

VIET NAM

Oral Statement from Lawyers for Lawyers

Human Rights Committee's review of the third Periodic Report of Viet Nam – Formal NGO briefing – Geneva – 11 March 2019

Speaker: Mr. Otto Volgenant

Mister Chair, Excellencies, members of the Human Rights Committee, Ladies and Gentlemen,

Lawyers for Lawyersⁱ would like to draw the Committee's attention to the failure of the authorities of Viet Nam to ensure the right of access to justice and effective legal representationⁱⁱ. Protection of human rights and fundamental freedoms requires effective access to legal services provided by an independent legal profession. Fundamental to improving human rights for the people in Viet Nam is a justice system that provides due process for rights holders and allows lawyers to work independently without fear of harassment, intimidation or worse.

There is 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 topics such as having a future multiparty democracy system in Viet Nam. Many of those lawyers who do, are the subject of threats, harassment, intimidation and physical attacks. Several lawyers in Viet Nam have been disbarred or are subjected to criminal proceedings and detention.



Nguyen Van Dai at his trial in Viet Nam

A striking example of this is the prosecution of lawyer and human rights defender Nguyen Van Dai. He was arrested in 2015 while he was on his way to a meeting with delegates from the European Union as part of the annual EU-Viet Nam Dialogue on Human Rights. The UN Working Group on Arbitrary Detention concluded that he was arbitrarily detained and recommended his releaseⁱⁱⁱ. Viet Nam did not comply and continued to detain him. In April 2018 he was sentenced to 15 years in prison for "trying to overthrow the government". In June 2018, Nguyen Van Dai was exiled to Germany.

Fundamental to all rights enshrined in the ICCPR are access to justice, effective legal representation and an independent legal profession. Viet Nam fails to implement these fundamental rights. Viet Nam has failed to adequately respond to the Committee's questions about these issues.

Lawyers for Lawyers calls on the Committee to recommend Viet Nam to take effective measures to ensure compliance with Article 14 of the ICCPR^{iv} and ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation, including prosecution, in connection with their professional activities.

ⁱ For more information about Lawyers for Lawyers, please visit: www.lawyersforlawyers.org

ⁱⁱ As enshrined in Article 14 of the ICCPR. Adherence to the UN Basic Principles on the Role of Lawyers is considered a fundamental precondition to fulfilling the requirement that all persons have effective access to legal services provided by an independent legal profession. Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (1990), UN Doc. A/CONF.144/28/Rev.1 at 118, available at: <http://www.advocatenvooradvocaten.nl/basic-principles/>

ⁱⁱⁱ WGAD, Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017 Opinion No. 26/2017 concerning Nguyen Van Dai (Viet Nam) 8 June 2017. at para. 69.

^{iv} Recommendations Lawyers for Lawyers and Lawyers Rights' Watch Joint Thematic Report on Vietnam for the 125th session of the Human Rights Committee, available on:

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/VNM/INT_CCPR_CSS_VNM_33774_E.pdf:

- Ensure that: a) all detainees have immediate and confidential access to an independent legal counsel of their own choosing; b) all persons have access to an independent, impartial and competent tribunal to determine criminal charges and rights, including the right to pre-trial release; and, c) that all detainees and persons criminally charged are afforded due process and all fair trial rights in compliance with Article 14 of the ICCPR and the Basic Principles;
- Take effective measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients by state actors, in accordance with Article 14 of the ICCPR and articles 16 and 18 of the Basic Principles;
- 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 Principles, Article 14 of the ICCPR and Article 1 of the Declaration on Human Rights Defenders;
- Prevent lawyers from being subjected to or threatened with prosecution, disciplinary action or other sanctions on improper grounds or in reprisal for exercising rights protected by the ICCPR; and,
- Protect the right to freedom of expression of lawyers and human rights defenders, in particular rights 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, 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.