

The International Association of Democratic Lawyers Submission In Support of the Vietnamese Victims of Agent Orange.

August 10, 2011 was the 50th anniversary of the beginning of the spraying of defoliating herbicides in Vietnam. This spraying lasted from 1961 to 1971 and affected approximately 12% of the land area of Vietnam. It is estimated that almost 5,000,000 people were exposed to these chemicals and today there are many “hot spots” in Vietnam where the soil and environments are still contaminated with these chemicals including dioxin.

The most common herbicide was known as Agent Orange. It was given its name from the color of the orange-striped barrels in which it was shipped, Agent Orange is a 50:50 mixture of two chemicals 2,4,5-T and 2,4-D, it was manufactured for the U.S. Department of Defense primarily by Monsanto Corporation and Dow Chemical. The 2,4,5-T used to produce Agent Orange was later discovered to be contaminated with 2,3,7,8-tetrachlorodibenzodioxin, an extremely toxic dioxin compound. Vietnam estimates 400,000 people were killed or maimed, and 500,000 children born with birth defects. Indeed, given the contamination of many areas, birth defects are appearing in children and grandchildren of people exposed to Agent Orange.

The United States used these chemicals without having tested them until after they were used and suppressed as study for several years which showed the toxic properties of these chemicals. Despite the suffering of hundreds of thousands of people in Vietnam and the ongoing threat to their human right to health and reparation, and even though the United States Government now compensates United States Veterans who were exposed to Agent Orange in the amount of \$1.52 billion a year, the international community has not made any pronouncements on the need to address the ongoing human tragedy in Vietnam. IADL believes it is time for the Human Rights Council to consider this issue.

The International Association of Democratic Lawyers (IADL) has been addressing the plight of the Vietnamese victims of Agent Orange. In 2009 IADL sponsored an International People’s Tribunal of Conscience in Support of the Vietnamese Victims. The Panel of Judges included: Judge Juan Guzman from Chile who was appointed to prosecute Augusto Pinochet, Marjorie Cohn, professor of International Law in the United States, Retired Judge Claudia Morcom, from the United States, Gavril Chuizbaian, former Justice Minister from Romania, Jitendra Sharma, Sr. Advocate in the Indian Supreme Court, Shoji Umeda, attorney from Osaka, and Professor Adda Bekkouche from Algeria.¹

Portions of the Tribunal’s Executive Summary of the findings are set forth below.

The Tribunal received evidence and testimony from 27 people including victims and expert witnesses. The testimony from the victims was very compelling and the testimony of the experts tied the damages that these victims suffered to their exposure to Dioxin. Testimony also described the extent of the spraying, the millions of persons exposed, the jungles and forests destroyed and families devastated.

¹ The full Judgment of the Tribunal appears at: <http://www.iadllaw.org/en/node/469>.

After examining the evidence the Tribunal found that the United States Government and the Chemical manufacturers were aware of the fact that Dioxin, one of the most dangerous chemicals known to man, was present in one of the component parts of Agent Orange; yet they continued to use it and in fact suppressed a study which showed in 1965 that Dioxin caused many birth defects in experimental animals. It was not until the results of that study were released by a leak from concerned citizen that the use of Agent Orange was stopped.

The Tribunal found specifically:

1) that the evidence presented to the Tribunal has established that during the war of USA against Vietnam, from 1961 to 1971, military forces of the United States sprayed chemical products which contained large quantities of Dioxin in order to defoliate the trees for military objectives;

2) that the chemical products which were sprayed caused damages to the people, the land, the water, the forest, the ecology and the economy of Vietnam that this Tribunal can categorize as:

a. direct damages to the people: The illnesses produced directly to the people who have been exposed to Dioxin include cancer, skin disorders, liver damage, pulmonary and heart diseases, defects to reproductive capacity, as well as nervous disorders;

b. indirect damages to the children of those exposed to Dioxin, including severe physical deformities, mental and physical disabilities, diseases and shortened life spans;

c. damages caused to the land and forests, water supply, and communities. The forests and jungles in large parts of southern Vietnam have been devastated and denuded, and may either never grow back or take 50 to 200 years to regenerate. Animals which inhabited the forests and jungles have become extinct, disrupting the communities which depended on them. The rivers and underground water in some areas have also been contaminated. Dioxin will persist in the environment for many years; and

d. erosion and desertification necessarily will change the environment contributing to warming the planet and the dislocation of crop and animal life.

The Tribunal also found:

1) that the US war in Vietnam was an illegal war of aggression against a country seeking national liberation: the illegality is based on Articles 2(3) and 2(4) of the Charter of the United Nations which require countries to peacefully resolve their disputes. The massive spraying of Agent Orange/Dioxin on the southern part of Vietnam and the massive bombardment of the northern part of Vietnam clearly demonstrates that the United States violated the UN Charter mandate to refrain from the use of force in international relations;

2) that the Nuremberg Principles define a war of aggression as a crime against peace punishable under international law;

3) that the use of Dioxin was a war crime because it was a poisoned weapon outlawed both in customary international law and by the Hague Convention of 1907. [Hague Convention 23(a)]. Violations of the customs and laws of war are considered war crimes under Principle VI b of the Nuremberg Principles. The Chemical companies knew how their Dioxin- laced products would be used in Vietnam; yet they continued to manufacture and supply these agents with very high levels of Dioxin to the US government. By providing poison weapons the companies were complicit in the war crimes committed by the US government;

4) that the use of Dioxin was a crime against humanity as defined by VI c of the Nuremberg Principles, because it constituted an inhuman act done against a civilian population in connection with a crime against peace and war crimes;

5) that the use of illegal weapons in an illegal war has caused the devastation described above. These crimes have produced so much pain, suffering and anguish to at least 3 to 4 million people and their families. The effects of these crimes will be felt for generations to come; and

6) that the time has come to provide an adequate remedy to the Vietnamese victims of Agent Orange and their families and to repair as much as possible the environment of Vietnam

Thus the Tribunal finds:

1. that the United States Government is guilty of the offenses listed above and determines that the damage to the environment of Vietnam can be defined as “ecocide”;
2. that the Chemical companies who were charged in the summons and complaint are guilty of complicity in the offenses listed above; and
3. that the United States Government and the Chemical companies which manufactured and supplied Agent Orange must fully compensate the victims of Agent Orange and their families. The US Government and the Chemical companies must also repair the environment to remove the contamination of Dioxin from the soil and the waters, and especially from the “hot spots” around former US military bases.

The IADL urges the Human Rights Council to ensure that the Special Rapporteur on the Right to Health or any other appropriate Special Rapporteur be assigned to ensure the Council can get the full information about the impact of the use of this weapon of war and to address the right to a remedy for the ongoing impact of the use of these weapons.