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UPR Unit

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## **Submission to the Universal Periodic review of Vietnam in 2014**

### **The Norwegian Bar Association**

The Norwegian Bar Association is the only association for Norwegian lawyers. The association has 6852 members, and is active activity in Human Rights Issues domestically and internationally. The Bar Association cooperates with other bar associations all over the world with implementing human rights in the judiciary.

The Bar Association has contributed substantially to the Civil Society Report prepared in relation to the UPR of Norway in 2009. The Association has also contributed substantively to United Nations revisions of a number of UN Human Rights Instruments.

### **Preparation of the report. Cooperation with authorities and other stakeholders**

The report is based on the Practical Guide for Civil Society UNIVERSAL PERIODIC REVIEW.

The report is based on focused issues and cases brought to the attention of The Bar Association by expert witnesses from Vietnam, who, for security reasons must remain anonymous.

### **The format of the submission**

The submission is within the limit of 5 pages, with an annex of more comprehensive information which also includes endnotes with references to the given information.

The Norwegian Bar Association welcomes the opportunity to submit its views to the UPR on Vietnam.

## Front page

### I Introduction

1

The Norwegian Bar Association (NBA) is deeply concerned with the status of so-called "National Security Cases" (NSC) . The concern is related to both the legal basis for such cases and to the procedure applied in such cases.

2

The NBA questions if the legal basis for the criminalization of expressing views and opinions, and forming organizations and assemble people are in compliance with Vietnam's obligations under the International Covenant on Civil and Political Rights (ICCPR).<sup>i</sup>

3

Furthermore the NBA questions Vietnam´s compliance with the requirements in the ICCPR that concern Human Rights in the administration of justice, protection of persons subjected to arrest, investigation and detention, and with regard to respect for the basic principles for the role of lawyers.<sup>ii</sup>

### II Compliance with the ICCPR

4

The NBA is familiar with the Vietnamese Constitution Art 69 which reads:

*The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law.*

5

Since the constitution only allows for the freedom of speech "in accordance with the provisions of the law" the constitution does not provide citizens with any real protection, as freedom of speech may be eroded by the provisions of the law.

6

The offenders in the NSC are in general brought to justice under allegations of violation of the Penal Code art 79 and 88.<sup>iii</sup> The NBA considers the provisions unacceptable since they are so vague and open ended that that they do not provide the citizens with the opportunity to understand which acts are considered as crimes..

7

Art 79 reads:

***Article 79.- Carrying out activities aimed at overthrowing the people's administration***

*Those who carry out activities, establish or join organizations with intent to overthrow the people's administration shall be subject to the following penalties:*

- 1. Organizers, instigators and active participants or those who cause serious consequences shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment;*
- 2. Other accomplices shall be subject to between five and fifteen years of imprisonment.*

8

Art. 88 reads:

***Article 88.- Conducting propaganda against the Socialist Republic of Vietnam***

*1. Those who commit one of the following acts against the Socialist Republic of Vietnam 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 Vietnam.*

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

9

The NBA believe that Art. 79 is in violation of the ICCPR Art. 21 and/or Art. 22 as it criminalizes the right to freely assemble and to form and join associations.

10

Reference is made to the cases<sup>iv</sup> in which the convicted persons have participated in non violent assemblies and associated:

- State vs. NguyenVan Hai (See Attachment 1)
- State vs. Cu Huy Ha Vu (See Attachment 2)
- Ta Phong Tan (See Attachment 3)
- State vs. Nguyen Phuong Uyen (See Attachment 4)
- State vs. Le Thi Cong Nhan a.o. (See Attachment 5)

11

All the convicted faced severe penalties in terms of long term imprisonment for the conviction of the alleged crimes.

12

**The NBA kindly request the Vietnamese Government to be questioned if the Penal Code Art. 79 is in compliance with the ICCPR.**

13

The NBA believes that the Penal Code Art. 88 is in violation of the ICCPR Art. 19 as it prohibits the right to freely express opinions including also opinions on the Government and the governance of the Country.

14

Reference is made to cases<sup>v</sup> in which the convicted persons have faced severe penalties for non violent expressions of opinions, amounting to several years of imprisonment:

- State vs. 14 Catholic youth (See Attachment 6)
- State vs. Tran Huynh Duy Duc(See Attachment 7)
- State vs. Le Cong Dinh (See Attachment 8)

15

**The NBA kindly asks that the question be put to the Vietnamese government: Is the Penal Code Art. 88 in compliance with the ICCPR?**

### **III Person subjected to arrest, detention and investigation. Protection on the ground**

16

In accordance with ICCPR Art 14, Art. 7, Art. 9 and Art. 10, ref also standards made reference to in footnote 3, the Government is obliged to establish rules which

- maintain the principle of innocence until conviction
- secure the right to access lawyer including legal aid
- protect against torture and degrading or inhuman treatment during investigation
- secure fair trial and the right to effective appeal

17

The NBA recognize that the rights mentioned in paragraph 16 are covered in different clauses in the Penal Code and in the Criminal Procedure Code<sup>vi</sup>

18

However, the NBA understand from the NSC referred to above, and testimonies from the expert witnesses, that the rights are drastically violated in such cases inter alia:

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- Persons are arrested and investigation initiated without information of the alleged charges

- Persons are kept in temporary detention up to at least 20 months without judiciary trial of the legal grounds for detention whatsoever
- Mental and physical abuse during interrogation
- Detainees are kept together with convicted persons
- Arrested persons and detainees are denied access to lawyers for up to one year
- The time lag between the arrest and the trial may be up to three years
- The conditions during pre-trial detention are severe, characterized by, ban of contact with the outside world, including family, use of prisoners' uniform and restricted living space in overcrowded prison facilities, and the lack of nutrition during detention<sup>vii</sup>
- The detainee does not have access to medical assistance when needed.

20

**The NBA kindly requests that the Vietnamese Government is asked if the practice in the NSC is in compliance with the International Human Rights and International Standards for the protection of persons subjected to arrest, detention and investigation.**

21

The NBA is concerned with the working conditions and protection of lawyers in NSC. The International Standard for the Basic Principles for the Role of Lawyers (See footnote 3) contains specific rules for the role of lawyers in a democratic society, and also for the communication between the lawyer and his/her client.

22

This working conditions for defense lawyers are characterized by:

- Difficulties with regard to renting of office and organizing of lawyer's office
- Difficulties with resident permit
- Harassment and ill treatment by the police and organized mob
- Uncertainties for personal security

23

And by:

- Lawyers often identified with his/her client
- Lack of access to the client
- Lack of privacy in communication with client
- No access to telephone or written communication with the client
- Restricted access to case documents. No right to copy case documents, or when permission is given, insufficient time to copy case documents.
- Restriction concerning the right to criticize authorities and to invoke Human Rights Instruments in the course of the trial.

**The NBA kindly request that the Vietnamese Government is asked if the practice in the NSC are in compliance with the International Human Rights and International Standards as regards the International Standards for the Role of the Lawyers.**

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<sup>i</sup> International Covenant on Civil and Political Rights. Adopted by the Un General Assembly in res. 2200A (XXI) the 16<sup>th</sup> of December 1966. Ratified by Vietnam the 24<sup>th</sup> of September 1982

<sup>ii</sup> Inter alia Standard minimum rules for the Treatment of Prisoners adopted by the UN Economic and Social Council the 31st July 1957 and of 13<sup>th</sup> of May 1977. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Adopted by the UN General Assembly the 9<sup>th</sup> of December 1988. Basic Principles on the Role of Lawyers, Adopted by the Eight United Nations Congress of Crime and the Treatment of Offenders, Havana, Cuba 27<sup>th</sup> August to 7<sup>th</sup> September 1990

<sup>iii</sup> Law No. 15/1999/QH10

<sup>iv</sup> See reference

<sup>v</sup> See reference

<sup>vi</sup> Law No. 19/2003/QH11 of November 26, 2003

<sup>vii</sup> See Decree Promulgating the Regulations on Temporary Custody and Detention (No. 89/1998/ND-CP)

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## Attachment 1

### Nguyen Van Hai (Đieu Cay)

**Background:** Writing under the pen name Dieu Cay (peasant's water pipe), Nguyen Van Hai is one of Vietnam's pioneering citizen journalists. Through his Yahoo360 blog, Dieu Cay exposed government corruption, called for freedom of expression and was among the first Vietnamese to criticize China's annexation of the Paracel and Spratly Islands. He was arrested while calling for a boycott of the Beijing Olympic Torch Relay.

**Length of detainment and imprisonment:** First arrested on 19/04/2008, brought to court on 20/10/2008 on charges of tax invasion and was sentenced to 2.5 years. His detainment extended to 19/07/2012 and charged with **Article 88** and was sentenced to 12 years.

## Attachement 2

### Cu Huy Ha Vu

**Background:** a prominent government critic and human rights lawyer. He filed unprecedented lawsuits against the government—including suing Prime Minister Nguyen Tan Dung for violating laws on environmental protection, national security and cultural heritage by approving a Chinese-run bauxite mining project in the Central Highlands. His law firm provided legal assistance to democracy activists and, prior to his arrest, to six Catholics from Con Dau parish who had protested government confiscation of Church properties.

**Length of detainment and imprisonment:** Arrested on 05/11/2010 and was brought to court on 04/04/2011. Was charged with Article 88 and sentenced to 7 years imprisonment followed by 3 years house arrest.

## Attachement 3

### Ta Phong Tan

**Background:** a former police officer and communist party member, is a prolific blogger with more than 700 articles to her name. She began her writing career as a freelance journalist in 2004 and since then her articles have appeared widely online. With her knowledge and experience of police work, she provides insightful observations about widespread abuse of power by the security police. She is a recipient of Human Rights Watch's Hellman/Hammett award.

**Length of detainment and imprisonment:** Arrested on 05/09/2011. Brought to

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court on 04/10/2012 and sentenced to 10 years imprisonment under **Article 88**. The sentence was up-held by an appeal court on 28 December 2012.

#### **Attachment 4**

##### **Nguyen Phuong Uyen**

**Background:** According to state media, **Nguyen Phuong Uyen** were arrested for handing out leaflets that “distort the Party and the State’s policies related to religion and land, and exhibit a twisted viewpoint regarding the Spratly and Paracel islands and the border land between Vietnam and China.

**Length of detainment and imprisonment:** Phuong Uyen was arrested on 14/10/2012 (without informing her family until 8 days later) and was brought to court on 13/05/2013. Charged under Article 88 and was sentenced to 6 years imprisonment.

#### **Attachment 5**

##### **Le Thi Cong Nhan and Nguyen Van Dai**

**Background:** both were charged among other things, with “misinterpreting government policy on trade unions and labourers in Vietnam”, participating in the Block 8408 movement for democracy and the progressive party, giving human rights courses and the possession and dissemination of documents propagating democracy and human rights.

*Nguyen Van Dai* founded the Committee for Human Rights in Vietnam in 2006. Nguyen Van Dai had taught students on human rights at his office. He and Le Thi Cong Nhan had expressed themselves in interviews in ways that prompted the government to initiate criminal proceedings. Both of them are well-known dissidents in Vietnam and acted as lawyer for protesters who were prosecuted by the government.

**Length of detainment and imprisonment:**

- Le Thi Cong Nhan - Arrested 03/06/2007 and was brought to court on 11/05/2007 and sentenced to 3 years imprisonment plus 3 years house arrest. She was released on 06/03/2010.
- Nguyen Van Dai – Arrest on 03/06/2007 and brought to court together with Le Thi Cong Nhan and was sentenced to 4 years plus 4 years house arrest. He was released on 09/03/2011.

#### **Attachment 6**

##### **“14 Catholic Youth Activists”**

(Arrested in between July/August 2011 and detained until first court hearing 9<sup>th</sup> Jan 2013 – Sentenced between 3-13 years)



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**Examples of longest convictions (13 years imprisonment plus 5 years house arrest):**

**Dang Xuan Dieu**

**Background:** is an engineer and community organizer, active in mobilizing access to education for poor students and assistance for victims of typhoons and disabled persons. He is a contributing citizen journalist for Vietnam Redemptorist News and is a member of the Congregation of the Most Holy Redeemer. He was arrested upon arriving at Tan Son Nhat Airport in Saigon, as part of a larger crackdown currently totaling 17 human rights defenders (mostly from Vinh Province).

**Length of detainment and imprisonment:** Arrested on 30/07/2011. Brought to court on 09/01/2013 and sentenced to 13 years imprisonment under **Article 79**. His appeal was denied due to missing deadline for the appeal application date (15 days after the first trial)

**Ho Duc Hoa**

**Background:** a community organizer and a contributing journalist for Vietnam Redemptorist News. A member of the Vinh Diocese, Hoa is also a member of the John Paul II Group for Pro-Life and is active in mobilizing access to education for poor students and assistance for victims of typhoons and disabled persons. His detention is part of a larger crackdown currently totaling 17 human rights defenders (mostly from Vinh Province).

**Length of detainment and imprisonment:** Arrested on 30/07/2011. Brought to court on 09/01/2013 and sentenced to 13 years imprisonment under **Article 79**. His sentence was upheld by the appeal court on 23/05/2013.

**Le Van Son**

**Background:** Paulus Le Son is a community organizer and prominent writer for Vietnam Redemptorist News (VRNs). A resident of Hanoi, he is an active community organizer for issues such as HIV, public education, and serves as member of the John Paul II Group for Pro-Life. His popular personal blog ([paulusleson.wordpress.com](http://paulusleson.wordpress.com)) covers issues of social justice, human rights and sovereignty. He was arrested as part of a larger crackdown currently totaling 17 human rights defenders (mostly from Vinh Province).

**Length of detainment and imprisonment:** Arrested on 03/08/2011. Brought to court on 09/01/2013 and sentenced to 13 years imprisonment under **Article 79**. His sentence was reduced to 4 years at the appeal court on 23/05/2013.

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## Attachment 7

### Tran Huynh Duy Duc

**Background:** Tran Huynh Duy Thuc help found mobile phone company One Internet Connection, which grew rapidly to reach a regional scale in Southeast Asia. Thuc blogged under the pen names Tran Dong Chan and Change We Need. In 2005 he created the "Think Tank Chan" with friends to reflect on the future of Vietnam. Arrested originally for "theft of telephone lines," authorities subsequently reclassified the charges against him to subversion. He is a member of the Democratic Party of Vietnam.

**Length of detainment and imprisonment:** Arrested on 17/05/2009. Brought to court on 20/10/2010 and sentenced to 16 years imprisonment plus 5 years house arrest under **Article 79**.

## Attachment 8

### Le Cong Dinh

**Background:** A renowned commercial lawyer and former Fullbright scholar, Le Cong Dinh successfully represented Vietnamese interests in a landmark trade suit with the United States. He wrote articles on political reform that were published by progressive newspapers in Vietnam. Beginning in 2007, he provided legal counsel to prominent dissidents on trial. He was convicted of subversion in 2010 based on his participation in the Democratic Party of Vietnam and attendance at a training session on nonviolent struggle organized by Viet Tan.

**Length of detainment and imprisonment:** Arrested on 13/06/2009. Brought to court on 20/01/2010 and sentenced to 5 years imprisonment plus 3 years house arrest under **Article 79**. He was released in 06/02/2013.