



Law Council
OF AUSTRALIA

Office of the President

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By email: Jenifer.Henderson@dfat.gov.au; humanrights@dfat.gov.au

Dear Mr Lee and Ms Worthaisong

Australia-Vietnam 2018 Human Rights Dialogue: Civil Society Consultation

The Law Council of Australia thanks the Department of Foreign Affairs and Trade (DFAT) for the opportunity to participate in civil society consultations for the 15th Australia-Vietnam Human Rights Dialogue. The Law Council encourages DFAT to continue to support annual Human Rights Dialogues with Vietnam and to continue to make representations to ensure that respect for the rule of law and human rights are improved in Vietnam.

In making this submission, the Law Council reiterates its ongoing concerns about rule of law, freedom of expression and the realisation of human rights in Vietnam.

These concerns have been summarised in submissions made by the Law Council to DFAT in 2015,¹ 2016² and 2017.³ The Law Council is not aware of any significant changes to indicate that these concerns are no longer current. In the absence of a meaningful space for domestic scrutiny of government policies, it is especially important that Vietnam is encouraged to increase its engagement with international partners, UN treaty bodies and Special Rapporteurs.

¹ Law Council of Australia, Submission to Department of Foreign Affairs and Trade, *Australia-Vietnam 2015 Human Rights Dialogue: Civil Society Consultation*, 5 August 2015

<<https://www.lawcouncil.asn.au/resources/submissions/australia-vietnam-2015-human-rights-dialogue--civil-society-consultation-2>>

² Law Council of Australia, Submission to Department of Foreign Affairs and Trade, *Australia-Vietnam 2016 Human Rights Dialogue: Civil Society Consultation*, 20 June 2016

<<https://www.lawcouncil.asn.au/resources/submissions/australia-vietnam-2016-human-rights-dialogue-civil-society-consultation>>

³ Law Council of Australia, Submission to Department of Foreign Affairs and Trade, *Australia-Vietnam 2017 Human Rights Dialogue: Civil Society Consultation*, 11 July 2017

<https://www.lawcouncil.asn.au/resources/submissions/australia-vietnam-2017-human-rights-dialogue--civil-society-consultation>

In fact, new cybersecurity laws, due to come into force on 1 January 2019, have been described as “a direct attack on online freedom of expression.”⁴ The laws include prohibitions against “the use of cyberspace” to carry out a range of activities deemed to present a threat to Vietnam’s security and governance arrangements.

The Law Council notes that there is a legitimate role for appropriately targeted regulation of online activities, provided such regulation is subject to clear limitations and includes necessary checks and balances. However, the laws, as presented to the National Assembly on 12 June 2018,⁵ do not provide these necessary limitations and checks and balances.

For example, Article 8 (‘Conduct which is strictly prohibited’) could be used to prevent the use of social media to:

- Have any discussion that addresses subjects of Vietnamese national identity (including the ‘the nation, the national flag, the national emblem, the national anthem, great people, leaders, notable people, and national heroes’) in a manner that is deemed by the Vietnamese Government to be ‘insulting’ or ‘distort’ or ‘defame’ government authorities.
- Organise political opposition, facilitate discussion about government policy or arrange public demonstrations in relation to government policy.
- Discuss views on historical events that ‘distort’ or ‘deny’ the Government’s interpretation of the proper historical construction of past events and the role of important historical figures.
- Provide information deemed by Government authorities, acting with unlimited discretion, to be ‘false’.
- ‘Cause confusion among citizens’, for example by offering an opinion on a subject that contradicts, in whole or in part, a version of events promulgated by the Vietnamese government (it is not an element of the offence that any particular citizen must be proved to have been confused as a consequence of a person’s conduct).
- ‘Cause difficulties’ for state agencies and public officials, which could include difficulties arising in the course of questioning their conduct on matters of legitimate public interest.
- ‘Destroy the fine traditions and customs of the people [or] social ethics’.

The Law Council also notes that the provisions dealing with punishment for breach of Article 8 and other parts of these laws grant broad discretion for a person to “be disciplined, be fined for an administrative offence, or be criminally prosecuted...[or] pay compensation”. It is not sufficiently certain, on the face of these laws, which penalties apply to each article. There is also no guidance as to the relative seriousness of the various offences created by these laws or the maximum penalty for each offence.

Internet service providers are required under these new cybersecurity laws to take down ‘offending’ content within 24 hours upon receipt of a request from the Ministry of Information and Communications or the Ministry of Public Security. Requirements that internet service providers store data locally, ‘verify’ user information, and disclose user data to authorities

⁴ Editor, ‘Vietnam’s Dangerous New Cybersecurity Laws’, ASEAN Today (online), 31 May 2018, <<https://www.aseantoday.com/2018/05/vietnams-dangerous-new-cybersecurity-laws/>>.

⁵ Allens Linklaters, Client Update : Vietnam issues a stringent new cybersecurity law, 22 June 2018, <<https://www.allens.com.au/mobile/page.aspx?page=/pubs/priv/cupriv22jun18.htm>> ; English language copy of Draft Law on Cybersecurity (dated 20 June 2018) available from <<https://www.allens.com.au/pubs/pdf/priv/cupriv22jun18.pdf>>.

without requiring a court order also threaten the right to privacy and could facilitate further suppression of online dissent or activism.⁶

It is also reported by Human Rights Watch in its Submission to the Universal Periodic Review of Vietnam that:

Vietnamese authorities have recently stepped up their crackdown against online dissidents and rights activists. In July 2017, the information and communications minister, Truong Minh Tuan, reported that “Google and Facebook had removed 3,367 clips with bad and poisonous content after being requested to do so by the Ministry of Information and Communications. Facebook removed more than 600 accounts that have violating content.

The government has mobilized a massive army of paid “collaborators on social opinions” (Cong tac vien du luan xa hoi), often referred to as “public opinion shapers” (du luan vien), whose job is to promote official propaganda and to combat views deemed hostile to the ruling party and government. Separately, Colonel General Nguyen Trong Nghia reported in December 2017 that Force 47, a military task force founded in early 2016 to combat online opinions critical of the regime, has over 10,000 members “ready to combat erroneous views every hour, minute and second of the day.”⁷

On the basis of this analysis, there are clear risks that the Law on Cybersecurity will enable the Vietnamese Government to continue to use legal frameworks to silence peaceful criticism of government policies.

The Law Council notes that there has been some progress towards abolition of the death penalty, demonstrated by recent criminal law amendments. However, it is not possible to determine whether these changes have had any impact on the overall use of the death penalty because executions in Vietnam are carried out in circumstances of extreme secrecy.⁸

The Law Council has a longstanding policy opposing the imposition or execution of the death penalty⁹ and welcomes the recent announcement of Australia’s Strategy for Abolition of the Death Penalty, which encourages the Australian Government to raise death penalty abolition as a priority human rights issue, including in the context of human rights dialogues.¹⁰

‘Particular cases of concern’

The Law Council notes that DFAT’s press release following the 14th Australia-Vietnam Human Rights Dialogue¹¹ lists several specific issues that were discussed in 2017 and

⁶ Human Rights Watch’s Submission to the Universal Periodic Review of Vietnam, January 2018 <<https://www.hrw.org/news/2018/07/13/submission-universal-periodic-review-vietnam>>

⁷ Ibid.

⁸ See Cornell Center on the Death Penalty Worldwide, Death Penalty Database – Vietnam, <<https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Vietnam>>;

⁹ Law Council of Australia, Policy Statement on the Death Penalty (September 2007), <<https://www.lawcouncil.asn.au/docs/c07d9246-cd39-e711-93fb-005056be13b5/0709-Policy-Statement-Death-Penalty.pdf>>

¹⁰ Department of Foreign Affairs and Trade, Australia’s Strategy for Abolition of the Death Penalty (June 2018), p6, <<http://dfat.gov.au/international-relations/themes/human-rights/Documents/australias-strategy-for-abolition-of-the-death-penalty.pdf>>.

¹¹ Department of Foreign Affairs and Trade, ‘14th Australia-Vietnam Human Rights Dialogue’ (Media Release, 21 August 2017) <<http://dfat.gov.au/news/media/Pages/14th-australia-vietnam-human-rights-dialogue.aspx>>

requests that DFAT seek an update on Vietnam's response to these matters during this year's dialogue. In particular, the Law Council seeks updates on the 'particular cases of concern' raised by DFAT at previous dialogues.

Although the names of individuals that these cases relate to was not included in the DFAT media release, the Law Council's 2017 submission raised specific concerns about Nguyễn Văn Đài and Nguyễn Ngọc Như Quỳnh.

Nguyễn Ngọc Như Quỳnh is also known by her pen name, 'Mother Mushroom'. She was convicted of "conducting propaganda against the state" and sentenced to 10 years imprisonment on 29 June 2017 following a one-day trial. Quỳnh is a notable online blogger, known for her opposition to the Vietnamese Government across a range of issues, including the anti-Formosa movement and police brutality.

Since the 2017 dialogue, Frontline Defenders has reported that Quỳnh's conviction has been upheld by a superior Vietnamese court and that she has been transferred to a remote prison in Northern Vietnam. According to these reports, Quỳnh's health is deteriorating and she suffers from low blood pressure, dizzy spells and fainting.¹²

The Law Council notes that Nguyen Van Dai has recently been released and sent to exile in Germany.¹³

As of June 2018, Human Rights Watch documents at least 16 rights activists still held in police custody without trial, some since November 2016 such as Nguyen Van Duc Do and Luu Van Vinh.¹⁴

Trần Huỳnh Duy Thức is another particular case of concern, who was charged with "attempting to overthrow the people's administration" and subsequently sentenced to 16 years' imprisonment on 20 January 2010 following a quick trial. Such trial was criticised by Amnesty International in its open letter to the Minister of Public Security dated 19 May 2017 as:

*... short of international standards for fair trial, disregarding the presumption of innocence and right to a defence. The prosecution provided no evidence to support the indictment. According to observers, the judges deliberated for only 15 minutes before returning with the judgment, which took 45 minutes to read, suggesting it had been prepared in advance of the hearing.*¹⁵

The Law Council also raised, in its 2016 submission, concerns about the conviction of four Vietnamese asylum seekers (Nguyễn Thị Liên, Trần Thị Thanh Loan, Hồ Trung Lợi and Nguyễn Văn Hải) for "organising an illegal escape overseas" after being returned by Australia to Vietnam on 18 April 2015 under the Australian Government's "turnbacks" policy.¹⁶ Their return to Vietnam by Australian authorities was apparently subject to an

¹² Frontline Defenders, *Arrest of Nguyen Ngoc Nhu Quynh*,

<<https://www.frontlinedefenders.org/en/case/arrest-nguyen-ngoc-nhu-quynh#case-update-id-7379>>

¹³ Germany welcomes freed Vietnamese human rights lawyer, <<https://www.reuters.com/article/us-vietnam-dissident/germany-welcomes-freed-vietnamese-human-rights-lawyer-idUSKCN1J40H7>>

¹⁴ Human Rights Watch, above n 6.

¹⁵ Amnesty International, Open Letter on Tran Huynh Duy Thuc,

<<https://www.amnesty.org/download/Documents/ASA4162342017ENGLISH.PDF>>

¹⁶ Samantha Hawley, 'Four asylum seekers behind boat journey to Australia sentenced to jail, Vietnamese group says', ABC News (online), 23 April 2016 <<http://www.abc.net.au/news/2016-04-23/asylum-seekers-in-vietnam-sentenced-to-jail,-advocates-say/7352814>>

undertaking from the Government of Vietnam that none of the people on board the vessel would be prosecuted upon their return.

The Law Council has previously indicated that these convictions have serious implications for Australia's international law obligations, especially its non-refoulement obligations under Article 33 of the Refugee Convention.

The Law Council encourages the Australian Government to raise these cases of concern with the Vietnamese Government.

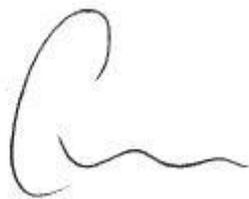
Conclusion

The Law Council understands that DFAT is currently considering the development of non-binding benchmarks, as a way of measuring progress achieved through annual human rights dialogues with Vietnam. In this context, the Law Council suggests that the following may be both achievable and capable of supporting improvements to the rule of law and human rights in Vietnam:

- agreement by Vietnam to issue a standing invitation to all Special Rapporteurs; and
- increased transparency and regular reporting, including through annual human rights dialogues, regarding the imposition and execution of the death penalty.

If you wish to discuss or have any questions or comments on this submission, please do not hesitate to contact Christopher Dyer, Senior Policy Lawyer on +61 2 6246 3716 or by email to Christopher.Dyer@lawcouncil.asn.au.

Yours sincerely



Morry Bailes
President