



Submission No 5

**Inquiry into Australia's Human Rights Dialogues with China
and Vietnam**

Name: Nguyen Van Dai

Private Capacity

Hanoi, Vietnam
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To: Joint Standing Committee on Foreign Affairs, Defence and Trade
Human Rights Sub Committee
The Ministry of Foreign Affairs and Trade of Australia
The Australian Embassy in Hanoi

I am attorney Nguyen Van Dai, imprisoned for four years by the Vietnamese Communist government, from March 6, 2007 until March, 2011. While being detained in Nam Ha prison, I was fortunate and honored to have been visited by the Australian Embassy in Hanoi and a delegation from the Foreign and Trade Ministry of Australia.

First, I'd like to thank the Foreign and Trade Ministry and The Embassy of Australia for taking the time to visit me when I was incarcerated in Nam Ha prison. This has motivated and encouraged me a great deal and helped me to keep faith in the struggle for human rights and democracy that I have chosen. When I related this story to the 100 or so political prisoners who belong to the Protestant religious minorities in Vietnam's Central Highlands who were in detention with me, they, too, got encouraged and comforted.

I've learned that very soon the Foreign and Trade Ministry of Australia would have a human rights dialogue with Vietnam. On behalf of the nearly 100 political and religious prisoners who are being imprisoned in Nam Ha Province and those who are released but remained under house arrest for years, I would like to present some of my views with The Foreign Ministry and Embassy of Australia regarding the human rights dialogue with Vietnam.

Vietnam has gained independence and unification for 36 years now, a period of time sufficient for a country to build and develop a rather robust economy. There is also enough time to ensure that political, civil and human rights are respected and implemented in practice. It's painful and ill-fated for our people to be under the yoke and leadership of the Communist Party, who has done nothing but going against what they have prescribed in the Constitution of Vietnam and what they've committed to the international community with respect to the safeguard and promotion of human rights.

Since April 2001, tens of thousands of Highland Protestants marched to demand religious freedom and human rights claims. Instead of meeting the legitimate demands of the people, the Vietnamese government has arrested thousands of people and had sentenced about 500 people, ranging from 2 to 18 years imprisonment. Currently there are about 100 detainees at the prison in Nam Ha Province, and over 100 others who are detained in the province of Thanh Hoa, Phu Yen, Dak Lak, and Gia Lai.

In early 2006, the movement for freedom, democracy and human rights in Vietnam began to form and flourish. But in August 2006, the Vietnam government began a campaign to arrest and try of those who struggle for freedom, democracy and human rights. Especially after Vietnam joined the WTO in early 2007, the human rights situation became

increasingly worse. The list of political prisoners and those who have carried out their sentences but still under house arrest keeps lengthened. Up to now, there are nearly 100 dissident-prisoners and about 200 political and religious prisoners from the highland ethnic minorities. About 10 people were released but still under house arrest for 3 to 4 years.

Every year, Vietnam would carry on bilateral talks on human rights with Australia, the United States, Switzerland, Norway, ... and conduct human rights dialogue with the EU. But the human rights situation in Vietnam has not improved at all, Vietnam patriots and those who realize their duties to the country can not stand idle and be silent regarding the sad state of our country's affairs, as corruption has become the national epidemic, and the authorities our own internal enemy. The exploitation of Vietnam forests, the mining of its resources has continued unabated, milking the land dry in exchange for foreign money and favors. The environment has been seriously damaged. The irresponsibility of the authorities in controlling the production and import of consumer goods, poor-quality foodstuffs affect the health of not only Vietnam generation of today but also the health of generations to come. The nation's territorial sovereignty is threatened and violated. Instead of listening to people's opinions so it can reform, improve and lead Vietnam out of the morass, the communist government arrests and detains the best and brightest citizens of the country. The brave lawyers who dare to stand up and defend those who struggle for human rights get their license revoked.

How could the human rights dialogue between Australia and Vietnam bring about an improvement in human rights for the people of Vietnam? How could the people of Vietnam not enslave to the government that they raise and support with their taxes, blood, sweat and tears?

I would like to propose some ideas to the Government and the Ministry of Foreign Affairs and Trade of Australia:

1. The Government of Australia should attach its development aid - the non-humanitarian aid - with Vietnam's improvement in human rights and democracy:

- The degree of improvement in human rights should be assessed in a measurable way so that the Government of Vietnam would stop arrest and harass those who are fighting for human rights and democracy; to free immediately the 300 or so political prisoners and religious detainees; to remove the house arrest condition with those who are already released.

- Improvement of democracy must be carried out by the Government of Vietnam, such as: respect the rights of the people to form and organize political parties, associations, and the right of citizens to assemble. Allow the already established parties to operate (e.g. The Democratic Party, The Progressive Party.) Respect the rights of free speech, free press, allowing people to set up private newspapers.

2. Parliament and the Government of Australia should set aside a budget with non-governmental organizations to assist organizations and individuals who are fighting for human rights and democracy in Vietnam.

The movement for human rights and democracy in Vietnam is in the development stage, but the movement's greatest weakness is the lack of help and financial support to help it flourish. If the help and financial support would come about, the struggle for human rights and democracy will surely succeed and soon. The people of Vietnam will enjoy the fruits of independence, which they have not had for nearly 40 years.

The help and financial support of Australia for the democracy movement in Vietnam will contribute to building the friendship between two peoples. Personally, I - like most people who are fighting for human rights and democracy - realize and desire to build an alliance with Australia. The alliance between Vietnam and Australia, along with partners in ASEAN, Japan, Korea and the United States will contribute to maintaining peace, stability and prosperity in the Asia Pacific region.

Again, from the bottom of my heart, I thank the Australian Parliament, the Government, the Ministry of Foreign Affairs and Trade, The Embassy of Australia who have been concerned with my case during my years of captivity. I wish and hope that the Ministry of Foreign Affairs and Trade of Australia will have a practical and successful human rights dialogue with the Government of Vietnam in the coming months. I wish you good health and may the Lord bless you.

Enclosed is a letter about the status of political prisoners, the Highland ethnic minorities and the report on the status of human rights violations in the Number 1 Temporary Detention Camp in Hanoi, and the list of political prisoners in the Central Highlands.

Lawyer Nguyen Van Dai

Sincerely,

Lawyer Nguyen Van Dai

**To: Joint Standing Committee on Foreign Affairs, Defence and Trade
Human Rights Sub Committee**

Date: May 10, 2011

Subject: Intervention for Christian Montagnard Prisoners in Nam Ha Prison, Vietnam

My name is Nguyen Van Dai, a lawyer who was imprisoned by the Vietnamese authorities for four years for wrongful charge of “*propaganda against the Government of the Socialist Republic of Vietnam*” according to Article 88 of Vietnamese Criminal Code (VCC). While detained in Nam Ha prison from January 4th, 2008 to March 6, 2011, I learned of numerous unjust cases; among those, approximately 80 Christian prisoners, who are indigenous minority from Central Highlands (so-called hill-tribal Montagnards) that need your urgent attention and intervention. These impoverished and under-privileged Christians have been unjustly persecuted and imprisoned for their struggle for religious freedom and other basic freedoms. (See Attachments A & B)

I share their will and belief, and feel it is my duty to publicize their cases and request your assistance in regaining their basic human rights.

Causes of their struggles

The highlands of Central Vietnam, an area of 54,639 km², include five provinces including Dac Lac, Gia Lai, Kon Tum, Dac Nong and Lam Dong with a population of about 5.2 million inhabitants. This population indicates a huge surge from 1,225 million in 1976 (consisting of various indigenous total of 853,820, or 69.7%) and 4,668 million in 2004 (consisting of various indigenous total of 1,181,337, or 23.3%), as a result of aggressive mass influx of Kinh Vietnamese since then. Consequently, the indigenous ethnics became minorities who suffer strict control by the new authorities, especially in regard to their land, natural resources, affected culture, faith, and religion.

Suppression due to religion and ethnicity

The new authorities started to unfairly treat the Highlands Christian ethnics soon after April of 1975 with the demolition of many of their churches; arrest of their pastors, missionaries, and Church officials; and prohibition of religious masses and activities. The suppression that lasted over 20 years forced the Christian ethnics (mainly Ede, Jarai, Bahnar, and Mnong) to exercise their right of demonstration accorded by Article 69 (*entitlement of basic freedoms*) of Vietnam’s Constitution. In February of 2001, tens of thousands of ethnics participated in a demonstration for several days. Eventually the protests were suppressed without mercy by both the police and army, resulting in numerous casualties and unaccountable cases, as well as forcing thousands to escape to Cambodia to seek asylum. Among thousands of arrested or summoned victims, approximately 500 were secretly tried and sentenced from 2 to 18 years in prison according to Article 87 VCC (*undermining the national unity*) and/or to Article 89 VCC (*causing public disorder*) or Article 91 VCC (*fleeing abroad to oppose the people’s government*). The rest of the detainees were held without trial from 3 to 9 months. The authorities continued their oppression with slandering campaigns both domestically and abroad against the Christian ethnics, blaming them for their part in the pre-1975 FULRO movement and to advocating for the separatism to found the Degar nation under the pretext of religious activities. In April 2004, a second major demonstration took place to oppose the suppressive measures but was, again, brutally crushed which led to numerous arrests and escapes between 2005 and 2008.

Crimes and trials

Among the detainees, many were tortured and gave forced confessions. They were later tried on camera, without the presence of relatives or legal representation. Though most of the victims claimed their

demonstrations were for religious freedom, human rights, and land recovery, they were still wrongly tried according to Article 87 VCC for people who were accused of organizing and stimulating people attending demonstrations, to Article 89 VCC for participants of demonstrations and to Article 91 VCC for people attempting to leave the country. The application of Article 91 VCC (*fleeing abroad to oppose the people's government*) by the Vietnamese courts was unreasonable since the victims had left their local residence to avoid oppression but they were still inside Vietnam. Their sentences were also too harsh.

(from their total sentences of 17 and 14 years respectively). is a special case. He was captured after being repatriated by the UNHCR in Cambodia and later sentenced to 10 years imprisonment.

Detention far away from home

After their trials, all victims were held very far from home, with most transferred to prisons in North Vietnam. In 2008, it was reported that the Nam Ha prison, about 1,200 km away from the Central Highlands, was holding about 200 Christian ethnics, and about 100 in Thanh Hoa prison, over 1,000 km away.

It is very inhumane to hold prisoners far away from their homes, especially for the ethnics who were held in drastically different climates. They were forced to leave their familiar cool Highlands for the North where it is too hot in the summer and too cold in the winter. The communication with the families is very limited because Montagnard prisoners must speak or write in Kinh, which is not their native language. Letters of Montagnards via mail rarely reached their families. While Kinh prisoners can receive one visit with food supply and one package of food (5 Kg) via mail per month, most relatives of Montagnard prisoners were able to afford - due to poverty - only one visit per annum. About 25% of the families could only make visit once every two or three years. About 5% of the Montagnard prisoners have never received visitors. The rare visits of their family relatives are especially emotionally draining because most prisoners are between 20 and 50 years old and fathers with very young children.

It is worth mentioning that only direct relatives are allowed to visit prisoners. This regulation prevents friends from visiting and sending food to the Montagnard prisoners. Due to irregular food supply, Montagnard prisoners suffer from their malnutrition. Their health is poor, and some die from unknown causes. In a few cases, Montagnards were released early due to serious illness to die at home.

Even in prison, the ethnic minorities have faced discrimination. The clean water supplied to them is rationed. They have to work 8 hours per day and have to reach the minimum production norm. They are shackled if they denied forced labor. Despite the fact that they have achieved the same performance in labor and re-education, the term of imprisonment reduction for Montagnards is always the half of the reduced term for Kinh Vietnamese political or criminal prisoners. Many Montagnards receive no reduction without an explanation.

As already mentioned, all ethnic prisoners are Christian followers; however, they are not allowed to receive bibles, hymnals, and religious books, which again is a violation of prison regulations.

Recommendations:

The Montagnards living in Central Highlands were only exercising their rights to religious freedom and to life. The Vietnamese authorities have detained and tried them arbitrarily. Their detention in places far away from their families is inhumane. Therefore, in any of your future contacts with the Vietnamese

authorities in Hanoi or in the provinces including Dac Lac, Dac Nong, and Gia Lai, please kindly intervene and demand that they:

- 1) Grant amnesty to all ethnic prisoners (See Attachments A & B) because they have already served at least one-third of their sentences;
- 2) While awaiting their amnesty, consider their release based on humanitarian reasons. Their imprisonment terms could be considered for reduction because they have served at least more than one-third of their sentences according to Article 58 (section 1) VCC, and they could be released because they have served at least one-half of their sentences according to Article 58 (section 3) VCC.
(In the attached lists I recommend three categories of release: 1) immediate release, 2) release, and 3) reduction of prison term and then release in next year)
- 3) While awaiting the amnesty decision and release,
 - a. Have them moved to their local prisons, which are much closer to their home for their family's visiting convenience;
 - b. Stop all types of discrimination against ethnic prisoners while considering the reduction of their sentences;
 - c. Guarantee the minimum standards of healthcare, foods and other living conditions;
 - d. Ensure their religious activities are free in prisons; and
 - e. Allow diplomatic representatives to visit ethnic prisoners.

If you have any questions or need further information regarding the Montagnard prisoners and the prison Nam Ha, please contact me. Thank you for your support and consideration.

Best regards,

REPORT ON THE VIOLATIONS OF HUMAN RIGHTS IN
TEMPORARY DETENTION CAMP 1, HANOI

Dear Sir/Madam,

I, attorney Nguyen Van Dai, had been detained nearly 10 months (from March 6, 2007 until January 4, 2008) at the detention center No. 1 in Hanoi before being transferred to Nam Ha prison in Ha Nam province. During the nearly 10 months of detention there, I was transferred to four (4) different detention cells, coming into contacts with hundreds of detainees. I, myself, have suffered as well as witnessed the trampling of human rights of these poor folks, the problem of corruption in the system of detention, which did not only violate the laws of Vietnam, but also violated the International Convention on political and civil rights. To help the international community to know and understand what is taking place in the detention camps of Vietnam, I write what I have endured and witnessed during my time in detention there:

1/ Detention facilities:

In accordance with the penal law of Vietnam, the basic standard for each detainee should be: a) at least 2 meter square sleeping space for a person, b) 2 liters of drinking water per person per day. But the room at the Hanoi temporary detention center for each detainee who has not yet been to the preliminary trial, is only 1.2 to 1.4 meter square, making the detention room always crowded and stuffy, especially during the summer. The temporary detainees are not allowed to use the mosquito net, although those areas are infested with mosquitoes. Through the use of polluted water, many mosquito bites when not treated promptly became infected and created skin lesions.

In the quarter for detainees who have not been through preliminary trials, clean drinking water are not provided. They are given very dirty water, drawn directly from the wells, to use for bathing, washing and sanitation. They have to use socks and washcloths to filter drinking water. In the prison chambers for those who had been tried in the first instance, boiled water is provided, but only in small amount, about 10 liters per day, to be divided among the more than 20 people, none on Saturdays and Sundays.

Food: The detention center provides detainees with only two meals per day, each meal consists a bowl of rice, and vegetables that are very dirty. Meat is given once a week, and less than 100 grams.

Contact: All information and contacts between detainees and their families are strictly prohibited until the investigation ends, or, in some cases, until after the hearing at first instance (especially in political proceedings). In the detention room there are no TV, radio or newspapers. The detainees are not privy to any news that going on in the outside.

2/ The life of the accused and their corrupt wardens:

A detention chamber is divided into four groups with different rights and privileges as follows:

- Upper Group: Special privilege group enjoys all the supplies sent in by families which are pooled together, they pick and choose the best foodstuffs and take the provisions according to their needs, the rest will be distributed back to the under privilege group below. They people are free to travel within the prison chamber and corridors. Those detainees who want to partake in the activities of the upper groups

have to have their families pay the prison management about five million dong (approximately \$300 USD in 2007) which is good for a term of about three months, after three months if the person has not been tried, the family must pay about one million more for each subsequent month.

- The In-between Group: This group is entitled to about 60% of the Upper groups. They are allowed to move about the cell chamber. The detainees who want to participate in these group activities must have their families pay the prison management between two to three million dong.

- Sanitation Team: These people have to do the sanitation chores in the cell, such as doing laundry, boiling water, making tea for the upper groups. They enjoy a little extra food every day which the upper group donate. Their families have to pay prison management from five hundred thousand to a million dong.

- The Dirt-Poor Group: These are people whose family economic conditions do not allow for bribes for their care. Every day they receive poor standards of detention, which consist of rice, some vegetables, and white salt. Once in a while, when their family brought in provision, they would receive about 1/3 of this family supplies. They have to sit bunching up, grasping their knees and are not free to travel within the cell. These people after a period of detention about three months or more, their health would decline, many would turn deeply depressive, became paralyzed and cannot walk.

3/ Method corruption of management

When a person comes into custody, the warden can assess his person's family circumstances through his records. Prison warden then would ask inmates who are in charge of assigning rooms for new detainees to see what groups he would like to participate with. After the new detainee made his decision to join certain group, the inmate in charge of room assignment would bring him to see the warden, the warden would then allow him to write letters to his family asking them to pay the warden fees. Through the detainee's address and phone number, the warden will communicate directly with the detainee's family to get his money. Usually an executive warden would supervise four-chamber cell numbered from 100 to 120 defendants. Each month the warden could earn from 45 to 60 millions dong, this is the estimate for the 2007 time period.

4/ Attitude and treatment of warden toward the detainees:

Temporary detainees are not considered guilty and should not be deprived of their civil rights. They are separated from society for the sake of the investigation. But those who manage them are always looking for ways to degrade their dignity. Most of the detainees are to call the warden 'teacher' and refer to themselves as 'son' or 'daughter', although many of the detainees are in the same age bracket or older than the warden. When the detainees are called out to speak, they are not allowed to sit in chair, they have to sit on the floor while the warden sits in his chair. Those detainees who violate prison rules and are without visiting relatives may get beating.

Every time a new person got detained, if the warden said, "No one asks this person questions" s/he will not be beaten. If the warden doesn't say anything, then that night when he is taken into custody, the new person would be taught "the law" by the old inmates, the inmate in charge of the new chamber will tell him about "three No's: no see, no hear, no tell," when someone ask about the violations taking place in

detention. Then depending on the new detainee's attitude, he will either be kicked in the chest or slapped in both ears. Approximately 90% of those taken into custody for the first time got beaten thus.

Form of discipline for those who violate the rules of detention camps:

Those who violate the rules of detention camps would be held in a cramped closet, shackled for 7 days, 24/24 hours. They eat and carry out their bodily functions in place, can't brush their teeth or wash their face daily, no bathing and no changing clothes.

5/ Inspection and monitoring:

Each year, agencies such as the Procuracy, the Police Inspector of the Security sectors regularly organize delegations to visit detention centers for inspection and monitoring arrests and detention conditions. But these inspection and monitoring visits are only perfunctory. All inspection and monitoring trips are announced in advance so the prison warden and those in charge would have time to prepare and shape up beforehand. Management and prison warden would ask the detainees to clean and ship-shape cell rooms, hiding all the banned items. The detainees would be selected, prepped and threatened before they meet the inspection team. So all the inspections and monitors would pass muster, getting good report and no offense.

6/ The supply and use of items prohibited in the detention center:

Under prison rules, the smoking of tobacco and water pipes, consumption of alcohol, beer, tea and the use of cash in the detention area are all prohibited. In fact, all inmates wishing to smoke tobacco or water pipe, drinking alcohol, beer, or even using drugs are also being satisfied. There are two sources of supply providing these stimulants to the detainees:

- The first source of supply is provided by the prison administration itself, the warden asks the detainee's family to pay and he would buy cigarettes and other stimulants according to the needs of the detainee.

- The second source: there are police officers not involved in prison administration, who would facilitate cash transfer for the detainees. When the detainees see their family, the family is requested to contact the owner of the cafe in front of the detention center and ask them to transfer money to their loved ones. Cafe owner would take his \$50,000 VND fee, then s/he (cafe owner) would hire the police from the detention center to bring money to the detainees, the detainees would receive only 60% of the amount that the family submitted, the police officers would get his 40% cut. The detainees use the money to buy tobacco at 20 times the price of the outside market going rate (to buy a tobacco package priced \$10,000 dong outside, the detainee in detention has to pay \$200,000 VND).

Also some of the detainees who wish to meet directly with their relatives must request and pay bribes of at least 2 millions dong to the camp supervisor (normally the detainees only meet his family by phone). Some detainees will give money to their supervising officers so they can see their family freely, then their relatives would give them small packages of drug, they would swallow them and thus transport the drug inside the detention camp. The user would consume part of the banned substance, and part they would sell to others at 20 times the going rate.

7/ The detainees' effort to overcome difficulties:

The lives of the detainees in the Hanoi detention camp # 1 are brutally harsh. Yet they'd find ways to overcome these difficulties. The detention center do not allow the money to be deposited, so all the family provisions are cooked, prisons banned the use of fire and cooking in chamber confinement, but the detainees have to buy empty milk cans for \$200 thousand dong, or beer cans for \$100 thousand, and then use nylon bags as fuel to heat the food for the day, plus they also use nylon bags and beer cans to boil their drinking water. Periodically the police of the prison would make their rounds and confiscate all such items. The detainees have to take time and money to acquire these items again.

8/ Illness, diseases and medical care in prison:

The detainees often contracted three main diseases:

- First, skin lesions, caused by dirty water and damp, humid conditions in cramped quarters;
- Second, diarrhea, caused by eating spoiled food since there are no means to heat the food in detention.
- Third, detainees' physical being become deteriorated which would bring about paralysis, caused by lack of adequate nourishment.

Every day there are health workers to visit people in detention center, but the medical staff just listen and provide medicines, and medicines produced by Vietnam are of low quality, many people have contracted more severe diseases and have to be taken to emergency hospital for treatment, and prolonged and inadequate treatment would affect the health of detainees. Many of the detainees whose economic conditions allow them to bribes prison management so they can receive proper treatment and medicine from family or taken to hospital when their conditions are still treatable and have not become acute.

9/ Corruption in the transfer of prisoners to the prison:

After the first instance or appellate hearings taking effect, ranging from 40 to 60 days, the detention center and prison management agency, under the Ministry of Public Security, will move those who have been sentenced into the prison to carry out the rest of their sentences. Detention in the Hanoi Detention Center #1 would hold some prisoners there who are sentenced to 3 years detention or less to do the kitchen work, farming, tend to livestock, and to carry out services in the detention center. Those prisoners who want to be kept back in detention center, their families have to pay bribes to prison administrators or staff an amount that ranges from 10 to 15 million depending on the location of their work. Those prisoners to be moved to prisons closer to home and doing light works, their families need to pay bribes of about 20 to 40 millions dong depending on the camp and the work they perform. Bribery is possible through the staff at the detention center or through relations with the prison management agency. The prisoners who have no bribes will be transferred to prisons far from their families and carry out the hard labor.

10/ Conclusion:

In Vietnam, the one-party political regime today is no longer consistent with economic development and societal progress. The mismatch of the political institution has created so many injustices in society, with the fundamental rights of the people continually deprived, those who are arrested, their dignity are being trampled. Corruption happens at all levels of society, outside as well as in prison.

What I and other people of Vietnam earnestly wish and call out to the international community is the need for them to act strongly and effectively to persuade and to pressure Vietnam's communist government, forcing them to respect the importance of human rights provisions stipulated in the Constitution of Vietnam as well as in the Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights.

Political changes in Vietnam will promote human rights and cause them to be honored. This not only brings joy and happiness to generations of Vietnam today and the Vietnam generation of tomorrow, but will facilitate Vietnam's relation with the world's civil societies.

Thank you for your time and patience in reading and understanding more of what has happened in the Hanoi Detention Center # 1.

If you have any further question please do not hesitate to contact me