



Law Council
OF AUSTRALIA

Office of the President

11 July 2017

Ms Lisa Wright
Assistant Secretary
South-East Asia Mainland Bilateral Branch
Department of Foreign Affairs and Trade

By email: rose.hunter@dfat.gov.au
humanrights@dfat.gov.au

Dear Ms Wright

Australia-Vietnam 2017 Human Rights Dialogue: Civil Society Consultation

1. The Law Council of Australia thanks the Department of Foreign Affairs and Trade (DFAT) for the opportunity to engage in the Civil Society Consultation on 12 July 2017, and to provide a written submission to the Australian delegation on matters of interest and concern ahead of the 14th Australia-Vietnam Human Rights Dialogue (the **Dialogue**).
2. The Law Council considers that such opportunities allow the Australian Government to seek valuable feedback from civil society. It hopes that the concerns of the Law Council and other organisations are raised at the Dialogue and through the Australian Government's ongoing human rights discussions with the Government of the Socialist Republic of Vietnam.
3. The Law Council acknowledges the assistance of its National Human Rights Committee and its International Human Rights Committee of the International Law Section in the preparation of this submission. The Law Council's comments in this submission will focus on Vietnam's legal framework, access to justice, the death penalty, human trafficking, and international law. This submission addresses the developments since the Law Council's last submission, provided to DFAT on 20 June 2016.¹
4. The Law Council has recently adopted a *Policy Statement on Human Rights and the Legal Profession: Key Principles and Commitments*, which provides a framework for ongoing activities of the Law Council in relation to human rights, including international advocacy.² In addition, the Law Council's *Rule of Law Principles* support the activities of the Law Council in promoting the rule of law, including defending the legal

¹ Law Council of Australia, *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>>.

² Law Council of Australia, *Policy Statement on Human Rights and the Legal Profession: Key Principles and Commitments* (May 2017) <<https://www.lawcouncil.asn.au/policy-agenda/human-rights/human-rights-policy>>.

profession's interests abroad.³ These policies inform the Law Council's approach to this consultation.

Vietnam's Legal Framework

5. The Law Council notes the delay in the implementation of key new laws,⁴ regarding which it had raised concerns in its last submission.
6. Vietnam continues to silence peaceful criticism of government policies through judicial and extra-legal means.⁵ This may be contrary to a range of human rights, such as the right to freedom of opinion and expression, and the right to take part in the conduct of public affairs. The United Nations (UN) High Commissioner for Human Rights expressed concern in late 2016 about the crackdown on human rights defenders.⁶
7. This development has also been noted by Human Rights Watch, which says that the number of bloggers and activists known to be convicted and sentenced to prison almost tripled from 2015 to 2016.⁷ It also says that there has been violence and intimidations directed against bloggers and activists by '...anonymous men who appear to be acting with state sanction and impunity'.⁸ Human Rights Watch further detailed this trend in a comprehensive report on assaults on bloggers and democracy campaigners in Vietnam.⁹ It made a number of recommendations, including for donor agencies and concerned countries, such as Australia.¹⁰ We have suggested below that the Australian Government adopt these recommendations in the Dialogue.
8. The circumstances of the arrest and detention of these individuals also raises human rights issues. A particularly high-profile case is that of 'Mother Mushroom', a blogger that has recently been sentenced to 10 years in prison following a one-day trial.¹¹ This case was considered by the UN working group on arbitrary detention, which found that her detention was arbitrary.¹² This is contrary to Article 9 of the *International Covenant on Civil and Political Rights (ICCPR)*, which guarantees that no one shall be subjected to arbitrary arrest or detention.¹³ The UN has also previously raised in this regard that incommunicado detention for an extended period of time may lead to, or be in itself, torture.¹⁴

³ Law Council of Australia, *Policy Statement: Rule of Law Principles* (March 2011) <<https://www.lawcouncil.asn.au/resources/policies-and-guidelines>>.

⁴ Amnesty International, *Amnesty International Report 2016/17 The State of the World's Human Rights* (2017) <<https://www.amnesty.org/en/documents/pol10/4800/2017/en/>> 398.

⁵ Ibid.

⁶ 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>>.

⁷ Human Rights Watch, *Vietnam Events of 2016* (2017) <<https://www.hrw.org/world-report/2017/country-chapters/vietnam>>.

⁸ Ibid.

⁹ Human Rights Watch, *No Country for Human Rights Activists Assaults on Bloggers and Democracy Campaigners in Vietnam* (June 2017) <https://www.hrw.org/sites/default/files/report_pdf/vietnam0617_web_2.pdf>.

¹⁰ Ibid, 64.

¹¹ OHCHR, *UN experts condemn Viet Nam's jailing of prominent blogger Mother Mushroom* (30 June 2017) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21815&LangID=E>>.

¹² Ibid.

¹³ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966. 999 UNTS 171 (entered into force 23 March 1976).

¹⁴ OHCHR, *UN Human Rights Chief urges Viet Nam to halt crackdown on bloggers and rights defenders* (14 October 2016).

9. Another case of note is that of Nguyen Van Dai, a prominent Vietnamese human rights lawyer and activist. In April 2017, the UN Working Group on Arbitrary Detention adopted an opinion on this matter, calling for his immediate release.¹⁵ It considered that the deprivation of liberty of Mr. Dai was in contravention of a number of articles of both the *Universal Declaration of Human Rights* and the ICCPR, and requested the Government of Vietnam ‘...to take the steps necessary to remedy the situation of Mr. Dai without delay and bring it into conformity with the relevant international norms’.¹⁶
10. The Law Council recommends that, in the Dialogue, the Australian Government:
- adopt the recommendations of the Human Rights Watch report *No Country for Human Rights Activists Assaults on Bloggers and Democracy Campaigners in Vietnam*; and
 - encourage Vietnam to develop laws that are consistent with the rule of law and Vietnam’s human rights obligations.

The Judiciary, the Legal Profession and Access to Justice

11. The Law Council is concerned about continuing reports of shortcomings in respect of access to justice and the legal profession, as detailed in the most recent US Department of State report on Vietnam.¹⁷ For instance, the report notes that:
- defence lawyers representing politically sensitive detainees reported significant difficulty carrying out their responsibilities and exercising their rights under the law;¹⁸
 - there is a shortage of well-trained and experienced lawyers and judges;¹⁹
 - there continues to be credible reports that authorities pressured defence lawyers not to take religious or democracy activists as clients;²⁰ and
 - the judiciary was not strong and vulnerable to influence by outside elements, such as senior government officials and the leadership of the Communist Party of Vietnam.²¹
12. The Law Council recommends that, in the Dialogue, the Australian Government:
- emphasise the importance of the rule of law; and
 - urge Vietnam to comply with United Nations guidance on best practice for actors in the legal system, including the *Basic Principles on the Role of Lawyers*, the *Basic Principles on the Independence of the Judiciary* and the *Guidelines on the Role of Prosecutors*.

¹⁵ Working Group on Arbitrary Detention, *Opinion No. 26/2017 concerning Nguyen Van Dai (Viet Nam)*, 78th sess, UN Doc A/HRC/WGAD/2017/26 (8 June 2017).

¹⁶ *Ibid.*, [69]–[70].

¹⁷ US Department of State, *Country Reports on Human Rights Practice for 2016*, ‘Vietnam’ (2017) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265386>>.

¹⁸ *Ibid.*, 11.

¹⁹ *Ibid.*, 15.

²⁰ *Ibid.*, 16.

²¹ *Ibid.*, 14.

Death Penalty

13. Vietnam continues to impose the death penalty. The Law Council opposes the imposition or execution of the death penalty absolutely.²²
14. Amnesty International now believes that Vietnam has one of the world's highest execution rates, and that information received in early 2017 indicates that '...executions have been carried out at a higher rate than previously understood'.²³ The Law Council is concerned by this new information, particularly in light of the fact that official statistics remain classified as a state secret.²⁴ This means that the extent of the practice is not clear.
15. The Law Council recommends that, in the Dialogue, the Australian Government:
 - promote steps toward the abolition of the death penalty in Vietnam; and
 - promote greater transparency of information relating to the death penalty in Vietnam.

Human Trafficking

16. The Law Council refers to the annual Trafficking in Persons Report (**TIP report**) by the US Department of State.²⁵ Vietnam remained on Tier 2 in this year's TIP report.²⁶ This classification is assigned to governments of countries that do not fully meet the minimum standard for the elimination of trafficking but are making significant efforts to bring themselves into compliance with these standards.²⁷ The TIP report noted, for example, that: 'Implementation of the amended 2015 Penal Code, including new anti-trafficking articles, continued to be delayed, leaving deficiencies in the law that hindered interagency coordination and law enforcement efforts.'²⁸ The TIP report contained a number of recommendations for Vietnam.²⁹
17. The Law Council recommends that, in the Dialogue, the Australian Government:
 - seek an update from Vietnam on its response to the recommendations for Vietnam from the 2017 TIP report.

International Law

18. The Law Council reiterates its call for the Australian Government to encourage Vietnam to observe international law relating to human rights and engage with international institutions in order to promote human rights. This is particularly important against the background of Vietnam's human rights record, which Human Rights Watch has characterised as 'dire in all areas'.³⁰

²² Law Council of Australia, *Policy Statement The Death Penalty* (September 2007) <<https://www.lawcouncil.asn.au/resources/policies-and-guidelines>> 2.

²³ Amnesty International, *Amnesty International Global Report Death Sentences and Executions 2016* (2017) <<https://www.amnesty.org/en/documents/act50/5740/2017/en/>> 28.

²⁴ *Ibid.*

²⁵ US Department of State, *2017 Trafficking in Persons Report* (June 2017) <<https://www.state.gov/j/tip/rls/tiprpt/>>.

²⁶ *Ibid.*, 425.

²⁷ *Ibid.*, 28.

²⁸ *Ibid.*, 425.

²⁹ *Ibid.*, 426.

³⁰ Human Rights Watch, *Vietnam* (2017) <<https://www.hrw.org/asia/vietnam>>.

19. The Law Council recommends that, in the Dialogue, the Australian Government express support for Vietnam to:
- ratify international human rights instruments that it has not yet ratified, such as the *Convention for the Protection of All Persons from Enforced Disappearance*;
 - accept individual complaints procedures and inquiry procedures for the treaties it has ratified;
 - implement the UN *Guiding Principles on Business and Human Rights*; and
 - respond favourably to requests and reminders from the Special Procedures of the Human Rights Council to visit Vietnam, and provide a standing invitation to the same.
20. On 9 February this year, the Australian Government announced its intention to ratify the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The Australian Government should use this as an opportunity to promote Vietnam's ratification of this treaty in the Dialogue.
21. I trust that this information is of assistance. Please contact Dr Natasha Molt, Senior Legal Advisor, at natasha.molt@lawcouncil.asn.au or (02) 6246 3754 with any questions.

Yours sincerely



Fiona McLeod SC
President