tcdata360.worldbank.org/indicators/entrp.law.ind?country=VNM&indicator=3369&viz=line_chart&years=2012,2016.

⁵⁷ Oxford Business Group, “The Report: Vietnam 2017”, at chap “A look at Vietnam’s legal system”.

⁵⁸ *Ibid*.

⁵⁹ *Ibid*.

⁶⁰ *Ibid*.

VIII. Conclusion

37. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. However, the authorities of Viet Nam have failed to take substantive steps to ensure rights to fair trial and to guarantee that every citizen has effective access to justice and to timely and confidential legal assistance of their choice.
38. There are a small number of lawyers in Viet Nam who dare to represent those who speak out against the Government of Viet Nam, and who dare to contribute to the public debate about controversial topics such as a future multiparty democracy system and recognition of internationally protected rights in Viet Nam. Lawyers in Viet Nam still face threats, intimidation, physical attacks, prosecution and long terms of arbitrary detention in connection to their professional activities and the exercise of their right to freedom of expression. The most recent example is of lawyer Nguyen Van Dai who was sentenced in 2018 to 20 years (15 years imprisonment and additionally 5 years house arrest).
39. The endorsing organizations recommend that the List of Issues for Viet Nam include the continuing need for Viet Nam to:
 - a. ensure the right to fair trial including access to an independent, impartial and competent tribunal to determine criminal charges and rights and confidential and timely access to counsel of choice in compliance with Article 14 of the ICCPR and the Basic Principles;
 - b. ensure that lawyers are able to carry out their professional functions and human rights defenders are able to engage in human rights advocacy without intimidation, reprisal, harassment or undue interference in line with Principles 16, 17, and 18 of the Basic Principle, Article 14 of the ICCPR and Article 1 of the Declaration on Human Rights Defenders.
 - c. prevent lawyers from suffering from or being threatened with prosecution, disciplinary action or other sanctions as a result of the advocacy or other improper grounds.
 - d. protect the right of freedom of expression of lawyers and human rights defenders, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action, in line with Article 19 of the ICCPR, Article 23 of the Basic Principles and Article 6 of the UN Declaration on Human Rights Defenders.