

**A report on the lawsuit conducted by the Vietnamese victims of
AO/dioxin against the U.S chemical companies for justice
before the U.S courts**

*(Speech by Professor of Law Luu Van Dat at the International Conference
for Victims of Agent Orange/dioxin)*

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I/ Pre - action situation – Preparations for class action

1. From 1961 to 1971, the U.S military conducted the greatest chemical warfare ever known in the history of mankind which led to serious and long-termed consequences on Vietnamese humans and environments (as analyzed by this conference's various documents).

2. Ever since the signing of the Paris Agreement and the withdrawal of the U.S armed forces in 1973 and then the end of the war in 1975, the consequences of this tragedy has ceaselessly imposed heavy burden on the people and environments of Vietnam, especially on the people themselves.

The civil liability of the United States and its chemical companies is undisputable. The laws applied by any state and of course by the international community all certainly provide that the perpetrators must unquestionably compensate their victims for their harms

However, the U.S and its chemical companies have tried in many ways to evade their liability.

3. In 1994, the U.S Government terminated its embargo on Vietnam. In 1995, consequently, the diplomatic relations between the two countries were reestablished. Apparently, when the Vietnamese legal experts began finding ways to obtain justice for their compatriots who were victims of Agent Orange/dioxin, they found international law very complex

4. Under these difficult conditions, the International Association of Democratic Lawyers - IADL and the U.S National Lawyer Guild – NLG, which during the war had strongly voiced their support for our national liberation on various world and regional forums, now decided to help our victims legally.

In 2000, the IADL's Bureau board meeting convened in Bucharest (Rumania) issued a resolution to condemn the spraying of Agent Orange/dioxin during the war in Vietnam and demanded that the U.S should provide compensation for the damaged Vietnamese.

In 2001, at its 14th Congress held in La Havana, the Capital of Cuba, Prof. Le Cao Dai on behalf of the Vietnamese delegation presented a report on the chemical warfare waged 30 years ago, and its grave aftereffects on the Vietnamese victims. This strongly shook the feelings and good conscience of many participants. The conference could even pass a resolution to strictly condemn the spraying of Agent Orange/dioxin and demanded that the U.S should be held accountable for paying all damages related to its use of this substance in Vietnam. Accordingly, the first round of firings on the legal front was initially

started on an international forum and be heard and concerned by many people.

- Also from 2000, the IADL's legal experts began offering its assistance to their colleagues in Vietnam Lawyers Association (VLA) in seeking justice for Vietnamese victims through judicial and court channels

5. At the end of 2003, and during the early days of 2004, following advices offered by the international and Vietnamese legal experts, the Vietnam Association for Victims of Agent Orange/dioxin - VAVA and certain number of Vietnamese victims representing all those who were similarly situated to bring a class action into the U.S District Court of Brooklyn, New York, against the U.S chemical companies. Then and now we were and are consciously aware of difficulties and challenges in waiting for us on the way to reach justice for our victims. This effort as it always appears would surely be full of uncountable hurdles and prolonged for many years. The defendants are colossal industrial corporations rich with powerful influence and might in the United States of America. The Vietnamese who are filing the lawsuit before the U.S court know quite well their lawsuit would be tried by the United States judges, in the United States courts and under the United States case law.

II/ The developments of our class action

1. On 30th January, 2004, with the assistance offered by the U.S attorneys who were introduced by the IADL and the ALG, on behalf of themselves and all others similarly situated, VAVA and three Vietnamese victims

filed a complaint against 36 U.S chemical companies, et al., who were manufacturers and suppliers of herbicides containing high levels of dioxin during the Vietnam War, demanding damages for their injuries and harms caused by them, into the United States Federal District Court of Brooklyn, New York, under the international law and the United States Alien Tort Statute (ATS).

2. On 28th February, 2005, an oral argument session was held before this district court where attorneys of both parties presented their views under the control of Judge Weinstein. This hearing was substantially taught as several complicate legal matters were raised

3. On 10th March, 2005, Judge Weinstein issued a 234 paged long “Amended Memorandum, Order and Judgment”

This opinion is unusual, as it is rather long and involved several vital and complicate legal matters, and declared at a time just only 10 days, a very short duration, after the above-said oral argument, and only one day before the opening of the International Conference on the Consequences of the United States Defoliation Program in Vietnam (1961 – 1971), held in Paris, France, on 11th March, 2005.

4. On 7th April, 2005, the Vietnamese plaintiffs filed their appeal in the U.S Second Circuit Appellate Court demanding it to reverse the decision made by the District Court to dismiss and close our lawsuit.

6. After 22nd March 2006, when both parties already filed all of their briefs into the Appellate Court, this establishment will decide the schedule for the related oral argument.

III/ Our position, view and attitudes

1. The argument based on by the U.S district court to dismiss the case brought by the Vietnamese victims focused on a rationale of following scientific and legal aspects and facts.

“Agent Orange and other agents used for the purposes of this 12(b) (6) motion, should be characterized as herbicides and not poisons. While their undesired effects may have caused some results analogous to those of poisons in their impact on people and land, such collateral consequences do not change the character of the substance for present purposes”.

2. Judge Weinstein’s argument is nothing but a legal paradox that clearly lacks scientific basis and especially goes contrary to the actual facts. The U.S counsels representing the interests of the Vietnamese victims before the court and masses of world legal experts who support Vietnamese victims, justice and morality are having sufficient valid rationales and arguments to reject what the U.S District court has decided.

The presence herein of victims of the toxic Agent Orange/dioxin used in Vietnam during the last part of 20th century belonging to different nationalities (U.S, South Korean, Australia, New Zealand and Canadian) constitutes an eloquent evidence on the rude denial on the consequences

of the Agent Orange/dioxin (in the court's proposition) on humans and eco-environments. This is completely in contrast to the objective facts.

3. In this lawsuit, justice and morality always side with Vietnamese victims-plaintiffs, the chemical company defendants' liability is undeniable. The Vietnam American veterans already enjoyed compensation from them. A South Korean High Court already affirmed their liability for damages to the Korean veterans who had been exposed to Agent Orange/dioxin in Vietnam and in South Korea.

These events are encouraging the VAVA and Vietnamese victims to resolutely demand justice.

We, the Vietnamese legal experts and Vietnamese victims who believe in the prevailing of justice and are determined to fight side by side with all others similarly situated and various nations to demand justice. The human conscience is further internationally awakened to make sure that the tragedy that once happened in Vietnam will never occur again in any other places in the world.

With support and assistance coming from peace-and-justice loving people all over the world, we will firmly advance to the final end.