

JOINT UPR SUBMISSION

VIET NAM / UPR SESSION JANUARY/FEBRUARY 2014

Date of this joint submission: 13 June 2013

LAWYERS FOR LAWYERS (L4L)

PO box 7113, 1007 JC Amsterdam, The Netherlands

<http://www.lawyersforlawyers.nl/>



THE LAW SOCIETY OF ENGLAND AND WALES

The Law Society's Hall, 113 Chancery Lane, London, United Kingdom, WC2A 1PL

<http://www.lawsociety.org.uk/>



LAWYERS' RIGHTS WATCH CANADA (LRWC)

3220 West 13th Avenue, Vancouver, B.C., Canada, V6K 2V5

<http://www.lrwc.org/>



**LAWYERS FOR LAWYERS, THE LAW SOCIETY OF ENGLAND AND WALES
AND LAWYERS' RIGHTS WATCH CANADA**

JOINT UPR SUBMISSION – VIET NAM, 13 JUNE 2013

1. Lawyers for Lawyers ('L4L'), Lawyers' Rights Watch Canada ('LRWC') and the Law Society of England and Wales jointly submit this report on the state of human rights in Viet Nam, especially those regarding the legal profession, with recommendations to the OHCHR for the 18th session of the Universal Periodic Review (UPR) Working Group in the United Nations Human Rights Council in January/February 2014.
2. L4L is an independent and non-political Dutch foundation established in 1986 and funded by lawyers' donations. L4L promotes the proper functioning of the rule of law through a free and independent legal profession.
3. LRWC is a committee of Canadian lawyers who promote human rights and the rule of law by promoting and protecting lawyers' right to engage in independent advocacy.
4. The Law Society of England and Wales is the professional body representing more than 166,000 solicitors in England and Wales. Its concerns include the independence of the legal profession, the rule of law and human rights throughout the world.

Introduction

5. The adequate protection of human rights and fundamental freedoms requires that all persons have effective access to justice and legal assistance. Legal assistance can only be provided effectively by an independent legal profession. This follows *inter alia* from the Charter of the United Nations (ratified by Viet Nam on 20 September 1977) and the Universal Declaration of Human Rights. Furthermore, the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs Of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), adopted by United Nations General Assembly, 9 December 1998 by consensus, affirms the primary responsibility of states to ensure protection of human rights defenders against unlawful interferences.
6. To exercise the State responsibility to promote and ensure the proper role of lawyers, the Viet Nam government should respect the United Nations Basic Principles on the Role of Lawyers ('Basic Principles')¹, which describe international standards regarding the right to independent counsel. Adherence to the Basic Principles is a fundamental pre-condition to fulfilling the requirement that all persons have effective access to legal assistance.
7. Reports gathered by the signatory organisations and information received from lawyers in Viet Nam, demonstrate that the Viet Nam government does not always uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. As a consequence, lawyers encounter difficulties in carrying out their professional responsibilities and experience onerous impacts on their personal lives. Viet Nam is violating the fundamental freedoms of lawyers and interfering with and failing to ensure the right of lawyers to carry out their professional duties independently and free

¹ Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

from state interference. This report identifies three main consequences of this failure and makes remedial recommendations.

- I No effective access to legal assistance;
- II No independent lawyers' professional organisation; and
- III Arbitrary detention of individual lawyers.

I. No effective access to legal assistance

8. Article 7 of the Basic Principles requires states to ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
9. While in theory defendants are permitted access to lawyers, in practice the Viet Nam government insists on approving the selection of the lawyer and deciding when the lawyer and client may meet. Thus, people detained are routinely denied legal representation or are denied timely and reliable access to their lawyers. It is common for a defence lawyer to meet with his/her client for the first time only a few days before the trial, many months after the arrest. For national security cases (*f.i.* pursuant to article 88 of the Penal Code, see [Annex I](#)), according to Vietnamese law there is no right to legal access until after the investigation period, which can be up to 16 months.
10. This is in stark contrast with Viet Nam's commitment made in the course of the Universal Periodic Review (UPR) of 2009 to implement measures to 'provide people detained under security or propaganda laws with fundamental legal safeguards, including representation by legal counsel of their choice throughout the proceedings and a public trial'.²
11. Trials of government critics or their legal counsel often take place in less than one day, usually in just two or three hours. The trial is effectively a forum for Viet Nam authorities to announce the predetermined sentence. Before the proceedings, the security police (*Cong An*), the prosecution agency (*Vien Kiem Sat*) and the judges often convene to come to agreement on the outcome of the trial. As a result, no political dissident has ever been acquitted in a Viet Nam court.
12. Foreign observers are rarely allowed to be present in the courtroom. In some high profile cases, diplomats and journalists have been permitted to watch a television monitor from a separate room. In other political trials diplomats have been denied access to the court even by closed-circuit television despite official requests. Local persons who try to attend trials in support of the defendants are turned away and sometimes detained themselves.
13. Every judge must be a member of the Communist Party (the only political party that is allowed in Viet Nam). Thus, judges are not independent from the government.

II. No independent lawyers' professional organisation

14. A self-regulated and independent bar association with mandatory membership is regarded as essential to ensuring the independence of lawyers, protection from state interference and the quality of legal services.

² Report of the Working Group on the Universal Periodic Review, 5 October 2009, Human Rights Council, 12th session, paragraph 101.

15. According to Article 24 of the Basic Principles, lawyers shall be entitled to form and join self-governing professional associations to represent their interests. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.
16. The legal profession in Viet Nam is regulated by the Ministry of Justice and the local Bar Association in each province. To practise law, a certificate issued by the Ministry of Justice is required and the lawyer must be admitted to the local Bar in the place he/she practises. The local Bar Association then issues a licence. The Viet Nam Bar Association is the national bar association to which the local Bars are affiliated. The Presidents of the local Bar Associations and the Viet Nam Bar Association must be a member of the Communist Party. The charter of the Viet Nam Bar Association must be approved by the Ministry of Justice, and charters of the local Bar Associations have to be approved by the local People's Council.
17. The Viet Nam Bar Federation and the local Bar Associations are not independent. They are controlled by the Viet Nam Communist Party. If a lawyer criticizes the Communist Party or the Viet Nam Government, the local Bar Association can expel the member on that basis. A lawyer's law practice certificate is automatically withdrawn when a lawyer's name is deleted from the list of lawyers of the local Bar Association (Lawyers Law, article 18 sub 1 sub d, see [Annex I](#)). By way of example, **Mr. Huynh Van Dong** is a human rights lawyer known for insisting that the authorities adhere to the Viet Nam criminal procedure code. In August 2011, following a complaint of the Court of Ben Tre Province for allegedly disrespecting Viet Nam laws, the Dak Lak Bar Association ordered the disbarment of Mr. Huynh Van Dong. As a result Mr. Huynh Van Dong is currently prevented from practising his profession as a lawyer and human rights defender.
18. Article 18 of the Lawyers Law creates several conditions that trigger automatic withdrawal of a lawyer's law practice certificate. If a lawyer is sentenced and the sentence has taken effect, his/her law practice certificate will be withdrawn automatically (article 18 sub 1 sub f of the Lawyers Law, see [Annex I](#)). In addition, the Minister of Justice is empowered to both withdraw law practice certificates and to determine the withdrawal procedures (article 18 sub 2 of the Lawyers Law, see [Annex I](#)).

III. Arbitrary detention of individual lawyers

19. According to Principle 16 of the Basic Principles, governments shall ensure that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference.
20. However, in practice there are numerous lawyers engaged in defending or promoting human rights who have been intimidated, hindered and harassed by the Viet Nam government. A number of high profile human rights lawyers have been subjected to malicious prosecutions and arbitrary detention. It is common for such prosecutions to result in sentences of many years imprisonment, up to twelve years.
21. Five examples of well-known Viet Nam lawyers who have been arbitrarily detained are set out as follows:
 - **Mr. Le Quoc Quan** has been harassed constantly since 2007 by Viet Nam authorities

because of his human rights activities. He was arrested in 2007, detained for 100 days and subsequently his law practice certificate was revoked. In April 2011, he was arrested again and released without charges. In August 2012, Mr. Le Quoc Quan was severely injured during a violent attack he believes was conducted by authorities. He was then arbitrarily detained on 27 December 2012. L4L and LRWC and a coalition of 10 other international NGOs raised his situation with the Special Rapporteurs of the United Nations and also with the United Nations Working Group on Arbitrary Detention.³ At the date of this submission, Mr. Le Quoc Quan is still imprisoned, and his trial date is set at 9 July 2013. The European Union has listed Mr. Le Quoc Quan as a prisoner of concern.

- **Mr. Le Cong Dinh** represented journalists, human rights activists, writers, bloggers and lawyers, including the lawyers **Nguyen Van Dai** and **Le Thi Cong Nhan**. He was arrested on 13 June 2009, and on 1 July 2009 the Ho Chi Minh Bar Association announced that Le Cong Dinh had been struck from the register and that the Ministry of Justice had revoked his law practice certificate. The disciplinary procedures were based on the allegations that in November 2007, during the trial of his clients Nguyen Van Dai and Le Thi Cong Nhan, Le Cong Ding called Article 88 of the Criminal Code (prohibiting the spreading of propaganda against the regime, see [Annex I](#)) ‘contrary to international treaties and human rights’. As a result of his work advocating for human rights and democracy, he was charged with ‘propaganda against the state’ and convicted on 20 January 2010 of ‘carrying out activities to overthrow the government’. He was sentenced to five year in prison and three years house arrest.⁴ He was released on 6 February 2013 and is currently under house arrest. The signatory organisations raised his situation with the Vietnamese government and with the Special Rapporteur on the independence of judges and lawyers.
- **Mr. Nguyen Van Dai** (also known as blogger **Dieu Cay**) founded the Committee for Human Rights in Viet Nam in 2006. A qualified lawyer, he is a well-known dissident and blogger in Viet Nam and has acted as lawyer for protesters facing prosecution. He was arrested in March 2007 and sentenced to four years in prison and four years house arrest. His law practice certificate was withdrawn. Subsequently, as a result of his blog articles advocating freedom of expression, he was convicted of conducting ‘anti-state propaganda,’ and in September 2012 he was sentenced to twelve years imprisonment.⁵ He is currently under house arrest. United States President Barack Obama, United States Secretary of State Hillary Clinton, and European Union High Representative Catherine Ashton have all raised concerns about his situation.
- **Mrs. Le Thi Cong Nhan** is a well-known dissident in Viet Nam who has acted as lawyer for protesters prosecuted by the government. In March 2007, she and her colleague Nguyen Van Dai were convicted on charges related to criticizing the government and promoting democracy. She was sentenced to three year in prison and three years house arrest. Her law practice certificate was withdrawn. Since her release in March 2010, the police have arbitrarily arrested Le Thi Cong Nhan three times.⁶

³ <http://www.advocatenvooradvocaten.nl/7741/Viet-Nam-complaint-filed-at-wgad-on-behalf-of-le-quoc-quan/> and <http://www.lrwc.org/Viet-Nam-letter-to-the-un-special-rapporteurs-on-the-arbitrary-detention-of-le-quoc-quan-letter/>

⁴ <http://international.lawsociety.org.uk/files/Letter%20Le%20Cong%20Dinh%20Nov2012%20Gabriela%20Knaul.pdf>, <http://www.advocatenvooradvocaten.nl/lawyers/le-cong-dinh/> and <http://www.lrwc.org/ws/wp-content/uploads/2012/11/Letter-Le-Cong-Dinh-nov2012-Gabriela-Knaul-1.pdf>

⁵ <http://www.advocatenvooradvocaten.nl/lawyers/nguyen-van-dai/> and <http://www.lrwc.org/re-mr-nguyen-van-hai-also-known-as-dieu-cay-mr-phan-thanh-hai-and-ms-ta-phong-tan-2/>

⁶ <http://www.advocatenvooradvocaten.nl/lawyers/le-thi-cong-nhan/>

- **Mr. Cù Huy Hà Vũ** was arrested in November 2010 and charged with ‘propaganda against the Socialist Republic of Viet Nam’ under the Criminal Code, an offence he allegedly committed by giving interviews to foreign media. On 4 April 2011 he was convicted and sentenced to seven years in prison and an additional three years of house arrest.⁷

Recommendations

22. L4L, The Law Society of England and Wales and LRWC recommend that Viet Nam reform laws, policy and practice in order to ensure:
 - a. Full compliancy with the United Nations Basic Principles on the Role of Lawyers;
 - b. That all detained persons have timely, reliable and confidential access to a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings and to ensure that lawyers are able to consult with their clients freely at all times;
 - c. Effective guarantees of freedom of expression, association and assembly and ensure that lawyers are not subjected to, or be threatened with, prosecution or sanctions for any action taken in accordance with recognized professional duties;
 - d. That national laws comply with Viet Nam’s international law obligations under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and with the standards set out on in the United Nations Basic Principles on the Role of Lawyers;
 - e. Independent, self-governing bar associations whose executive bodies are responsible to exercise its functions according to law without external interference;
 - e. That crimes, harassment and other human rights violations against human rights defenders and lawyers are effectively investigated and that suspected perpetrators identified by investigation are prosecuted and tried before independent and impartial tribunals;
 - f. The review and commutation of the sentences of Mr. Cù Huy Hà Vũ, Mr. Nguyen Van Dai, Mr. Le Cong Dinh and Mr. Le Quoc Quan and ensure their immediate release from prison and from house arrest, and re-instate their law practice certificates;
 - g. The re-instatement of Mr. Huynh Van Dong’s and Mrs. Le Thi Cong Nhan’s law practice certificate;
 - h. Prevention of further wrongful arrests and harassment of Mrs. Le Thi Cong Nhan; and
 - i. All other measures required are taken to bring law and practice into compliance with Viet Nam’s international human rights obligations.

⁷ <http://www.advocatenvooradvocaten.nl/lawyers/cu-huy-ha-vu/> and <http://www.lrwc.org/the-arrest-prosecution-conviction-and-sentencing-of-lawyer-cu-huy-ha-vu/>

Annex I

Viet Nam Penal code

Article 88.- Conducting propaganda against the Socialist Republic of Viet Nam

1. Those who commit one of the following acts against the Socialist Republic of Viet Nam shall be sentenced to between three and twelve years of imprisonment:

- a) Propagating against, distorting and/or defaming the people's administration;
- b) Propagating psychological warfare and spreading fabricated news in order to foment confusion among people;
- c) Making, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Viet Nam.

2. In the case of committing less serious crimes, the offenders shall be sentenced to between ten and twenty years of imprisonment.

Lawyers law No. 65/2006/QH11, which is amended by Law No. 20/2012/QH13 dated 20 November 2012

Article 18.- Withdrawal of law practice certificates

1. The law practice certificate granted to a person shall be withdrawn if he/she falls in one of the following cases:

- a/ Working as a cadre, official or civil servant; as an officer, professional personnel or defense worker in an agency or unit of the people's army; as a commanding or professional officer or non-commissioned officer in an agency or unit of the people's security force;
- b/ No longer residing in Viet Nam;
- c/ No longer satisfying lawyers' criteria specified in Article 10 of this Law;
- d/ Being disciplined in the form of having his/her name deleted from the list of lawyers of a bar association;
- e/ Being deprived of the right to use the law practice certificate;
- f/ Having been sentenced and the sentence has taken legal effect.

2. The Justice Minister has the power to withdraw law practice certificates and stipulate procedures for the withdrawal of those certificates.