



INTERNATIONAL INSTITUTE FOR VIETNAM

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Vietnam Human Rights Review

April 1, 2009

Paper submitted to the US Congressional Caucus on Vietnam.

Ladies and Gentlemen,

I am honored to be invited to an informal forum in Washington DC being organized on April 1 by the Congressional Caucus on Vietnam. I am informed that this forum will focus on the human rights' record of Vietnam in preparation for its review by the United Nations' Universal Periodic Review (UPR) in Geneva on May 8. I am requested to present to the Caucus my own review, concerns and questions on the present human rights situation in Vietnam. Due to schedule conflict, and not being able to attend the forum in person, I ask your permission to submit my review in writing.

Generally speaking, it is evidently clear to all American and international human rights observers that Vietnam continues to deprive its citizen of their basic human rights and civil rights. Not a single US and international human rights organization, including the US State Department's human rights bureau, can report a good human rights record for Vietnam. Those participating in this forum will certainly present to the Caucus a lot of evidence of these violations. What I would like to bring to your attention in my review is the cause of these violations, *the violation of all the violations: the lack of, and violation of, the rule of law.*

During the last decade or more, the Communist Party and government in Vietnam have tried to present to the international community the image of what they called "a law-governed country". Tens of laws and regulations have been issued, especially during the months before joining WTO. Some laws were even modified or revised to meet the requirements of WTO membership. They tried to convince the international community that Vietnam is now governed by laws. In the pretext of law-governed governance, the dictators imprisoned and prosecuted human rights defenders and freedom advocates as being "law violators". Violators of human rights, predators of freedom, now become protectors and

defenders of the law! I call this distortion of the rule of law “the legalization of human rights violation”. To put this right: this is not the rule of law, but *the rule by law*, and by the laws being created by the governors and for their own benefit, and not the laws being created by the people and for the people. This should be made very clear: the Communist government in Vietnam are using *their* laws to suppress the basic rights of the Vietnamese people.

A brief review of the present Constitution suffices to clarify this legalization of human rights violation in Vietnam. In the Constitution (*) there exists an entire chapter on the citizen’s rights: Chapter Five (“Fundamental Rights and Duties of the Citizen”). The citizens are assured to enjoy all basic freedoms “*in accordance to the provisions of the law*”. The law, and the regulations, issued by the party-controlled National Congress and government, determines how the citizens can “enjoy” those basic rights. The law determines the Constitution, and not vice versa, as it should be. And worse, not only the law, but even the government’s policies can override the basic rights of the citizens (Article 70, on religious freedom).

In short, the present Constitution gives the government the power to use laws to limit the “enjoyment” of the basic rights of the people. They can manipulate these rights and give and take these rights as much as they want, through the legal process of creating new laws and revising old ones accordingly to their wishes or to circumstances. This is the most serious violation of the Universal Declaration of Human Rights, specifically, of its final article, the fundamental article, Article 30: “*Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.*”

My point is this: the present government in Vietnam is not a rule of law government, but a rule-by-law government. They are using laws to violate human rights. And this is the violation of all violations. No human rights can be truly respected by such a government. No improvement of human rights can be expected and sustained in Vietnam, not until *the rule of law*, instead of the rule by law, prevails.

To pressure the representatives of the Vietnamese government in Geneva in May on this violation of all violations of human rights, I suggest to raise the following questions:

1. Is the present government in Vietnam a rule of law government? (“*pháp trị*” in Vietnamese) or a rule-by-law? (“*pháp quyền*”). (The Vietnamese government now defines themselves, in Vietnamese, as “*Nhà nước pháp quyền*” which is actually “the rule-by-law government” in English.)
2. If it is the rule of law, does the present laws allow the citizens to criticize the highest government officials and not being prosecuted? Like the

- General Secretary of the Communist Party, the President, the Prime Minister?
3. The Vietnamese government declares that the present political prisoners are not political prisoners but “law violators”. If they violate the laws, does this mean that the laws have limited the rights they can “enjoy” and determines how they can “enjoy” these rights?
 4. And does this violate Article 30 of the Universal Declaration of Human Rights?
 5. One of the slogans we hear very often in Vietnam today is this: “Dân biết, dân bàn, dân làm, dân kiểm tra” (the people know, the people discuss, the people do, the people inspect). Why we do not hear “the people decide” (“dân quyết”)? Who decides? The Communist Party?
 6. Why Vietnam has not allowed international human rights organizations to have representatives and offices in Vietnam to monitor human rights violations?
 7. Why Vietnam has not allowed independent lawyer associations to exist?

The above suggested questions conclude my contribution to the review of the present human rights situation in Vietnam which will be carried out by UN Human Rights Council in Geneva on May 8.

Thank you for organizing this forum and for allowing me to submit this presentation to the Congressional Caucus on Vietnam.

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(*) http://www.vietnamembassy-usa.org/learn_about_vietnam/politics/constitution/