

Plea of Mrs. Vu Minh Khanh, Wife of Attorney Nguyen Van Dai  
To Be Tried in Appeal Court on November 27, 2007

**My Husband Is a Patriot,  
My Husband Is Innocent**

Hanoi, November 14, 2007

On May 11, 2007, the Hanoi People's Court sentenced my husband, attorney Nguyen Van Dai, to five years of imprisonment and four years of house arrest on the charge of "*propaganda against the Socialist Republic of Vietnam*". Right after my husband's arrest on March 6, 2007, many media belonging to the Communist Party of Vietnam (CPV) and to the Government have launched a campaign of vilification against my husband in order to project the image of a bad element, a traitor to the Fatherland. They misrepresent the human rights activities of my husband, spreading the propaganda that he "*organized the gathering of political and social information, especially in the field of religion, so as to provide foreign countries with fodder which they can use to distort and blemish the image of Vietnam.*" (Sai Gon Giai Phong, April 12, 2007)

Motivated by his patriotism, my husband has on many occasions openly criticized the misdeeds and violations of the law perpetrated by government personnel and agencies. It is my belief that my husband's human rights activities have in actuality helped Vietnam improve its human rights situation and raise its standing with the world. He does not tell untruths. As a human rights lawyer, he has received many reports of violations of religious freedom from various localities. These are reported breakups of religious gatherings, confiscations of the faithful's property, H'mongs being forced by local authorities to renounce their religion, and beatings of Protestant followers by public security cadres leaving wound traces. My husband has written legal complaints and usually chose the path of quiet exchange with the authorities before bringing out issues to the attention of the public. In a number of instances, it was thanks to his alert bulletins that the central government learned about violations of the law by local officials and subsequently has intervened. In other localities, the situation has improved because it has drawn international attention, thus forcing the central government or local authorities to pay more attention to the matter. It was partly owing to my husband that Vietnam has been able to improve on its religious freedom record. This led the U.S. to remove Vietnam from the CPC (country of particular concern) list in November 2006. It was thanks to people like my husband that the authorities have lessened their suspicion of Protestantism, the so-called "American" and "reactionary" religion, and allowed its followers to carry out normal religious activities. Ever since the middle of last year, when various Protestant house church groups were allowed to carry out normal religious functions, it is clear that happenings leading to a tense situation have noticeably decreased. This has helped to stabilize society. Thus the voices of people like my husband's are very much needed, even though this is something that has upset a few government officials.

The fact that the government media, the indictment and the findings of the Court of First Instance (*generic term for Toa So Tham, the preliminary trial court in Vietnam; hereinafter*

*Toa So Tham* referred to as the "Court of First Instance") have unanimously claimed that my husband is a lawyer "who has never spoken on behalf of anyone ever since the opening of his law firm up to the day that he was arrested" is a very malevolent distortion, thus providing the public with a very erroneous image of my husband. This malevolence appears even more obvious when the Court of First Instance sentence asserts that my husband has so admitted at the trial. To rebut, I only need to cite a couple of cases, which everyone can check on. At the very least, my husband has defended Ms. Nguyen Thi Thuy, who was representative of the Vietnamese Assembly of God Church in Viet Tri at the beginning of 2000; he has defended Pastor Nguyen Hong Quang, Secretary-General of the Vietnam Mennonite Church in April 2005; he has also intervened in legal matters involving Pastor Than Van Truong of the Vietnam Baptist General Conference when the latter was kept without a valid reason in the Bien Hoa mental hospital from September 2004 to September 2005. My husband was the legal counsel of the Asset Management Council of the Evangelical Church of Vietnam North and he has counseled pro-bono for a great number of persons.

There is no lack of misinformation like the above in many articles published in the recent past. The spreading of misinformation has created a bad prejudice against my husband, thus giving to the public the impression that he is therefore guilty; it also created an atmosphere favorable to a sentence against him. I am of the belief that the investigative organs, the People's Procuracy (Vien Kiem Sat Nhan Dan) and the court have done nothing but aimed at seeking a sentence against my husband.

The sentencing of my husband at the trial of first instance in the Hanoi People's Court (Toa An Nhan Dan) was based on misinterpretations, the result of sloppy and prejudicial work by the prosecutorial organs. Before and during the trial, these organs have severely violated many fundamental principles of the Vietnam Code of Criminal Procedure (Bo Luat To Tung Hinh Su). That is why the court was unable to discover the truth about the matter. Because the trial of my husband has to be seen in a comprehensive way, I am going to contribute ideas towards clarifying a number of issues regarding civil rights in the 1992 Constitution and human rights in the International Covenant on Civil and Political Rights, to which Vietnam is a party. I am also analyzing the charges aimed at my husband's so-called crime of "propaganda against the SRV" in accordance with Article 88 of the Vietnam Criminal Code (Bo Luat Hinh Su).

**1) The sentence in the Court of First Instance needs to be nullified because the prosecutorial organs have severely violated the Constitution and the very fundamentals of the Code of Criminal Procedure.**

**a) In the pre-trial period**

In the very first article of Chapter I of the Code of Criminal Procedure, it is asserted that this code is aimed at forming fair judgment --not prejudicing the innocent-- and protecting the legal interests of citizens. In order to do so, the Code of Criminal Procedure must be built on the fundamental principles as found in Chapter II. But even before my husband was brought

before the court, the prosecutorial organs have already severely violated the fundamental principles of the Code. Here are some examples.

In principle, my husband is presumed innocent until he is given a court sentence having the power of law. For this reason, all condemnations of my husband by individuals, organizations or governmental organs constitute violations of **the right to a presumption of innocence** (Article 72, Constitution) and of my husband's right to **have his honor and dignity be respected** (Article 71, Constitution). Yet, when they met me right after his arrest, public security (cong an) personnel affirmed right up front that my husband would not escape an imprisonment sentence. Even though the court had yet to try my husband, they already knew that he would be sentenced to jail. They already considered my husband to be guilty and forced him to wear a prisoner's outfit when they put him on television. The public security also provided State media with information and pictures belonging to the trial case of my husband so that they could launch a campaign of vilification of his integrity and thus violate his dignity. I have written to 17 mass media, requesting that they investigate carefully before they disseminate bad information about my husband, but up until now, I have yet to receive an answer from any of them. The Hanoi Bar Association has based itself on the fact of my husband's temporary detention to withdraw his membership card and the Ministry of Justice has based on this decision to cancel the license of the Thien An Law Office. All these judiciary organs did not allow my husband an opportunity to defend himself and they did not even wait for the valid sentencing of a court. In this way, the mass media, the public security's investigative organs, the People's Procuracy, the Hanoi Bar Association and the Ministry of Justice have violated the following fundamental procedural principles, to wit:

- *"No one is considered guilty without a court sentence having the power of law."* (Article 9, Code of Criminal Procedure)
- *"To protect the citizen's life, health, honor, dignity and assets."* (Article 7, Code of Criminal Procedure)

The prosecutorial organs **did not have a fair-minded attitude** as required by the law. The fair-mindedness of prosecutorial organs and individuals is shown in the way they correctly, completely and objectively realize their mission in accordance with the law during the prosecutorial process. I noticed many indications of lacking of fair-mindedness on the part of the Hanoi People's Procuracy, and that of the Hanoi People's Court. From the day they received the file on my husband, on April 19, 2007, to the day they completed the indictment on April 23, 2007, the Hanoi People's Procuracy needed just four (04) days to complete all the tasks as specified in Article 23 of the Code of Criminal Procedure. The People's Procuracy did not fully use the 30 days limit envisioned in the Code of Criminal Procedure for extremely serious cases like the one involving my husband (Article 166, Code of Criminal Procedure). In my view, four days are not sufficient for the People's Procuracy to closely inspect the legality of prosecutorial procedures in a case involving a relatively large amount of evidence (6 personal computers, 1 laptop, 2 hard disks, and 121 documents). When they received two (02) letters of complaint from me concerning illegal obstacles to my securing an attorney, the People's Procuracy should have made necessary adjustments right away. The Hanoi People's Procuracy not only did not study my letters of complaint, incomprehensibly but it also hastily went ahead with producing an indictment based on assertions without substance. And the trial that followed used these assertions to draw up defective conclusions.

The People's Procuracy did such a hasty job that it even forgot to number and date the indictment --this alone should invalidate the indictment for having violated the stipulations of Article 167 of the Code of Criminal Procedure.

The following, in particular, makes me suspect even the independence and fair-mindedness of the court. On April 19, 2007, the French press agency AFP, on the basis of a source inside the Hanoi People's Court, very accurately announced that my husband would be tried on May 11, 2007. It should be noted that April 19, 2007 was the very day that the Hanoi Public Security Office transferred my husband's case file to the Hanoi People's Procuracy. This means that as soon as the police completed its investigations, the Hanoi People's Court already decided about the trial date for my husband—even though the People's Procuracy has yet to complete its indictment and the Court has yet to receive the file from the latter. This also clearly shows that the Court was only interested in having him tried and that no considerations were given to other possible solutions as stipulated in Article 176 of the Code of Criminal Procedure, e.g. the possibility of reviewing and returning the file to the People's Procuracy for supplementary investigations or the possibility of even stopping the trial. This suspicion is further reinforced when the newspaper *Ha Noi Moi* ("New Hanoi") on April 25, 2007, i.e. only one day after the Hanoi People's Court officially received my husband's file from the People's Procuracy —announced that he would be put on trial on May 11, 2007. I have the impression that from the very start, the organs in charge of prosecuting my husband have assented to ascertain his guilt and have no interest in protecting his freedom or finding out the truth about the matter. It is thus clear that both the Hanoi People's Procuracy and the Hanoi People's Court have gravely violated the fundamental procedural principle of

- *"Guaranteeing the unbiased approach of those in charge of the prosecution."*  
(Article 14, Code of Criminal Procedure)

Both the public security police and the People's Procuracy have deliberately impeded the defense of my husband as they did not allow him to meet with a defense attorney in the period preceding the transfer of his file to the Court. The impeding started with little things like refusal to provide me with the arrest order, the house search order, the office search order, and the copy listing the documents and objects taken by the police, in accordance with Articles 80, 85, 126 and 145 of the Code of Criminal Procedure despite my repeated letters of complaint. Because I am not given these documents both my husband and I do not know what has been taken from us, and for a long time we could not know for sure the reasons for which he has been charged.

Right after my husband was arrested on March 6, 2007, I have on numerous occasions asked that the investigative police allow him to see a defense attorney, but that request was simply not granted. On April 5, 2007, his attorney wrote to the Hanoi Public Security Office (So Cong An Ha Noi) asking that he be acknowledged as my husband's defense attorney. The public security officer in charge of his case only answered orally *"because your husband has been charged with allegedly violating national security codes his attorney cannot participate in the investigation stage."* If that were correct, then according to Article 58 of the Code of Criminal Procedure, it is up to the Chief Procurator of the Hanoi People's Procuracy to issue that decision. In actuality, I have yet to receive any document from either the Hanoi Public Security Office or the Hanoi People's Procuracy addressing this question of limitations of my

husband's attorney participating in the prosecutorial period of his court case. The question of his defense attorney had been left hung up in the air until his file reached the Court. And because his attorney was not allowed to participate since the beginning of the prosecution process many of my husband's legal rights have not been protected. Since he did not receive the conclusive report of investigation from the Hanoi Public Security Office (Article 162, Code of Criminal Procedure) or the indictment of the Hanoi People's Procuracy (Article 166, Code of Criminal Procedure), he had no time to learn of the opinions of the prosecutorial organs on the various facts adduced in the case, the evidence supporting the charges, and the proposed solutions so as to effectively defend my husband.

It was not until May 2, 2007 that my husband's attorney was provided by the Hanoi People's Court with an "Attestation of Defense Attorney." If counted until May 10 inclusive and leaving out the weekend holidays, he had altogether seven (7) working days to prepare for the defense of my husband and attorney Le Thi Cong Nhan. It is clear that this was too short a period for the attorney to complete the study of a large amount of documents involved, to meet with his clients and to collect needed evidence for the defense (Article 58, Code of Criminal Procedure). If this is seen as a complex case in view of the hundreds of articles and reports carried on government media over several weeks, then the defendant clearly has had the "short end of the stick" as compared to the time that the prosecution was given to investigate and prepare the indictment (from February 3, 2007 to April 19, 2007), ten times more than the time given to the defense attorney to prepare his case. In summary, the Hanoi Public Security Office, the Hanoi People's Procuracy and the Hanoi People's Court have violated a basic procedural principle regarding

- *"Guaranteeing the defense right of detainees, convicts and defendants"* (Article 11, Code of Criminal Procedure)

During the time my husband was in detention awaiting trial, I have sent a total of 61 **letters of complaint** or various proposals, some 24 of which were sent to the functional organs in charge and 37 to the organs in charge of leadership and supervision asking them to respect or intervene so as to protect my husband's legal rights. Until now I have yet to receive any answer from the supervisory organs concerning my questions about procedural matters. And because these violations have severely limited his right to a defense, on May 4, 2007, I have made an application asking for a postponement of the trial. This application was sent to 16 functional organs but I have yet to receive one response. For this reason, these organs have violated the following fundamental procedural principles:

- *"To respect and protect the fundamental rights of the citizens"* (Article 4, Code of Criminal Procedure)
- *"To guarantee the right to complaint and denunciation in criminal procedure"* (Article 31, Code of Criminal Procedure)
- *"The supervision by government organs, mass organizations and publicly elected representatives over the prosecutorial organs and individuals"* (Article 32, Code of Criminal Procedure)

**b) In the court trial of first instance**

The court trial of first instance, which took place on May 11, 2007 also severely, violated the basic principles of the Code of Criminal Procedure.

The trial did not reach the standards of a public trial even though there was no announcement that it was to be a behind-closed-doors trial. When I attended the trial I got the impression that those present were a group of people who had been previously selected. Among the participants, for instance, I recognized many familiar faces that I have met in the various public security offices. Immediate family members, acquaintances and friends of the accused have not been able to attend the event. They were stopped at the door on the pretext that they could not produce invitation letters. Each defendant was allowed to have only one immediate family member in the courtroom, but even that person could step into the room only after the trial had begun. The two family members were led to the last row in the courtroom, thus could not hear clearly the proceedings of the court. International observers and reporters were limited in their observation since they were allowed only into an adjacent room to observe the trial through close-circuit TV. The exchanges in the trial were rebroadcast over an intercom. While the words of the presiding judge and the Procuracy person could always be heard clearly throughout the trial, many responses of the lawyers and defendants could not be heard distinctly. This made the participants unable to understand fully the arguments of the defendants and their attorneys, leading to laughter and derision sometimes, which created very heavy pressure on the psychology of the defendants and their attorneys. The presiding judge has not intervened to change this situation. In this way the Hanoi People's Court has violated a fundamental procedural principle regarding:

- *A public trial* (Article 18, Code of Criminal Procedure)

The assignment of seats in the courtroom also shows a clearly prejudicial disposition. While the two persons from the People's Procuracy (i.e. prosecutors) were allowed to sit next to each other on a high pedestal, the two defense attorneys were seated far from each other. There was no way that they could exchange anything either between them or with my husband. In the trial the defendants were not given equal access [to the prosecution] since they were not allowed to listen to the witnesses' testimonies. All the witnesses invited by the presiding judge were the witnesses for the prosecution. The witnesses for the defense were not invited to speak when it came time to cross-examine the witnesses. The presiding judge also did not invite my husband's attorney to cross-examine the witnesses.

The defendants and their attorneys were not allowed to mention or argue or made a defense on religious grounds or to discuss issues relating political organizations and parties. On the other hand, the prosecutors were allowed to discuss these issues, thus giving the wrong impression that my husband is organizationally involved in anti-State activities.

In the final statement allowed to the defendant, the presiding judge repeatedly interrupted my husband's remarks despite the fact that the latter had asked that he not be limited in the time of his statement since such a limitation would constitute a violation of Article 220 of the Code of Criminal Procedure.

The trial of first instance has committed an egregious mistake when it did not faithfully record the proceedings as it happened, especially when it related to my husband's declarations

before the court. In many instances, the sentence recorded that my husband has admitted to actions that he clearly denied in court, acknowledged only partially or said that he did not remember. This misreporting led to the damaging misapprehension that my husband has admitted his guilt and that the sentence meted out to him was correct. This way, the Hanoi People's Court has severely violated the following fundamental procedural principles:

- *Confirming the veracity of the trial* (Article 10, Criminal Procedural Law)
- *Guaranteeing equality of access in front of the Court* (Article 19, Criminal Procedural Law)
- *Guaranteeing the defense right of detainees, convicts and defendants* (Article 11, Criminal Procedural Law)

In this way, the trial of my husband did not proceed in a fair manner as stipulated by the law. The truth of the case was for that matter not established in an objective, full and comprehensive way because in the procedural process there have been severe violations of the Code of Criminal Procedure. This is because the prosecutorial organs have severely violated too many fundamental principles of the Code of Criminal Procedure. That is why the Court of Appeal (Toa Phuc Tham) should not just simply correct various deficiencies of the trial of first instance; it should instead nullify the entire sentence reached by that lower court.

**2) My husband has exercised his civil rights, as specified in the 1992 Constitution of the S.R.Vietnam and guaranteed by the International Covenant on Civil and Political Rights, to which Vietnam is a State party.**

According to the 1992 Constitution, citizens are guaranteed such civil rights as the rights to freedom of speech, freedom of the press, the freedom to be informed, freedom of association, as stipulated by the law (Article 69 of the Constitution), the freedom of religion and worship (Article 70), the inviolable rights of their honor and dignity (Article 71), the rights to conduct scientific research and participate in cultural activities (Article 60), the right to discuss the common issues and concerns of the nation (Article 53), and the right to seek redress for grievances (Article 74). In the capacity of an attorney-at-law, my husband, being fully aware of his civil rights, has been resolute in carrying out and defending these constitutional rights because they are the accomplishments earned in Vietnam's democratization process.

When examining the 1992 Constitution and other Vietnam statutes and legislations, one cannot find the definition regarding the freedom of expression. However, since Vietnam has accessed the International Covenant on Civil and Political Rights (ICCPR) on September 24, 1982 and has not expressed any reservations at the signing of the Covenant, **the definition of the freedom of expression in Article 19 of the ICCPR has been ipso facto affirmed and should be fully carried out and applied to the corresponding civil rights of the 1992 Constitution, such as the freedom of expression, freedom of the press, freedom to be informed, freedom of religion, and the freedom to conduct scientific research and participate in the national discussion of common issues and concerns.**

Moreover, the Law on Signing, Accession and Implementation of International Treaties, which the Vietnamese National Assembly has passed on June 14, 2005, clearly states: "Accession

is a legal act of the National Assembly, the President or the Government expressing the consent of the SRV to be bound by a multilateral international treaty." (Article 2, Paragraph 10). This law also explicitly gives precedence to the application of regulations of international treaties as stipulated in Article 6: "In the event that Vietnamese legislation conflicts with international treaties, to which Vietnam is a State party, then the regulations of international treaties apply." Therefore the Vietnamese government has fully agreed to give all Vietnamese citizens the unabridged freedom of expression according to Article 19 of the ICCPR.

Article 19 of the ICCPR stipulates that:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in Paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of the public, or of public health or morals.

The Human Rights Committee is an organization entrusted by the United Nations (U. N.) to monitor the implementation of the ICCPR in its member states. The Committee has the duty to interpret the overall intent of the Covenant articles. These interpretations will help the member states carry out the Covenant in a more serious manner. The member states are responsible to send periodical reports to the Human Rights Committee with regard to their implementation of the Covenant. In the General Comment (CCPR/C/21/Rev.1; May 19, 1989) the Committee has explained fully Paragraphs 1, 2, and 3 of Article 19 of the ICCPR regarding the freedom of expression as follow (excerpt):

1. Paragraph 1 (Article 19, ICCPR) requires protection of "the right to hold opinions without interference". This is a right to which the Covenant permits no exception or restriction (...)

2. Paragraph 2 requires protection of the right to freedom of expression, which includes not only freedom to "impart information and ideas of all kinds", but also freedom to "seek" and "receive" them, in whatever medium, "either orally, in writing or in print, in the form of art, or through any other media" of one's choice (...)

3. (...)

4. Paragraph 3 expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and, for this reason certain restrictions on that right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party

*imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be "provided by law"; they may only be imposed for one of the purposes set out in Subparagraphs (a) and (b) of Paragraph 3; and they must be justified as being "necessary" for that State party for one of those purposes.*

Vietnam has been at peace and has a stable development since 1975. In the last several years Vietnam has not had any violent rebellion on a national scale. Therefore, according to international laws, Vietnam does not fall into a situation where the entire country is under a security or political threat. Moreover, as regards the fact that Vietnam has not passed any special laws that limit the freedom of expression as stipulated in Article 19, Paragraph 3(a) and Paragraph 3(b) of the ICCPR is proof that the SRV has ipso facto recognized that **the citizens of Vietnam shall enjoy the full extent of their right to hold their own opinions and the right to freedom of expression in accordance with Paragraphs 1 and 2 of Article 19 of the ICCPR without any legal limitations.** In other words, if there is no legislation and regulations that limit the freedom of expression then that statute or legislation must be regarded as violating the Vietnamese government's accession to the ICCPR.

The fact that my husband holds his own political views and exercises his peaceful expression through his articles or verbal exchanges, as well as promotes his writings or ideas with others -- no matter where one resides in the world -- is absolutely in accordance with the freedom of expression as stated in the 1992 Constitution and the ICCPR of the U.N. As mentioned above, once Vietnam has joined the world community to sign several international treaties, the argument that my husband, being a Vietnamese citizen, "*has to fully obey Vietnam law, if not he will be punished severely to its full extent, pursuant to Vietnam law*" (Preliminary Court Sentence, p. 10) is a necessary argument but not a sufficient one. It is not sufficient because the Court of First Instance only wants to limit its ruling according to the [Vietnam] Criminal Code, not applying other codes that look into the conflict that the law of Vietnam may interfere with other international treaties, which Vietnam has signed. In order to have an unabridged view, **one must consider both the international law and the Vietnam law as integral parts, bound by the [Vietnam] 2005 Law on Signing, Accession and Implementation of International Treaties.** Therefore, if the Vietnamese law corresponds with the appropriate international treaty then the distinction of the laws is not the contention here. Yet in this case, if the Vietnam law is not in line with the required treaty then Article 6 of the Law on Signing, Accession and Implementation of International Treaties provides for the application of the necessary international treaty. More concretely, if **Article 88 of the Vietnamese Criminal Code is deemed not in line with the ICCPR then the Government of Vietnam must annul or suspend it at once the implementation of that law.**

My husband is not the only one who realizes that presently Vietnam has many legislations and regulations on civil and human rights, which are **not appropriate with the Constitution.** His opinion is shared by many analysts such as Associate Prof. Dr. Nguyen Van Dong, who wrote "Human Rights and Civil Rights in the Vietnam Constitution" (Khoa Hoc Xa Hoi Publisher, August 2005). Like other people, my husband has also raised the idea that Vietnam needs a **Constitutional Court** to rule on the constitutionality of legislations passed

under the law. Another critical at-large issue is the implementation of international treaties on human rights to which Vietnam is a State party. According to Prof. Nguyen Van Dong, honoring and properly implementing these treaties is the duty of the government and the people (ibid, p. 231). Those are the constructive expressions of my husband relative to the improvement of the current system of laws in Vietnam in order for Vietnam to integrate fully into the world community.

We need to reiterate that my husband is not the only one who exercises the constitutionally guaranteed civil rights. Before his arrest, there have been intellectuals, researchers, lawyers, professionals and high-ranking cadres, as well as many government leaders, representatives of the National Assembly and the Party – both current and retired -- who have exercised this freedom of expression in official mass media outlets, both within and outside Vietnam. Just like my husband, they have debated heatedly on issues such as Article 4 of the Constitution, the views on leadership role of the Party, multiparty and pluralism, democracy, human rights, reconciliation with overseas Vietnamese. Normally, the government needs to encourage such a culture of peaceful exchange regarding issues that face our nation.

### **3) My husband did not violate Article 88 of the Criminal Code**

#### **a) *The verdict is based on groundless and inaccurate investigations and arrived at false accusations***

The preliminary court sentence (PCS), No. 153/2007/HSST was based on the prejudicial accusations and careless investigations of the public security organ to arrive at false, even illogical, conclusions.

The opening of the verdict has deliberately created a false sense of guilt under the pretext that the defendants were caught red-handed in my husband's law office. *"In the morning of February 3, 2007, at the Thien An Law Office, 10 Doan Tran Nghiep, the investigative organs of the Hanoi Public Security Office and the Ministry of Public Security have discovered Le Thi Cong Nhan to be spreading propaganda against the SRV and distorting the government policies regarding democracy and human rights to three journalism students of the Ha Nam 1 Advanced School of Television and Radio"* (PCS, p. 2). This is an ignorant affirmation. The truth is on February 3, 2007, attorney Le Thi Cong Nhan only had time to greet and distribute a handout titled "Dignity, the Foundation of Human Rights" to the three students of Ha Nam before the police entered. According to the collaborated testimonies by Le Thi Cong Nhan, Pham Van Troi and Bach Ngoc Duong, everything that had taken place took no more than five (5) minutes before the police arrived to disperse them at 10:10 a.m. Even the People's Procuracy witness, Giap Van Hieu, stated at the court trial that: *"They have not had time to read the documents when the police came to arrest them."* Five minutes is such a short time and certainly it is not going to be sufficient for Le Thi Cong Nhan to perform such a formidable task of *"spreading propaganda against the SRV ... and distorting the government policies regarding democracy and human rights."* I must also add that the essay: "Dignity, the Foundation of Human Rights" is a scholarly research paper by Dr. Do Manh Tri, who lives in France. The scholarly nature presents itself at the beginning of the article where Do Manh Tri

clearly states: "[the article] utilizes an analytical method of examining historical records. In other words, based on a few watershed events in history it uses the idea of human dignity to illustrate the foundation of this concept in the process of appreciating and extolling the virtue of human rights". The article uses a few concepts of philosophy and theology, and there is not a single idea or word that mentions Vietnam. My belief is when accepting a conclusion that completely has no base in reality, logic and truth, the court has already prejudiced the accused.

The Court of First Instance has accepted at face value many opinions of the investigative organs. Just like the indictment, the verdict has bundled together many people and events that are not even related to create an impression of gravity so as to implicate my husband as the leading instigator. The verdict states: "*The Police investigative agency has affirmed Pham Van Troi and the four employees of the Thien An Law Office Pham Sy Nguyen, Nguyen Xuan De, Tran Thanh and Nguyen Thi Huong Lan were influenced by Le Thi Cong Nhan and Nguyen van Dai to carry out distortion of truths and propaganda against the State*" (PCS, p. 3). First of all, those individuals do not work in the same field. Mr. Pham Van Troi is a member of the Committee for Human Rights in Vietnam. Mr. Nguyen Xuan De is a driver and Miss Tran Thanh is an employee of the Viet Luat Limited Liability Company. Only Miss Nguyen Thi Huong Lan, an accountant, and Mr. Pham Sy Nguyen are both employees of the Thien An Law Office. These five people perform different duties each day, some people whose duties are limited to just driving or accounting. The employees in my husband's two separate offices have all declared that they did not carry out anti-State propaganda; therefore, no one was converted. Mr. Troi, an individual who acts on his own volition, also declared that my husband had never guided him. The fact that presiding judge Nguyen Huu Chinh did not invite Mr. Pham van Troi and my husband's employees to participate in the cross examinations at the court trial on May 11, 2007 has in fact twisted the truth against my husband.

**b) Article 88 of the Criminal Code contains too many vague and catchall terms.**

Since the Criminal Code was instituted in 1999, the State has not had any legislation to guide and explain what constitutes a "violation of national security" as stipulated in the Criminal Code. To be specific, with reference to Article 88 of the Code what constitutes "opposing" the State? How would one be against the State or against the Government? What constitutes "propaganda"? What kind of conduct and at what level or degree is one's speech considered propaganda? To critique the policies of the Party and the government, as well as the unconstitutional, illegal acts of Party cadres, government officials, and civil servants, to point out the occurrences of history --would these be considered actions that distort and slander the government? How does one's speech constitute psychological warfare? What kind of propaganda would be considered creating confusion and unrest among the people? How would one act be considered producing, storing and circulating materials and at what level would this act be deemed to be in violation of the law? These precepts are still very general and vague as people can arbitrarily interpret in any way they see fit. In general, many legal scholars and researchers in Vietnam still treat these issues as being "politically sensitive" issues, yet to be avoided; therefore, there has been no serious study to illuminate these issues. People are still operate on a skittish mode, forgetting that Vietnam is in a new

transition, trying to build the rule by law and integrate into the world community, and that it endeavors to reconcile between the provisions of the "violating national security" articles of the Criminal Code, the civil rights as provided for in the [Vietnam] Constitution, and human rights stipulated in international treaties. As the Criminal Code is not clear and lacking conventional understanding, there exist a variety of interpretations of this law in society. The citizens who are bold would do anything that is not prohibited by law; others who are puzzled, meek and reserved dare not reasonably engage nor exercise their constitutionally guaranteed rights. The law enforcement agency, on the other hand, has its own way of interpreting the law and applies it out of expediency. One time they would arrest a person; the other time they would overlook him. One time they would prosecute him; the other time they would enforce administrative measures, creating an inconsistent and loose application of the law and causing a shrouded curtain of uncertainty among the citizenry. They don't know when they are judged fairly in the eyes of the government.

To me, a rule-by-law Vietnam cannot let an important law such as Article 88 of the Criminal Code be implemented out of sheer expediency. Therefore, the legislative organ must clarify responsibly and promptly the intent of Article 88 of the Criminal Code. In the meantime, the State could temporarily suspend Article 88 on the basis of Article 2 of Criminal Code "nullum crimen sine lege" (No crime without a previous penal law). In the court trial of first instance, although having attested to the shortcomings in the Criminal Code the prosecutor still handed out his own interpretations before passing judgment on my husband. Therefore, I would like to protest as follows:

**c) My husband is not against the Constitution and is not against the SRV.**

In the presentation below, I will essentially apply the definitions of the Vietnam Encyclopedia, Unabridged Volume (VietEncyclopedia). This is considered the official and standard encyclopedia of Vietnam because it has been compiled by a government agency. This encyclopedia defines the "State" in a very abstract term: "*The State is a political organization of society, the basic instrument of political power in a class society*" (VietEncyclopedia, Volume 3, 2003). At the same time, according to Article 2 of the 1992 Constitution "*The Socialist Republic of Vietnam is a rule-by-law socialist State created by the people, of the people, for the people... The power of the State is integrated though there is division and coordination of responsibilities between different State agencies in the establishment of the legislative, executive and judicial powers.*" The Constitution of 1992 explicitly stipulates the agencies of the State as the National Assembly (Article 83, Constitution), the President (Article 101, Constitution) the Government (Article 109, Constitution), the People's Council (Article 119, Constitution), the People's Court and the People's Procuracy (Article 126, Constitution). We need to ascertain that, according to the 1992 Constitution, although the CPV is a "*power that leads the State and society*" (Article 4, Constitution) it is not viewed as an agency of the State. Therefore, if a Vietnamese citizen opposes the CPV then he/she cannot be regarded as being against the State.

To oppose the State is understood as opposing one or many of the State agencies that derive their power from the above mentioned Constitution. "To oppose" is to diametrically contradict. In political terms, "to oppose" is to be against something with malicious intent. The first

contention that needs to be considered here is whether a citizen who holds an opposing view (in his mind) with that of the government is guilty of a crime? The leaders of Vietnam have answered this with a resounding "No". The evidence is they always affirm that the Vietnamese government does not imprison anyone because he/she holds a difference of opinions, and that Vietnam does not imprison political dissidents but only those who violate the law. The next contention is if a citizen holds an "opposing" view, then which action of this citizen is considered a violation of the law and which action is considered to be protected under the constitutionally guaranteed freedom of expression (and thus not considered guilty). Because Article 88 of the Criminal Code regards the idea of opposing the State as a subjective factor of the crime thereby this Article is easily abused when applied in real life. The international laws resolve this issue in a simpler straightforward manner when it differentiates clearly an action, considered a crime that is committed with violence from another action, not a crime that simply expresses an opposing idea in a peaceful manner. Being a State party to the ICCPR, the Government of Vietnam must treat a citizen's attempt to express, to criticize, to propose and rectify by peaceful means, orally or by written words, with the government agencies as an lawful action protected by the civil rights guaranteed in the Constitution (Article 50, Article 69, Constitution) and by the freedom of expression guaranteed in the ICCPR. This right is also protected and upheld in all other countries in the world.

My husband has reiterated many times – even at the preliminary court trial – that he does not oppose the SRV but only exercises his constitutional civil rights. Yet, the Court of First Instance still issued its loose ruling based on flimsy evidence, accusing my husband of opposing the State. The Court of the First Instance has cited three reasons to hold my husband for the crime of opposing the State: opposing the Constitution, communicating with people who oppose the government and being a sympathizer or member of organizations that oppose the State. All three reasons cannot hold water.

If carefully examined, the arguments that the Court of First Instance used to accuse my husband of opposing the 1992 Constitution were based on a false premise. I can assert that not only my husband does not oppose the 1992 Constitution but also he often is of the opinion that we need to protect the constitutional spirit by defending citizens' rights.

In his article "The Right to Found a Political Party in Vietnam," which the Court has admitted as significant evidence, my husband observed correctly that there are no provisions in the 1992 Constitution forbidding the formation of legitimate parties alongside the CPV. Therefore, my husband believes, from the perspective of an attorney, that a citizen has the right to establish a legitimate political party. My husband has applied justifiably the main principle of a rule-by-law nation that is, *"the people could do anything that the law does not forbid"* (VietEncyclopedia, *ibid*). According to this Encyclopedia *"This principle represents the democratic underpinning of a nation, promoting all creative ideas of the subjects that are trying to serve the benefits of society, the government, and the people."* In reality, the 1992 Constitution no longer stipulates that the CPV is the sole power that leads the State, and society. This is a big change from the 1980 Constitution, which dictates that the CPV is the *"sole power that leads the State and society"* (Article 4, 1980 Constitution).

In 1980, in addition to the CPV there were two other parties, the Democratic Party and the Socialist Party, in the political arena of Vietnam. Both existed until 1988. Therefore, during the eight-year enactment of the 1980 Constitution, which clearly reserved the sole existence of the CPV in the leadership role, the Government of Vietnam did not consider the Socialist and Democratic parties illegal. It is noteworthy that these two political parties were established in 1944 and 1946. They voluntarily discontinued in 1988, but were not disbanded or declared unlawful by the government. Today, when Article 4 of the 1992 Constitution struck out the word "sole" as in the "*sole power that leads the State and society*" of Article 4 of the 1980 Constitution, then all the interpretations regarding the sole existence of the Party in the political arena and henceforth ascertaining that the operation or existence of other political parties as unlawful is simply groundless and lacking reason and reality. Due to a false premise regarding the characteristic of "sole" ("*The CPV is the sole party to lead Vietnam*") the Court of First Instance has repeatedly made false conclusions as "*all political parties and activities (sic!) are illegal*" or "*all acts criticizing the CPV ... strongly violate the Constitution*" (PCS, p. 6). The Court has based on this false argument to accuse my husband of opposing the State.

The Hanoi People's Procuracy and the Hanoi People's Court have heedlessly admitted many disputable presumptions from various investigative agencies. The Court of First Instance has relied on the fact that my husband has maintained contacts with overseas Vietnamese such as Messrs. Vu Quoc Dung, Nguyen Dinh Thang and Tran Ngoc Thanh to conclude that my husband is against the State (PCS, p. 6). Both the indictment and the verdict have reached a sweeping conclusion that they are "*Vietnamese elements overseas whose resolute intent is to oppose our State*" (PCS, p. 6). Yet, the verdict of the preliminary trial could not prove among those mentioned there was anybody who has done anything who the Court could consider an "*element who resolutely intends to oppose our State*"? These people are all working publicly in different fields overseas, two of them for INGOs (international non-governmental organization). The Court has not carefully checked out their background so as to even misspell their names as well as the names of their organizations. One is named Vu Quoc Dung, currently Head of the Asia Desk of ISHR (The International Society for Human Rights), but not Vu Duc Dung of The International Human Rights Network. The appellation "The International Human Rights Network" derived from the false assumption that "*Vu Quoc Dung is the leader of The Vietnam Human Rights Network in USA*" (An Ninh The Gioi, the online edition of The Journal of World Security, April 22, 2007, and other online editions). The other person is Nguyen Dinh Thang, Ph.D., Executive Director of Boat People SOS, but not "*the leader of the Relief to Vietnamese Boat People Committee in America.*" The term "leader" in this context deliberately gives the connotation that the organizations are unlawful. In reality, these two NGOs have earned great credibility for their long-standing operation in their countries where they are registered as well as in many other countries. To date, there is not a single thread of evidence that any of these organizations has been opposing any single, individual nation. Moreover, the ISHR, accorded Consultative Status with the U.N., cannot go beyond the framework of the U.N. Charter to conspire the overthrow of any of the U.N. member states. For this reason, to conclude that my husband has the intention to conspire with these people – their names are not specifically mentioned – "*to form a number of organizations with the expressed purpose of opposing the SRV*" (PCS, p. 6) is totally groundless and has no base in reality.

The verdict has also accused my husband of being a member of the "Independent Union" (Cong Doan Doc Lap), "The Vietnam Progression Party" (Dang Thang Tien) and "Bloc 8406" (Khoi 8406), as well as a sympathizer of "The Democracy Party, Century 21" (Dang Dan Chu The Ky 21). At the court trial the presiding judge, being intent on proving my husband's organized anti-government activities, did not allow him and his defending attorneys to argue about these parties, though being pivotal ones. This is a great omission. I will not examine the weak accusation with respect to [Dai] being the sympathizer of "The Democracy Party, Century 21". This accusation is very shaky because the government itself has not yet launched criminal proceedings against The Democratic Party, Century 21 leadership, thus it cannot accuse the person in question, my husband, for being a sympathizer.

The Court affirmed a twisted and careless ruling that: *"The accused has participated and supported wholeheartedly the operating by-laws of the so-called 'The Vietnam Progression Party' and 'Bloc 8406' of Nguyen Van Ly – an organization operating illegally in Vietnam"* (PCS, p. 6). This affirmation is simply false. First, the mixture of Bloc 8406 and The Progression Party into one organization is erroneous because they are widely known as two separate entities. Reality shows that many people belong to Bloc 8406 but they are not necessarily members of The Progression Party. Second, my husband has never joined The Progression Party, but he only participated in Bloc 8406. Therefore, the accusation that my husband belongs to The Progression Party is false. Bloc 8406 has included the people who signed to support "The 2006 Manifesto on Democracy and Freedom" and it does not belong solely to Catholic priest Nguyen Van Ly. We need to reiterate that Bloc 8406, not a political party, does not have a bylaw nor does it have a joint plan of action. Sometimes, there are people in this group who have different ideas concerning a plan of action. For example, with regard to the 7<sup>th</sup> National Assembly Election while Father Nguyen Van Ly supported the boycotting of the election and issued many statements calling for such action, my husband is known to have publicly called against a boycott and supported citizens to run for the National Assembly independently. Therefore, to accuse my husband of wholeheartedly supporting Bloc 8406's actions is an accusation that could not be real and is blatantly false.

The act of accusing my husband for being a member of the "Independent Union" is also based on similar careless assumptions. Instead of producing as evidence a member roster of this organization, the Court of First Instance has relied on vague notions, e.g. *"According to the testimony of witness Tran Van Hoa who affirmed that in September 2006, Dai has requested that Hoa go to Hanoi so that they could depart together to China to meet a person named Tran Ngoc Thanh, an expatriate living in Poland, in order to form an organization that is so-called 'The Independent Union'"* (PCS, p. 7). The Court has not had this statement verified. Later witness Tran van Hoa divulged that he was tortured to make a false confession during his incarceration from September 21, 2006 to October 3, 2006 (Testimony on July 13, 2007). In principle, the false confession that the police obtained during this time must be considered worthless before the court of law. Mr. Hoa said that although he was forced to make a false confession under duress he had only given out information that concerns him. Mr. Hoa reiterated that he had never given any statement that my husband had asked him to go to Hanoi in order to travel together to China. In reality, my husband had no intention to go to China on September 21, 2006, because he had prepared to leave for Thailand two days

later on September 23, 2007. However, both his September trip to Thailand and his trip to India, planned for October 25, 2007, did not take place. The investigative agencies can easily verify with the Public Security Police about how my husband was stopped at the airport on both of those dates. To accuse my husband of being a member of The Independent Union is pure conjecture and therefore baseless.

*d/ the need to precisely validate the issues of "propaganda, distortion of the truths and defaming the People's Government," as well as those of "production, hidden storage and circulation of anti-State materials."*

As per the above analysis relative to my husband, his crime according to Article 88 of the Criminal Code is immaterial for lack of the subjective factor of "motivation" against the State.

However, I wish to further discuss the precepts mentioned in Paragraphs 1 (a) and 1(c) of Article 88 of the Criminal Code because I was under the impression that the Court of First Instance has made its assumptions out of expediency, thus distorting the true meaning of the freedom of speech as stipulated in the Constitution. According to the VietEncyclopedia (ibid) propaganda is defined as *"an act to disseminate a policy or an ideology with the purpose of changing the populace's attitude and influence them to act in a certain way with a certain purpose."*

First, I want to make certain that "propaganda" is a specific terminology used only in the political arena with a specific implication, which is not to be used wantonly. To say: "Mr. A propagandised to Mr. B that..." or "The father propagandised to his son..." would constitute a wantonly use of this term. Nevertheless, the term "propaganda", viewed from different cultural and political perspectives, may be construed either negative or positive. In Western cultures respect for one's dignity, regardless of its content, "propaganda" has a negative implication because the act itself is aimed at steering a subject towards a specific ideology or action that he/she never intends to subscribe to. In this sense, propaganda amounts to brainwashing or clouding one's conscious judgment. Furthermore, propaganda has been widely used in the Vietnamese mass media in a broader, non-specific sense. As such, the act of propaganda is judged good or bad, depending on its content. If one advocates positively for the Vietnamese government he/she is considered a good citizen whereas one advocates against it, he/she is considered being in violation of the law. However it is defined, the act of propaganda always has a number of characteristics that distinguish propaganda from other acts of communications.

With respect to its **content**, what is used in propaganda must originate from a doctrine or ideology that is in fact a collective of systematically organized thoughts. To express one's trivial, shallow or impromptu thinking cannot be judged as an act of propaganda. On a global scale, there is a consensus on opposing such policies as genocide, anti-humanity, anti-peace, racial discrimination, and terrorism. Therefore, all acts to advocate for or attempts to carry out these policies are to be prohibited. As a common practice, should a government wish to ban certain political topics or subjects, there has to be laws written to define what is or isn't

banned politically. The law also has to specify forbidden means to carry out these illegal acts of propaganda. For example, a banned topic could not be broadcast on films, printed materials or signs but it would be acceptable to converse on these topics. As such, not all activities relating to this banned topic can be summarily forbidden by law. In many countries, exceptions are made with regard to specific uses of means of propaganda for banned topics, as in the case of making films or publications to educate the public or to illustrate historical or artistic matters. For example, in the study of the history and ideology of Apartheid, it is allowed to use pictures or quotations from these documents to illustrate the discrimination of blacks in South Africa.

With regard to the form, a propagandist always wants to disseminate information, often biased or slanted, in order to steer the opinions of his listeners in his favor. This information needs not be untrue. The information may be correct in certain aspects, but as a whole it does not fully and completely represent the facts. Furthermore, in order to incite the public, the propagandist tends to simplify issues with the purpose to stir up one's emotions, rather than his/her rational thinking. The employed means are flyers, posters, films, and the press, TV, radio and other mass media. To make it more effective, the designer establishes a large-scale plan to repeat over and over again certain issues on these media.

However, it is important to note that should one's act lack a certain characteristic, whether it's content, presentation or large-scale organization, then his/her act cannot be considered propaganda. For example, if one's action is short of biases or not intended to excite the public's emotions, then it could be as simple as a scientific or a research presentation or an intellectual argument. If it lacks systematic "modus operandis" then this could be considered an impromptu statement or a personal opinion. If, as in the economics sphere, a product is shown repeatedly on wall posters on public streets, then this is a matter of advertisement. In the areas of education and religion, this is called preaching or giving a sermon. If there is a lack of large-scale organization in both content and form, as in the case of a person who speaks up impromptu regarding a current affairs subject in a private meeting amongst friends, then his action cannot be considered an act of propaganda. Even the totality of fragmentary expressions in such meetings should not be considered as a propaganda matter.

The initiator of propaganda acts may be a governmental agency, an organization, or a political party. The most famous propaganda campaigns commonly known in modern history were those of the Soviet Union, Nazi Germany and German Democratic Republic (East Germany). In reality, if such factors as impact, organizational scope and effect are to be measured one can see that only a governmental power can bring about most effective propaganda results. That is because only those in control of a country have the means to popularise their ideology or dogma in a most systematic and sustaining way via the most used media to change the populace's thinking, as well as to steer them towards a certain pre-determined direction. To accomplish its propaganda mission, the Government of Vietnam has under its control a huge propaganda machine that includes about 700 media agencies. These agencies work under the strictest direction of various bureaus in charge of culture, information and ideology. The Government of Vietnam, in order to propagandise specific policy or

governmental actions, often publishes a propaganda planning agenda which details specific purposes and goals of propaganda campaigns, contents, formats, and means of operation, as well as steering organs. Against such enormous force, it is almost impossible for a single Vietnamese individual to conduct an effective [anti-State] propaganda and/or counter-propaganda campaign.

In my opinion, the Vietnamese government's investigative agencies have blown things way out of proportion when they accused my husband of anti-State propaganda, both in terms of scope and effectiveness. In their investigations, they have not applied the same evaluation standards as other agencies do. They could not prove that my husband had any plans to propagandise for any specific ideology or with an identified purpose, goal, content, format, means of operation, or leadership structure. In the preliminary court trial, the term propaganda was simply made to convey the understanding that it is an act of saying or writing something to others more than once. If this sense were to be used then anybody could be guilty of propaganda acts as long as the police considered them anti-State. This way, any complaint uttered at a drinking place or even at home could be misconstrued as anti-State propaganda, thus an illegal act. If that were the case then there will be an enormous number of Vietnamese citizens guilty of this behavior. The end result is that it will be impossible for the law-enforcement agencies to have the deluge of cases tried. The fact that they choose to ignore some cases and prosecute certain others has created a situation whereas the law would be being applied either arbitrarily or at the agency's own wish. If that were the case then Article 88 of the Criminal Code --as it currently stipulates-- could not be implemented. If this legislation were invalidated then it would be incumbent upon [Vietnamese] lawmakers to change it in order to bring justice and trust in the government to the people, as well as effectiveness to law-enforcement agencies.

With regard to the form, the acts that my husband has committed show no large-scale organization of a propaganda campaign if the meaning of propaganda is correctly construed. My husband has only once met with all three (3) students from Ha Nam, one of whom he has met three (3) times, each time from 30 to 90 minutes. At each meeting, the contents of their exchange varied from personal greetings to legal counselling to issues of human rights and philosophy to current affairs. The Court exhibited the two (2) articles that my husband writes, namely "Freedom to found a political party" and "The Vietnamese people are politically sophisticated enough to build a multiparty system" which were publicized on the BBC, England homepage. Nothing in these articles indicates that they are anti-State as I have just indicated in my above analysis of the CPV and the Vietnam Constitution. The two articles, especially the second one, were only meant to contribute to a public debate on a website, not at all documents of propaganda nature. As stated above, my husband's employees have confirmed in their written testimonies that they were not involved in a propaganda campaign and my husband did not recruit them to join these activities. Mr. Pham Van Troi also stated that he voluntarily sought out my husband's counselling on human rights and legal issues and that he did not commit any propaganda act. These people were all university-educated and thus fully aware of their activities.

With reference to the content of his activities, my husband was charged with penning several articles and responding to interviews on the Internet. The authorities concluded that what my husband has said or written was *"untrue and distorted with the aim of misinforming about the democracy and human rights situation in Vietnam, smearing socialism and the CPV, as well as inciting the public to demand a change of regime"* (PCS, p. 7). However, the Court of First Instance did not find anything that he has explicitly written or said, with an intent to *"distort the facts about the people's government."* According to the definitions in Bach Khoa Toan Thu (VietEncyclopedia, *ibid*), distortion means to present *"falsehood with malice"* and government is *"the machine to run and manage the country"*. As such, if an event is presented factually, it cannot be misconstrued as distortion. Even if what is factually presented is believed to be critical of the government this does not rise to being a charge according to Paragraph 1 (a), Article 88 of the Criminal Code, which regulates only distortion matters.

As for the human rights situation, I can reaffirm that all that my husband has said and done was based on factual events and supported by proofs and witnesses. In this way, they cannot be misconstrued as false. **Fully aware of the fact that human rights are sensitive issues for this government, my husband has carried out everything with care and truthfulness. Never did he exaggerate an issue nor he falsely accused anyone.** Should the Court of First Instance allow my husband to debate this issue, I'm sure that such an ill-founded conclusion would have not been arrived. Likewise, the Court could not prove that my husband *"defames the government"*, so the charge was groundless. Defamation denotes *"negatively criticize or badmouth"* (*ibid*) and this is the matter of one's personal viewpoint. I believe that anything you do, there will be those who either praise or are critical of you. Therefore, it is not realistic if one expects to be praised all the time. The Court attempts to prove that my husband *"defames socialism and the CPV"* (PCS, p. 7) whereas **this issue is beyond the jurisdiction of Article 88 of the Criminal Code of 1999.** It is my belief that the Court clearly does not understand this matter enough to distinguish what constitutes the Government of the SRV and the CPV. I wish to add that only the Criminal Code of 1992 contains an "anti-Socialism propaganda" clause (Article 82). The Criminal Code of 1999 later on abolished this statute. As far as I'm concerned, those who are in charge of governing a country, regardless of what country it is, should be prepared to accept criticism of a higher standard than one levelled at an ordinary citizen. This will make them more sensitive to the sufferings of the people and accordingly will do a better job that the country has assigned them to do.

My husband is a lawyer specializing in human rights. In order to fight for his clients' just and lawful rights, it is within his rights and responsibilities to improve his knowledge by studying the new schools of thought and various concepts relative to society. According to the Science and Technology Code, *"scientific research and study are activities to discover and understand events, facts, as well as the laws of nature, society, and personal thinking. This is done to discover solutions for practical applications"* (Article 2 of the Science and Technology Code). The Court of First Instance has convicted my husband of *"storing and circulating materials of anti-State nature."* It is my opinion that as long as the lawmakers in Vietnam have not been able to clarify the concept of "storage and circulation" in this new age, the stipulations of Article 88 of the Criminal Code would inevitably continue to eviscerate the contents of such

constitutional civil rights as the rights of freedom of speech, freedom of the press, freedom to be informed, the rights to conduct scientific research and to participate in a debate of national issues. It is my belief that Article 88 of The Criminal Code is also in profound conflict with the contexts of the rights to research and invent (Article 51 of The Civilian Code of 2005) and the social responsibilities of lawyers (Article 3 of The Lawyers Code of 2006). One of the articles relative to the lawyer's social responsibilities is to "contribute to the protection of justice and development of economic issues, as well as to build a just, advanced and democratic society." It is obvious that Vietnamese lawmakers need to urgently amend these conflicting laws to bring consistency between the rights stipulated in the Constitution and in its derivative legislations.

In order to accuse my husband of "production, hidden storage and circulation of anti-State materials" pursuant to Article 88 of the Criminal Code, the Court presented as evidence 121 documents which were allegedly removed from my house and my husband's office. We cannot at this time confirm whether all these 121 documents really belong to us. I personally have filed complaints asking for [police] receipts listing seized items, but neither the police nor the People's Procuracy has responded to our demand. That the Court has not declared the nature and analysed the contents of these 121 documents has caused me to assume that there might be some "legal problems" with only a number of these documents that were already listed in the preliminary court verdict. My husband has freely admitted to having written the two articles titled "*The right to found a political party*," and "*The Vietnamese people are politically sophisticated enough to build a multiparty system*". The Court's view of these articles was that "*their contents were meant to smear and degrade the leading role of the VCP and suggest that under current circumstances, because the VCP did not have enough ability to lead the Revolution, Vietnam is in need of a change of the ruling party or change to a pluralistic, multi-party system in order to emerge out of poverty*" (PCS, pp. 4 and 5). As indicated above in Part 2, my husband's writing of these two articles is within his right to free speech, which is protected by the Vietnamese Constitution of 1992, as well as the ICCPR. Furthermore, the above analysis shows that the Court of First Instance has not presented adequate arguments and court evidences before reaching the conclusion that these two articles were of "anti-State" nature. The usage of descriptive terms such as "smear and degrade the leading role of the CPV" reveals that the Court has attempted to inject into this matter its biased, subjective thinking and gone beyond its jurisdiction as stipulated in Article 88 of the Criminal Code. In addition, the Court's sentence concludes that my husband, "*is the person who drafted the 'Bylaws of the Democratic Party' of Mr. Hoang Minh Chinh*" (PCS, p. 6), despite the fact that throughout the trial the Court could not produce enough evidence to back up their accusations. This has become a laughing matter in our society that the government has committed so many contradicting acts. One of these was their rush to convict my husband on grounds of his relationship with the Democratic Party [Century 21] while they have not yet come to a resolution of the legality of this party. For these reasons, the government's charges of my husband of "producing anti-State materials" are absolutely groundless.

Hidden storage (Tang-Tru) is an intentional "*act of carefully hiding items away from others' knowledge*" (VietEncyclopedia, *ibid*). In this case, all the items confiscated at my husband's law office and our residence were the documents used for his research, and there was no

intent on his part to hide them. All the security agents who had followed my husband in the past months will attest to the fact that the door to my husband's law office was always open to the public, and that the computers were available for others' use. Thus, the charge of "secretly hiding documents" is the one, which is absolutely without merit. When the investigative agents searched my husband's office and our residence, the seized documents were in the five computers, on the bookshelves, or on his research bookcase where all the research materials, including the research materials of Vietnam and international laws, together with his client files, were kept. The fact that these materials were collected simply for research purposes can be demonstrated. First, these documents represent various political viewpoints; some were pro, others against in various issues. They were found in a clutter of materials, legal and otherwise. Second, the presence of these materials alone does not necessarily mean that my husband agrees with them. For example, my husband was not against the [National Assembly] election but he did have amongst his research papers documents containing Father Ly's calls for boycott against it. In order to understand thoroughly an issue, my husband should not hear from one side nor should he read only documents that concur with his thinking. When it is known that my husband was concerned about certain subjects, various sources would either personally hand him or bring without his knowledge to his law office documents, considered by the Court to be "extremely anti-State, distorting or twisting the truth," such as "The Communist Party of Vietnam is a scourge", "Journal of a victim of injustice", or a document by Quoc Quoc. In the preliminary court trial, my husband freely admitted that he had possession of these materials, even though he had not seen many of them, nor had he read them. This proves that my husband never had any intent to hide anything, even some were related to the most serious charges, because of his belief in freedom of speech and freedom to do research – the rights guaranteed by the Vietnam Constitution. Therefore the charge of hidden storage against my husband is a violation of his civil rights guaranteed by the Constitution.

I wish to further clarify the matter of "hidden storage of data in the computer". In this age of global connectedness via the Internet, the charge [storing data] is an obsolete concept. On a daily basis, one receives hundreds of emails from numerous senders, friends and strangers alike. If one meticulously erases all these emails, the residual proofs of them are still in the computer. As a normal practice, very few people can successfully manage the volume of emails he or she receives everyday. Furthermore, the Internet represents a huge depository of news and information. Anybody can get on the Internet to retrieve or deposit the information without having to "secretly store" it in his/her personal computer. As a result, in the age of the Internet, the control of stored data by setting geographical barriers is rather out of the ordinary and it cannot be effectively carried out in reality.

In the Court of First Instance sentence, there was no mentioning of my husband being accused of "having circulated (luu-hanh) printed materials and cultural products with anti-State content". Circulation means "to give out broadly to the public in various places" (VietEncyclopedia, *ibid*). However, in the itemized list of indictment counts in the preliminary trial sentence, I notice one paragraph which says: "The accused have disseminated (phat-tan) these documents on various channels of information to reactionary Vietnamese organizations overseas." (PCS p. 5). To avoid any misunderstanding, I presume that the Court took

"dissemination" to mean the same as "circulation." Even if this presumption were correct, the charge against my husband was vague and imprecise. Instead of listing factually item by item his violations of the law, e.g. via what means, where and how, the Court only described the events in a series of nebulous terms which did not specify who were "the accused", what were "the documents", "the means of communications, and the name of "reactionary Vietnamese organizations". There are numerous items cluttered together in the Court of First Instance sentence which can only be viewed as arbitrarily, vague and hard to understand. In the context of the sentence, this cluster "these documents" could only be construed as references to the two above-referenced articles titled "*The right to found a political party,*" and "*The Vietnamese people are politically sophisticated enough to build a multiparty system*". As per the above analysis, the Court does not have adequate reasons to decide that the two articles are of anti-state nature. My husband admitted to having sent these articles to the homepage of a SINGLE radio station which is the BBC. BBC has been for years one of the world's most respected media agencies. It has its official office and representatives in Hanoi. Nobody can summarily argue that BBC belongs to a group of Vietnamese expatriates or BBC is an instrument of reactionary Vietnamese organizations overseas. There have been numerous high-ranking Vietnamese government officials, elected representatives, research cadres who often voiced their opinions on the BBC --at times strong negative criticism against the [Vietnamese] government. Other than the BBC, the Court has not presented any proofs that my husband had distributed the two articles to any other media organizations. If this were to happen, it is simply because in these days of the Internet, printed media and any websites could easily download, copy, and disseminate broadly any materials which appear at another website. This can be done to broaden information to the public without the author's consent. In summary, the decision reached by the Court of First Instance that my husband has committed acts of circulating anti-State articles, is absolutely groundless.

#### **4) Conclusion and Appeal to the Court of Appeals**

My husband is a patriot. As a human rights lawyer, my husband is wholeheartedly devoted to protecting the constitutional rights of Vietnamese citizens; therefore, he has criticized and opposed wrongful and illegal activities of government officials and agencies. In actuality, my husband's contribution to protecting religious freedom has helped Vietnam to improve the human rights situation in the country, thus elevating international respect for Vietnam. His contributions also help the Vietnamese government to better understand problems involving Protestant followers, thus maintaining stability in Vietnam.

The arrest and subsequent trial of my husband were not carried out legally and in conformity with current regulations and procedures. As the police had conducted a very sloppy investigation of my husband's activities they arrived at vague and summary accusations. Both the Hanoi People's Procuracy and the Hanoi People's Court, having wrongly accepted these erroneous conclusions without further deliberation, charged and sentenced my husband pursuant to Article 88 of the Criminal Code. Because of numerous procedural errors and biases against my husband, the Court of First Instance of May 11, 2007 could not discover the truth of this case; consequently, he was unjustly convicted.

All that my husband did was to exercise his freedom of speech. The Vietnam Constitution of 1992 guarantees this civil right. This constitutional right is also firmly protected by the International Covenant on Political and Civil Rights since the Government of the SRV signed on to this document in 1982 and enacted the Law on Signing, Accession and Implementation of International Treaties in 2005. Accordingly, a Vietnamese citizen is entitled, according to Article 19 of the Covenant, to the freedom of speech fully and completely without any legal restrictions. International laws view that peaceful opposition to a government does not constitute a crime. As such, activities to criticize, correct, and protest in a non-violent way, either verbally or in print, against certain government departments or their employees should be considered lawful.

Even if the Vietnamese Criminal Code is strictly applied to deal with this matter, the Court of First Instance's arguments have no merit. In order to accuse my husband of having committed a crime against the Government of the SRV the Court reasoned that his activities were against the Constitution, that he has contacts with overseas Vietnamese who resolutely intend to oppose the SRV and that he is member of anti-State organizations. All of these accusations are false because of the erroneous assumption of the unique role of leadership of the CPV. They were also based on the irrational speculations, as well as groundless and unlikely labeling of certain individuals and organizations, domestic and overseas alike. Without the proof of intent to oppose the State – the subjective factor of the crime – my husband's act does not constitute a crime according to Article 88 of the Criminal Code.

Moreover, my analysis above shows that the government should review the entire contents of Article 88 of the Criminal Code to ensure its consistency with other laws, with the Constitution, as well as with international treaties to which Vietnam is a signatory. As currently stated, Article 88 contains too many vague and catchall terms that many law-enforcement agencies have utilized to interpret and apply the law incorrectly, wantonly and arbitrarily, and therefore the integrity of the law has been damaged. In the meantime, I ask that Article 88 be suspended while this legislation is pending for amendment or clarification.

Having analyzed the entirety of the case of my husband, attorney Nguyen Van Dai, I hereby request the Court of Appeals to consider the following:

- a) **To nullify the sentence in the Court of First Instance, No. 153/2007/HSST and suspend the case pursuant to Article 251 of the Code of Criminal Procedure for the prosecutorial agencies have gravely violated so many fundamental principles of the Code of Criminal Procedure, and my husband is not guilty according to Article 2 of the Criminal Code, which reads: "*No crime without a previous penal law*";**
- b) **To immediately release my husband;**
- c) **To return all of our confiscated properties;**

d) To reinstate the good name of my husband by way of annulling the decision to withdraw my husband's membership card and the license of the Thien An Law Office.