

Socialist Republic of Viet Nam

Freedom of expression under threat in cyberspace

“Taking advantage of the information super highway, reactionaries in Viet Nam transferred incorrect information on democracy in Viet Nam abroad. As a result, anti-Viet Nam forums and organizations’ evidence of Vietnamese violations of democracy is nothing but a hoax, revealing their intentions to impose western-style freedom of democracy and a US attitude towards religious and human rights issues. The goal in spreading doctrines on freedom of democracy, ideas unfamiliar to the history and culture of Viet Nam and the socialist nature of the country is to erode local Vietnamese people’s confidence in the socialist path and ruin belief in the homeland’s future for more than two million overseas Vietnamese. Some overseas organizations and anti-Viet Nam media agencies praised certain agitators as ‘democracy supporters’, their discordant voices represent nobody but themselves.”¹

Introduction

Amnesty International is increasingly concerned about human rights in cyberspace for people in Viet Nam, in particular the fundamental rights to freedom of expression, information, peaceful assembly and the right to privacy. The Internet has provided people critical of the government with more opportunities to peacefully express their opinions. However, the relative ease with which dissenting voices can be traced in cyberspace, combined with the absence of privacy protection, has increased their risk of arrest and prosecution. Without safeguards for the fundamental rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR), to which Viet Nam is a state party,² dissenting voices run an even greater risk of falling foul of the authorities than before the launch of the Internet. Whilst recognizing the Vietnamese government’s legitimate responsibility to protect the security of its citizens, Amnesty International believes that this should not be used as a pretext to stifle criticism, freedom of expression, and human rights generally, in cyberspace.

The Internet has become ever more popular since its launch in Viet Nam in December 1997. The Vietnamese authorities have embraced the Internet as a tool for economic development. Technological developments are being introduced at a rapidly increasing pace. These advances are providing a more favourable climate for people to use the Internet to improve their social and economic opportunities. Computers are becoming more affordable, rates for dial-up subscriptions are decreasing and hourly rates for Internet access in Internet

¹ *Voice of Viet Nam* text website, in Vietnamese, 25 October 2001, (www.vov.org.vn), as reported by BBC monitoring.

² Viet Nam became a State party to both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1982.

cafés are now within the financial reach of larger parts of the population. In August 2003, the number of Internet users was estimated to be approaching 2.5 million. The potential Vietnamese audience for Internet publications has likewise increased. Political dissidents and others are exchanging e-mails with contacts in the Vietnamese diaspora, posting messages on web based Internet forums and a number of people have been posting political articles on the Internet.

The Vietnamese authorities' concerns about the combination of an increased Internet audience and active use by political dissidents and others of this medium, has resulted in a crackdown on people using the Internet to exercise their rights to freedom of expression and association. Since 2001 at least 10 people critical of government policies have been arrested on charges linked to use of the Internet. Six of them have already been tried and sentenced to long prison terms under national security legislation, while the others are detained awaiting trial. Information about these people is provided in this report.

Background – the Internet in Viet Nam

Viet Nam began experimenting with using the Internet in 1991, and has since embraced the medium as a tool for economic development. This has been tempered by increasing wariness of the opportunities the Internet offers to political dissidents and others to spread information to ever larger sections of the population. New ways which the Internet offers for communication between people both inside and outside Viet Nam and increased access to independent sources of information are regarded by the authorities with deep suspicion.

In December 1997, Viet Nam connected to the Internet through gateways in Ha Noi and Ho Chi Minh City. Since then, the Internet's popularity has increased slowly but steadily. Computers have become more affordable in cities and university towns. However, the cost of a computer and a dial-up connection is still prohibitively high for the vast majority of Vietnamese people living outside urban areas.³ Nevertheless, more and more young people are "chatting" on the Internet, exchanging e-mails and surfing the World Wide Web in the 4,000 - 5,000 Internet cafés across the country.⁴ In August 2003, the number of people using the Internet, mostly through Internet cafés,⁵ was estimated to be almost 2.5 million people.⁶

³ A current estimate for a basic computer and screen for word processing, spreadsheets and the Internet is around 290 US dollars. Second-hand computers are available with prices ranging from 160 to 220 US dollars, depending on whether or not a new screen is included. People with enough skills can assemble their own computer at a lower cost. In July 2003, the cost of medium priced mobile phones ranged between 65 and 195 US dollars, with more than 1.2 million people in Viet Nam owning a mobile phone. (Information provided by Vietnamese Information and Communications Technologies (ICT) expert by email in July 2003).

⁴ *NetNam* (Ha Noi based Internet Service Provider) source by email 20 August 2003; *The Guardian*, 16 August 2002; *Associated Press*, 3 February 2003.

⁵ In July 2003, average Internet access rates in Ha Noi and Ho Chi Minh City were around 0.20 US dollars per hour but some Internet cafés were advertising with hourly rates of 0.13 US dollars. In the larger towns the rates were estimated to range between 0.20 to 0.25 US dollars, while the range for smaller towns was estimated to be from 0.25 to 0.40 US dollars.

With a population of 80 million this still means only 2.75% of the Vietnamese population use the Internet. Viet Nam's ambitions in the information technology sector were spelt out by the Deputy Prime Minister in a recent telecommunications seminar.⁷

From its modest beginnings in the mid-1990s, the Internet offered the Vietnamese diaspora opportunities to criticize the Vietnamese government, the Communist Party of Viet Nam (CPV) and their policies. Other groups within the Vietnamese diaspora focused on using the Internet to provide different sources of news and information for their communities. Websites also house discussion forums on issues of democracy and human rights in Viet Nam. *Dan Chu* and *Ykien* are two such pro-democracy forums based outside Viet Nam.⁸ Despite these Internet-based efforts, the influence of groups in the Vietnamese diaspora on events in Viet Nam appears limited.

Accessing diaspora websites can be difficult for people inside Viet Nam. Access to some sites is blocked. Some of the blocking is left to self-censorship by Internet Service Providers (ISPs) as required by law. The relative ease with which electronic footsteps can be traced and possible public ignorance about the increasingly sophisticated methods for monitoring have made expressing a dissenting opinion more dangerous. ISPs and individual Internet users are obliged by law to facilitate easy access for security agencies to networks and computers. The Ministry of Culture and Information, in a recent decision explicitly encourages individuals and Internet providers to inform on those "violating rules" on the provision of information.⁹

The Internet has become an economic success story in urban areas of Viet Nam. In 2003 ADSL (Asymmetric Digital Subscriber Line) Internet services, Internet telephony, as well as mobile phone based multimedia messaging services were all introduced. In a more significant development, the government approved trials with Internet access through VSAT technology.¹⁰ The key aspect of this development is that VSAT links bypass the state-owned Viet Nam Data Communication (VDC) controlled and monitored Internet gateways. It has been reported that, in the future, Viet Nam expects to increase Internet access through post offices, as well as through village cultural centres. By 2005, four to five percent of the entire

⁶ Viet Nam Network Information Center of the Ministry of Post and Telematics, August 2003 (www.vnnic.net.vn/english/index.html).

⁷ "Vietnam is striving to rank fourth in telecom infrastructure – the Internet and fifth in information technology (IT) in the region by 2010", *Nhan Dan*, (www.nhandan.org.vn), 11 September 2003.

⁸ <http://www.danchu.net> and <http://www.ykien.net>, respectively.

⁹ Article 11 of the Ministry of Culture and Information Decision No.27/2002/QD-BVHTT on granting licenses for information providers and websites states that "agencies, organizations and individuals that render meritorious services to the authorities in detecting and reporting violations of rules and regulations on provision of information provided by Decree No.55/2001/ND-CP, and of provisions of this Statute, shall be commended according to regulations by the State".

¹⁰ VSAT-Very Small Aperture Technology, a technology which can provide connections to the Internet via satellite.

population, or an estimated 3.2 to four million people, are expected to be using the Internet.¹¹ The authorities have also announced plans to launch Viet Nam's first telecommunication satellite in 2006.¹²

The Vietnamese authorities appear to be genuinely dedicated to use the opportunities afforded by cyberspace to create social and economic opportunities for people in Viet Nam, while being equally determined to suppress dissenting opinions expressed through the Internet.

Political dissidents and the Internet

In the recent crackdown on dissidents and others using the Internet, individuals have been arrested for, *inter alia*, exchanging e-mails with contacts in the Vietnamese diaspora, posting articles critical of the government on the Internet, and expressing dissenting opinions.

These arrests attest to a sense of paranoia among the leadership of the government who feel under threat and fear a "peaceful evolution" which could threaten the current supremacy of the Communist Party of Viet Nam (CPV). A Directive issued in early 2003 by the CPV's Politburo to the Executive Committee of the Vietnamese Veterans Association claims that:

*"International forces continue to push for the realization of the strategy of 'peaceful evolution', in conjunction with a conspiracy to overthrow the socialist government in Viet Nam by force, to which end they consider 'peaceful evolution' on cultural and ideological level[s] as a breakthrough. The following activities are most notable: Through such means as mass media, especially radio, television, the Internet, various information offices of embassies, so-called press conferences, visits, contacts, seminars...they distribute and propagate wrong or reactionary ideas to negate the Marxist Leninist ideology and Ho Chi Minh thought, the fundamental ideology of our Party; to negate the ideal of socialism; to attack the leadership of the Party; to distort and blacken the revolutionary history of the Party and the people; to incite opposition and promote violence".*¹³

Rather than using the numerous decrees governing use of the Internet to prosecute these individuals, the Vietnamese authorities have used national security legislation in a series of high profile trials, still ongoing at date of publication of this report, which have resulted, so far, in long prison terms for those concerned. Under this legislation dissidents have been accused of disseminating information critical of the authorities and the political situation, and

¹¹ "About 2 percent of population are dialing up" *Viet Nam News Agency*, 28 July 2003 (www.vnagency.com.vn).

¹² "Clock ticking as Viet Nam counts down to first satellite launch", *AFP*, 17 September 2003.

¹³ See Amnesty International report, *Socialist Republic of Viet Nam: Two official Directives relating to anti-government activities*, AI Index ASA 41/018/2003, June 2003. These two Directives were issued in early 2003 from the highest levels of the Communist Party of Viet Nam to the Vietnamese Veterans Association.

for communicating with people outside the country. While people using the Internet significantly widen their potential audience, they also make themselves more vulnerable to state sanctions.

Concerns for fair trial standards

Amnesty International is concerned that the trials of cyber-dissidents fall short of international standards.¹⁴ Those dissidents described below who have already been sentenced to prison terms, were tried in closed courts in trials that lasted less than a day. Guarantees for fair trial standards are weak for all defendants in Viet Nam, but government critics are especially vulnerable to the deficiencies of the system. Rights not guaranteed include the right to a fair and public hearing, and to trial before a competent, independent and impartial tribunal; the right to be presumed innocent until proven guilty; the right to have adequate time and facilities for the preparation of a defence, and to communicate with counsel of one's own choosing; and the right to call and question witnesses.

Amnesty International has long raised concerns about the conduct of all trials in Viet Nam. The organization's research over many years has revealed that in most cases brought to Amnesty International's attention, the right to a defence lawyer of choice and adequate time to prepare a defence is lacking. In cases where lawyers are permitted, it is not uncommon for defendants to meet their lawyer for the first time only on the day before the trial starts. In the court hearings, defence lawyers are sometimes only permitted to plead for clemency on their client's behalf.¹⁵

Many trials on charges carrying long sentences last only a matter of hours, and cannot be regarded as allowing for the presentation of a proper defence. Politically sensitive trials are held in secret, sometimes without prior notification of the date to the families of those on trial. Independent observers are not permitted to attend such trials. An additional concern is the composition of tribunals, which cannot guarantee the accused a hearing from a competent, independent and impartial tribunal.¹⁶

Amnesty International also believes that the right to be presumed innocent until proven guilty is undermined by official media reporting against individuals, prior to their cases coming before the court. This applies especially to political and religious dissidents, but is also to be observed in criminal cases.

¹⁴ Article 14 of the ICCPR sets out the rights on which international fair trial standards are based.

¹⁵ The rights relating to adequate defence are specified in Article 14 (3) (b) of the ICCPR which states that everyone shall be entitled: "To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;" and in Article 14 (3) (d) which states that everyone is entitled: "To be tried in his presence and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require..."

¹⁶ For more information about AI's concerns about fair trial standards, please refer to report *Socialist Republic of Viet Nam: A human rights review based on the International Covenant on Civil and Political Rights*, pp. 8 – 10, AI Index ASA 41/007/2002, October 2002.

Cyber-prisoners of conscience

Concerns over the use of detention and other heavy-handed state practices against those peacefully exercising their right to freedom of expression and related rights have been highlighted by the UN Commission on Human Rights (UNCHR). In a resolution adopted in April 2002, the UNCHR called for the release of all persons detained for exercising the rights to freedom of opinion and expression and expressed concern:

“at the extensive occurrence of detention, long term detention...persecution and harassment, including through the abuse of legal provisions on...surveillance, search and seizure and censorship, of threats and acts of violence and of discrimination directed at persons who exercised the right to freedom of opinion and expression, including the right to seek, receive and impart information, and the intrinsically linked rights to freedom of thought, conscience and religion, peaceful assembly and association...”¹⁷

Amnesty International considers all the individuals named below to be prisoners of conscience, detained and in some cases sentenced to long terms of imprisonment solely for peacefully exercising their rights to freedom of expression and association. The organization is calling for their immediate and unconditional release. It is of particular concern that several are elderly men who suffer from the inevitable health consequences that accompany their advanced age.

Le Chi Quang

Dissident and advocate of political reform, Le Chi Quang, is a 33-year-old law graduate and computer teacher who was arrested on 21 February 2002 at an Internet café in Ha Noi. In the official charge sheet, which Amnesty International has obtained, it is stated that the police “caught Le Chi Quang red-handed when he was on the Internet...in Ha Noi, sending e-mails abroad.”¹⁸ His arrest followed the publication on the Internet of a document he had written critical of the Viet Nam/China border agreements, which have been a controversial issue in Viet Nam. He was accused of writing and distributing anti-government articles, referring to issues such as human rights violations, democracy and the Vietnamese government’s foreign policy. In November 2002 he was sentenced to four years imprisonment, plus three years house arrest on release, for carrying out “propaganda against the State” under national security legislation (Article 88 of the Criminal Code, “Conducting propaganda against the Socialist Republic of Viet Nam”).¹⁹ The trial lasted only half a day.

The charge sheet

¹⁷ Paragraphs 3 and 4 of Commission on Human Rights resolution 2002/48, 23 April 2002, E/2002/23-E/CN.4/2002/200, See chap. X1.

¹⁸ Unofficial translation of official charge sheet issued by the Supreme People’s Procuracy, reference 11KSDT – AN, dated 24 September 2002, available on request.

¹⁹ Full text of Article 88 is provided in Appendix 2.

The official charge sheet provides detailed information about the investigation into Le Chi Quang's activities and the accusations against him. It describes how, on 5 February 2002, the state-owned Corporation for Financing and Promoting Technology (FPT) of the Ministry of Science, Technology and Environment reported to the authorities about e-mails sent by Le Chi Quang to "reactionary individuals or organizations in exile". The FPT is the second largest Internet Service Provider (ISP) in Viet Nam. The e-mails were said to contain "distorted information". Amnesty International believes that the monitoring was carried out on the basis of Article 8 of Decree No 55/2001/ND-CP on the management of the Internet which states that "information supervision on the Internet shall be carried out by competent State agencies as stipulated by law". Le Chi Quang's house was searched by security officers who removed documents described as propaganda against the State written by Le Chi Quang and others.

The charge sheet states that Le Chi Quang listened frequently to the BBC World Service and Radio France International (RFI). It describes how he wrote about human rights violations and democracy in Viet Nam in articles he had written and distributed between April and September 2001, and names other dissidents to whom he had sent the following articles:

- "*Nguyen Thanh Giang – A Patriotic Scholar*", April 2001, criticizing the political system and the role of the CPV in Viet Nam;
- "*The Trade Agreement and the Viet Nam – US Relation*", June 2001, criticizing human rights violations which contributed to delay in the agreement;
- "*A Letter to a Revolutionary Fighter Whom I have never met*", July 2001, criticizing human rights violations and advocating pluralism;
- "*Contributing Ideas for the Amendments of the 1992 Constitution*", August 2001, criticizing the government and the CPV and advocating the abolition of Article 4 of the 1992 Constitution, which guarantees the leading role of the CPV;²⁰
- "*Beware of the Northern Empire*", September 2001, criticizing the authorities for arresting and searching dissidents who attempted to form an Anti-Corruption Association and for being under the influence of China.

One example of how closely Le Chi Quang's activities on the Internet were being monitored by the authorities is clearly shown when the charge sheet describes how, between 29 January and 2 February 2002, he sent five e-mails to an overseas Vietnamese activist with

²⁰ "The Communist Party of Viet Nam, the vanguard of the Vietnamese working class, the toiling people, the faithful representative of the rights and interests of the working class, the whole nation, acting upon the Marxist-Leninist doctrine and Ho Chi Minh's thought, is the force leading the State and the society. All Party organizations operate within the framework of the Constitution and the law", Article 4 of the 1992 Constitution of the Socialist Republic of Viet Nam.

“distorted” information about the political situation, and information that the authorities had sent police and the army to the Central Highlands for suppression of religious activity.²¹

According to the charge sheet, Le Chi Quang was accused of:

“gathering information, writing, distributing and keeping documents with distorted contents about the political situation of the Vietnamese State, distorting the internal affairs of the Vietnamese Party and State; falsely accusing and slandering some of the high ranking Party and State cadres...[and of having] fabricated and spread incorrect news abroad so that reactionary organizations in exile could use it to falsely accuse Viet Nam of suppressing democracy, violating human rights, and thus dishonour the Vietnamese State on the international stage.”

Le Chi Quang’s imprisonment for peacefully exercising his right to freedom of expression by using the Internet, contravenes Article 19 of the ICCPR. Amnesty International is particularly concerned for his health. Le Chi Quang suffers from long-standing chronic kidney disease, a condition which has seriously deteriorated since his imprisonment.

Dr Pham Hong Son²²

Dr Pham Hong Son, 35, a businessman and qualified medical doctor, was arrested on 27 March 2002, having translated an article entitled “What is Democracy?” from the United States embassy in Viet Nam website, and sending it to both friends and senior party officials. He also wrote an article, “Hopeful Signs for Democracy in Viet Nam” which was also sent to senior party officials. Dr Pham Hong Son was very active in sharing information that he found on the worldwide web and writing, via the Internet, to friends and government officials. He was also one of 21 dissidents who signed a petition to the authorities in August 2002 calling for peaceful political reform.²³

Shortly before his arrest, his house was searched by police who removed computer equipment and personal papers. The following day Dr Pham Hong Son went to the police station to claim his personal belongings without success. In protest, he published an open

²¹ In 2001 indigenous minorities in the Central Highlands protested, *inter alia*, about lack of religious freedom for members of unauthorized evangelical Protestant churches. The authorities reacted to the ensuing unrest with a harsh crack-down.

²² See AI report, *Socialist Republic of Viet Nam: Dr Pham Hong Son, Prisoner of conscience*, AI Index ASA 41/017/2003, June 2003. This includes an unofficial translation of the official charge sheet against him.

²³ The political dissidents described themselves as a “democracy group”. The signatories are: Nguyen Dan Que, Pham Que Duong, Tran Khue, Hoang Tien, Hoang Minh Chinh, Nguyen Thanh Giang, Tran Dung Tien, Chu Thanh, Nguyen Thu, Tran Dai Son, Phan Long, Vu Cao Quan, Vu Kinh, Nguyen Vu Binh, Nguyen Kim Chung, Vu Thuy Ha, Nguyen Thi Quyet, Nguyen Manh Son, Nguyen Van Tan, Nguyen Huu Tien and Dao Duc Kha. According to its website the organization was “founded to promote human rights and democracy in Vietnam”.

letter on the Internet complaining about the search of his home and confiscation of his belongings. Two days later he was taken into custody, although his family did not know where he was until some 10 days later.

Dr Pham Hong Son was brought to trial at Ha Noi People's Court on 18 June 2003. Requests by diplomats to attend went unanswered and those who tried to enter the court were turned away by security officials. Heavy security measures were taken outside the courtroom, probably because of the strong international interest in the case. Dr Pham Hong Son was sentenced to 13 years imprisonment, plus three years house arrest on release, for espionage under paragraph 1(c) of Article 80 of the Viet Nam Criminal Code.²⁴ The trial lasted only half a day. He appealed against the decision on 26 August and his sentence was reduced to five years, an unprecedented development which may have been due to the intense international pressure on the government about his case.

Accusations against Dr Pham Hong Son

The official charge sheet, obtained by Amnesty International, sets out in great detail the "evidence" against Dr Pham Hong Son and the reasons for his arrest. It states that the Security and Investigation Bureau (SIB) of the Ministry of Public Security arrested Dr Pham Hong Son on the basis of reports on him by the "information management authority". The SIB seized his computer, the hard disk of which revealed his contacts with "several reactionary persons from abroad".

The charge sheet describes contact that he had with other dissidents in Viet Nam and lists the names of people within the Vietnamese community in exile overseas with whom he had contact through e-mail. In particular, accusations focus on his association with a France-based organization, *Thong Luan*, maintained by Vietnamese in exile, which uses a website to post information relating to democracy and human rights issues in Viet Nam.²⁵ This organization is described as a "reactionary group against the State of Viet Nam" in the charge sheet that also describes how Dr Pham Hong Son exchanged 13 e-mails with the head of this organization during one two-month period.

As justification for charging Dr Pham Hong Son for espionage, the charge sheet states that:

"Pham Hong Son, by electronic mailbox, had contacted a number of exile reactionary elements from abroad...had directly received money from them and acted under their instructions in collecting materials with content denigrating and distorting the policy of the Party and the State, collecting materials and information and distributing them to exile reactionary persons for them to falsely accused the State of violating human rights..."

²⁴ Paragraph 1(c) of Article 80 provides for between 12 years and life imprisonment or the death penalty for "supplying or collecting for the purpose of supplying State secrets to foreign countries; gathering or supplying information and other materials for use by foreign countries against the Socialist Republic of Viet Nam". The full text of Article 80 is provided in Appendix 2.

²⁵ See <http://www.thongluan.org/EN/english.htm>.

To Amnesty International's knowledge, all the information shared by Dr Pham Hong Son was already readily available and in the public domain. Amnesty International believes that the charges against Dr Pham Hong Son constitute a violation of the right to freedom of expression guaranteed in Article 19 of the ICCPR and that his trial was not conducted in accordance with fair trial procedures outlined in Article 14 of the ICCPR. Dr Pham Hong Son is married with two young children.

Nguyen Khac Toan

Nguyen Khac Toan, 48, a former soldier, briefly a teacher of mathematics and in recent years a businessman, became interested in human rights issues around 2000. He was arrested in January 2002 in Ha Noi for passing information via the Internet to overseas Vietnamese activist groups about demonstrations and protests in Ha Noi by farmers. He also reportedly helped farmers' representatives to draft petitions to the government protesting against official corruption and land confiscation. The authorities accused him of collecting and distributing anti-government material and communicating with people in the Vietnamese diaspora. He was brought to trial on 20 December 2002 and sentenced to 12 years imprisonment, plus three years house arrest on release, under Article 80 of the Criminal Code for espionage. The trial lasted less than a day and Nguyen Khac Toan's lawyer had only been given very limited opportunity to speak alone with his client.

Amnesty International believes that Nguyen Khac Toan's arrest, trial and imprisonment – for using the Internet as a means to promote the protection of human rights - constitute violations to the rights of freedom of expression and fair trial contained in Articles 19 and 14 respectively of the ICCPR.

Nguyen Vu Binh

Nguyen Vu Binh, a 35-year-old journalist and writer, was arrested in September 2002. He was a journalist at the official Communist Party of Viet Nam journal, Communist Review (*Tap Chi Cong San*) for almost 10 years. In December 1999 he resigned from his post to attempt to form an independent political party – the Liberal Democratic Party. He did not get any response to his request for official permission to do so. An advocate of peaceful political reform, he is one of several dissidents who attempted to form an Anti-Corruption Association in 2001. He was briefly detained in July 2002 after submitting testimony in writing to the United States Congress about the human rights situation in Viet Nam. One month before his arrest, Nguyen Vu Binh criticized a controversial border treaty with China in an article entitled “Some Thoughts on the China-Vietnam Border Agreement” which was distributed on the Internet.

In a Directive issued by the Communist Party of Viet Nam in early 2003 setting out the case against three high-profile dissidents it is stated that Nguyen Vu Binh has been “already

arrested and prosecuted for spying activities”.²⁶ However, to Amnesty International’s knowledge he has not yet been brought to trial or even formally charged. Neither his lawyer nor his family have seen him since his arrest over one year ago.

Denial of access to his lawyer is a clear violation of Article 14 (3) (b) of the ICCPR concerning adequate time and facilities for the preparation of a defence and communication with counsel of own choosing. His lengthy pre-trial detention is also a violation of Article 9 (3) of the ICCPR which states, *inter alia*:

“Anyone arrested or detained on a criminal charge shall be promptly before a judge or other officer authorized by law... and shall be entitled to trial within a reasonable time or release. It shall not be the general rule that persons awaiting trial shall be detained in custody but release may be subject to guarantees to appear for trial...”

Amnesty International is particularly concerned that, to the organization’s knowledge, there has been no information about his current fate and welfare since his arrest 14 months ago.

The cases of Nguyen Vu Binh and Dr Nguyen Dan Que (described below) raise the issue of *incommunicado* detention. The UN Special Rapporteur on torture has warned of the dangers of *incommunicado* detention and argued that it puts detainees at risk of torture and ill-treatment.²⁷

Additionally, according to Principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days”.²⁸

Colonel Pham Que Duong

Pham Que Duong, 72, a retired colonel in the Vietnamese Army, military historian and former Editor-in-Chief of the Journal of Military History, was arrested in Ho Chi Minh City on 28 December 2002. He has long been critical of government policies, corruption and repression of dissent. In August 2002, together with 20 other political dissidents, he had called for political reform and, particularly, the abolition of Article 4 of the 1992 Constitution of Viet Nam which states that “the Communist Party of Viet Nam... is the force leading the State and society”.²⁹

²⁶ See footnote 13.

²⁷ Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/32, UN Document No. E/CN.4/1995/34, 12 Jan 1995 at para. 926d.

²⁸ Adopted by the UN under General Assembly resolution 43/173 of 9 December 1988.

²⁹ See footnote 20.

According to an official Directive from the Communist Party of Viet Nam³⁰ Pham Que Duong and his wife were arrested carrying “anti-government materials” in relation to the proposed setting up of an Anti-Corruption Association, for which they did not receive official permission, and about cooperating closely with overseas Vietnamese to establish a “Democracy Movement”. The Directive describes this as “caught-red-handed-evidence”. His wife was subsequently released. On 2 January 2003 proceedings were started to prosecute him on charges of espionage under Article 80 of the Criminal Code, although it is not known if he has yet been formally charged. The Directive accuses Pham Que Duong of corresponding, by e-mail, with “overseas reactionary groups”, being in contact with individuals and overseas Vietnamese organizations to provide information; receiving money from overseas Vietnamese organizations, and admitting that he and others had agreed to form “The Movement to Struggle for Democracy.” Pham Que Duong has not yet been brought to trial.

Professor Tran Khue

Professor Tran Khue, 67, a former professor of Vietnamese and Chinese literature and writer was arrested on 29 December 2002 in Ho Chi Minh City. He has been openly critical of government policies, including writing documents advocating political reform, and protesting border agreements between Viet Nam and China - a letter he wrote about this in March 2002 to the President of China was posted on the Internet.

Following his involvement in attempts to form an Anti-Corruption Association, Tran Khue was placed under administrative detention in September 2001. Amnesty International has long been concerned about the extensive use of administrative detention in Viet Nam. Under decree CP-31, persons can be kept under house arrest for up to two years without the intervention of a judge or a judicial officer. The use of administrative detention in Viet Nam was criticised by the UN Human Rights Committee when considering Viet Nam’s implementation of the ICCPR in 2002.³¹

The Vietnamese authorities’ case against Tran Khue is also described in the Directive issued by the Communist Party of Viet Nam in early 2003. The Directive states “Documents in his computer show that Tran Khue used the internet to correspond with overseas Vietnamese reactionaries.” It states that public security officials found “600 emails” which Tran Khue had sent overseas to “reactionary forces”.

The Directive refers to Tran Khue having written articles calling for the removal of Article 4, about the leading role of the Communist Party of Viet Nam, from the Vietnamese Constitution. In January 2002, the authorities issued a Decree ordering the confiscation and destruction of publications which had not received official approval. This reportedly included Dialogue 2000 and Dialogue 2001, which were hard-copy versions of an Internet forum

³⁰ See footnote 13.

³¹ Concluding observations of the Human Rights Committee: Viet Nam, 26 July 2002, CCPR/CO/75/VNN.

initiated in 1999 by Tran Khue and another scholar, Nguyen Thi Thanh Xuan. These reportedly include an essay calling for the removal of Article 4 from the Vietnamese Constitution.³²

The Directive states that Tran Khue will be charged for espionage under Article 80 of the Criminal Code,³³ and under Article 269 which provides for up to three years' imprisonment for refusing to comply with an administrative detention order. It is not known when Professor Tran Khue will be brought to trial.

On the available evidence, both Colonel Pham Que Duong and Professor Tran Khue are detained in contravention of Article 19 of the ICCPR and are considered by Amnesty International as prisoners of conscience.

Dr Nguyen Dan Que

Dr Nguyen Dan Que, 61, an endocrinologist and one of Viet Nam's best known dissidents was arrested on 17 March 2003 outside his house while reportedly on his way to an Internet café in Ho Chi Minh City. His arrest came after he issued a statement on 13 March which was published abroad. In this statement he asserted that there was no freedom of information in Viet Nam and supported legislation put to the US House of Representatives in February 2003 which proposed steps to be taken for the promotion of freedom of information in Viet Nam.

Dr Que has been imprisoned on two separate occasions previously for a total of 18 years because of his advocacy for political reform and criticism of the government policies. In February 1978 he was arrested and accused of "rebelling against the regime" and forming a "reactionary" organization - the National Front of Progress. After 10 years of imprisonment without trial he was released in 1988. He was re-arrested in June 1990 after he founded the *Cao Trao Nhan Ban* (High Tide of Humanism Movement) which called for democratic change. He also became a member of Amnesty International, a fact mentioned in the charges against him. In November 1991 he was sentenced to 20 years imprisonment. He was released under a special amnesty in September 1998. Since his release and up until his arrest, Dr Que faced constant harassment by the authorities, including having his phone and access to the Internet cut on numerous occasions.

Dr Nguyen Dan Que has been accused of espionage under Article 80 of the Criminal Code. It is not known when he will be brought to trial. He has had no access to his family or to a lawyer, and suffers from serious medical problems.

Concerns about the use of *incommunicado* detention have been described earlier (see Nguyen Vu Binh). The treatment by the Vietnamese authorities of Dr Nguyen Dan Que over a 25 year period epitomizes their attempts to stifle dissent, showing an almost total disregard

³² Committee to Protect Journalists (CPJ) letter to Tran Duc Luong, President of Viet Nam, dated 16 January 2002.

³³ See footnote 13.

for the most basic judicial standards which should protect the individual against arbitrary detention by the state.

Nguyen Vu Viet, Nguyen Truc Cuong and Nguyen Thi Hoa

This is a photograph of Nguyen Vu Viet with his uncle, Father Nguyen Van Ly. Both are prisoners of conscience.

Nguyen Vu Viet [m], 27, Nguyen Truc Duong [m], 36, and Nguyen Thi Hoa [f], 44, the nephews and niece of prisoner of conscience Father Thadeus Nguyen Van Ly who is serving a 10 year prison sentence, were arrested between 13 and 19 June 2001.³⁴ They were accused of providing information about their uncle and the religious situation in Viet Nam to two overseas Vietnamese organizations.

The original charge sheet, which Amnesty International has obtained, outlines in great detail the case against the three siblings.³⁵ It listed the dates and full contents of communications – emails, phone calls and faxes – made by the three. It is clear that the Vietnamese authorities had access to the Internet messages of the accused and recorded at least some of their phone conversations. The charge sheet recommended that the three should be charged under Article 80 of the Criminal Code for espionage.

The first scheduled trial to hear their cases was postponed. At the next hearing, on 10 September 2003, the charges against them had been changed to “abusing democratic freedoms to infringe upon the interests of the State...” as outlined in Article 258 (2) of the Criminal Code.³⁶ After a closed trial lasting only three hours Nguyen Vu Viet, Nguyen Truc Cuong and Nguyen Thi Hoa were sentenced to five, four and three years imprisonment respectively.

³⁴ Father Nguyen Van Ly was sentenced to 15 years imprisonment in October 2001 for consistently calling for more religious freedom and for his long-standing criticism of the human rights policies of the Vietnamese government. The sentence was recently reduced to 10 years following an international outcry over his case.

³⁵ The charge sheet is provided in appendix to AI report, *Socialist Republic of Viet Nam: The espionage case against the nephews and niece of Father Thadeus Nguyen Van Ly*, AI Index: ASA 41/004/2003, April 2003.

³⁶ Article 258. “Abusing democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens.

1 Those who abuse the rights to freedom of speech, freedom of press, freedom of belief, religion, assembly, association and other democratic freedom to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens, shall be subject to warning, non-custodial reform for up to three years or a prison term of between six months and three years.

2 Committing the offenses in one of the following circumstances [sic], the offenders shall be sentenced to between two and seven years of imprisonment.”

At the time of writing, the three siblings were scheduled to have the appeal against their sentences heard on 28 November 2003. It has been reported that they were not allowed to have defence counsel of their own choosing for this appeal, in contravention of Article 14 (3) (b) of the ICCPR.

Methods of state control of the Internet

*“It is a duty for managing authorities to limit the lowest level negative effects of the Internet on our country’s political security, social customs, and cultural traditions while not hindering the efforts to exploit the Internet as a useful resource for economic, social and scientific development.”*³⁷

The Vietnamese authorities’ attempts at state-control of the Internet: monitoring e-mails, websites and on-line forums; website blocking; information content control; ISP self-censorship; and restrictive measures aimed at Internet cafés are informed by their desire to balance opportunities for economic progress while protecting the political *status quo*. In addition to control measures and restrictions, some of the Internet-related laws encourage providers and users to report to the authorities on suspected abuses of the Internet.³⁸ In October 2003, an official Vietnamese report indicated that a Special Police Task Force was to be set up under the Ministry of Public Security to “handle violations of regulations and crimes relating to the Internet”. Such crimes would include, *inter alia*, “distributing harmful material”.³⁹

Monitoring before the Internet launch

In the mid-1990s, the Vietnamese Internet pioneer, *NetNam*, operated a bulletin board system (BBS) and on-line forums for discussions on academic issues. Initially, the users of the BBS and the on-line forums were foreign nationals living in Viet Nam, but gradually Vietnamese people also joined in. However, persistent rumours of monitoring kept the number of Vietnamese participants relatively low and their contributions fairly neutral. It is not known if the forums were monitored for political control purposes. Monitoring of such forums was not difficult; the only requirement was the availability of sufficient manpower and language expertise to continuously read posted messages. The e-mail volume in those early days was low. When Viet Nam commercially launched the Internet through its own gateways, operated by a state-owned company, the situation changed dramatically.

Monitoring in the Internet era

After the launch of the Internet in December 1997, the volume of e-mails to and from Viet Nam increased exponentially. At the same time, websites of individuals and organizations in

³⁷ Editorial in *Quan Doi Nhan Dan*, the official army journal, 17 April 2003.

³⁸ See footnote 9.

³⁹ “Vietnam to set up Internet crime police task force”, *VNExpress* website, Hanoi, in Vietnamese 28 October 2003 translated by the *BBC*.

the Vietnamese diaspora became freely accessible, opening up new, alternative sources of information on Viet Nam. Although theoretically still a possibility, manual monitoring of e-mail traffic became effectively impossible.

Amnesty International is informed that it is technically possible to search large volumes of e-mails by using key words which can provide rough indications of the contents of e-mails. Those e-mails can then be read. The arrest of Le Chi Quang while using a computer in an Internet café suggests that some measure of targeted monitoring was taking place. This monitoring could have been carried out by the Internet café owner, the ISP or any other official agency.

Website blocking

The state-owned company Viet Nam Data Communication (VDC) operates Viet Nam's three international Internet gateways.⁴⁰ This gives the Vietnamese authorities a high degree of control over websites people are able to access from inside Viet Nam. A national firewall,⁴¹ which blocks requests for Internet addresses associated with websites, is said to block outgoing Internet traffic to blacklisted political foreign-based websites.⁴² The extent to which blocking access to foreign-based websites is effective is not clear. Experienced Internet users are generally able to by-pass national firewalls. In August 2001, a high-ranking official of the Ministry of Culture and Information admitted that "control through the firewall is no longer effective". He added that "if we put all our future hopes [of preventing people from accessing blacklisted websites] on the firewall, we will fail".⁴³

All blacklisted websites are said to be based outside Viet Nam, but estimates of the number of websites blocked vary widely. A source inside Viet Nam estimates the number to be as low as 50, mainly anti-CPV websites. However, other sources suggest that more than 2,000 websites are being blocked.⁴⁴ For the most part, political websites are blocked. Viet Nam allegedly also attempts to prevent people from accessing religious websites or websites with pornographic content. The latter is also not uncommon in many other countries and is generally perceived as being acceptable if carried out in accordance with international standards. People inside Viet Nam generally have access to websites of international news

⁴⁰ VDC is an Internet Access Provider (IXP). According to article 13.2 of Decree No.55/2001/ND-CP, IXPs are "state-owned enterprises or stock companies dominated by the State". IXP licenses are issued by the Directorate General for Post and Telecommunications (DGPT).

⁴¹ Reportedly, the initial national firewall was acquired as a "free extra". The other services obtained from the information technology supplier were paid for by the Vietnamese authorities.

⁴² Websites can very easily change their Internet Protocol (IP) address, so it seems fair to assume that Viet Nam continuously monitors the Internet for IP addresses of blacklisted websites.

⁴³ Do Quy Doan, then chairman of the Viet Nam Web Site Project at the Ministry of Culture and Information, as quoted by Mark McDonald in an article, dated 21 August 2001, for the *San Jose Mercury News*' Vietnam Bureau.

⁴⁴ According to *NetNam*, the pioneer ISP operated by the Institute of Information Technology in Ha Noi, only a relatively small number of websites are now being blocked. Human Rights Watch, however, suggests in its 2003 annual report that "the government blocked approximately two thousand websites, including those of Vietnamese dissident groups based overseas".

agencies, although the *BBC World Service* reports that their Vietnamese-language website is blocked from time to time.⁴⁵

The Vietnamese authorities have acknowledged that firewalls might form a hindrance to domestic companies. As a result, opportunities have been created for businesses to operate beyond the national firewall, thus removing an economic hindrance, but leaving the political restriction in place.

Information content control

An additional aspect of control over the Internet is state-controlled information management. Viet Nam has introduced the following restrictive measures concerning content and information provision on the Internet:

- According to Decree No. 55, information on the Internet has to comply with Vietnamese laws governing the dissemination of information.⁴⁶
- Decree No. 55 confirms the continued existence of Information Content Providers (ICPs), which are information providers licensed by the Ministry of Culture and Information.⁴⁷
- A decision issued by the Ministry of Culture and Information, which elaborates on Decree No. 55, lists a range of restrictions on information provision.⁴⁸
- Internet café owners have to obtain a license from the Ministry of Culture and Information and are subjected to background checks before being granted a license.
- Locally based websites, whether Vietnamese or foreign owned, are required to apply for a license from the Ministry of Culture and Information.⁴⁹

⁴⁵ In an e-mail response of 9 July 2003 received from the webmaster of the English-language *VietQuoc* website, Amnesty International was informed that prior to 2000 around 100 Vietnamese from Viet Nam contacted the website with e-mail messages on a regular basis. The *VietQuoc* webmaster estimated that 90% of visitors were supportive and 10% hostile. The same website report that after 2000 and despite the setting-up of a firewall by the Vietnamese authorities, e-mails continued to be received from Viet Nam, but fewer in number.

⁴⁶ Article 6.1 of Decree No.55/2001/ND-CP stipulates that information “must comply with relevant regulations of the Press Law, Publication Law, Ordinance on the Protection of State Secrets...”.

⁴⁷ Article 14 of Decree No.55/2001/ND-CP states that ICPs are “organizations, enterprises granted Internet content service provision license by the Ministry of Culture & Information. ICPs must conform [with] regulations of the decree and regulations on press release and publication on the Internet, regulations on establishment and provision of electronic news on the Internet promulgated by the Ministry of Culture and Information”.

⁴⁸ Ministry of Culture and Information’s Decision No 27/2002/QD-BVHTTT on the Issuance of the Statute on Management and Granting of Licenses for Provision of Information and Creation of Websites on the Internet, dated 10 October 2002.

⁴⁹ Decision No. 27 is reportedly not being currently enforced and people inside Viet Nam are said not to take this decision seriously.

In July 2003, the number of websites legally hosted by licensed ISPs and ICPs was estimated at around 3,000.⁵⁰ There were 16 officially licensed ICPs. Existing legislation does not explicitly prohibit the creation of personal websites, but there are no procedures for individuals to apply for the necessary license. Personal websites are often incorporated into websites of organizations which fall under existing government controls. Some websites such as TTVNonline.com have been suspended or closed by the Ministry of Culture and Information.

The closure of TTVonline.com

In August 2002, the Ministry of Culture and Information closed down the website of TTVonline.com which had previously been named as “best Internet site for young people” in 2001⁵¹ receiving 260,000 hits a day.⁵² The same report indicated that the website was closed down because “it was improperly licensed and carried improper information that violated press laws and ‘distorted the truth’”.⁵³ The authorities reportedly objected to the raising of the sensitive issue of the border dispute between Viet Nam and China, official corruption, political change and Viet Nam’s relationship with the USA. As a clear pretext to close the website down, the authorities claimed that the website “had not applied for an operation license from the State information management agency” and “information carried by the website violated article 10 of the press law and article 6 and article 11 of [decree No. 55/2001/ND-CP]”.⁵⁴ Do Quy Doan, then head of the press and information department of the Ministry of Culture and Information is reported to have said “The website exercised no integrity in carrying out their online journalism and behaved like a tabloid paper”.⁵⁵

ISP self-censorship

It is unclear who is monitoring the Internet in Viet Nam. Although the government is said to be conducting website blocking and monitoring, ISPs are thought to perform part of that task as well. Given that in July 2003 all but one ISP was state-owned, the distinction between state-control and ISP self-censorship is blurred.⁵⁶ However, the case of Le Chi Quang shows that at least one of the ISPs, to some extent, has been monitoring Internet usage. It is not clear from the charge sheet in his case whether FPT (the Corporation for Financing and Promoting Technology) monitored Internet usage under instruction or independently.

Internet cafés

The Vietnamese authorities frequently harass perceived dissidents by disconnecting home telephone lines, mobile phones and confiscating personal computers. This may tempt

⁵⁰ Source: Ha Noi based ISP, *NetNam*.

⁵¹ The Vietnamese government copies Chinese Internet crackdown, *RSF*, 7 August 2002.

⁵² Viet Nam shuts down website over inaccurate reports, *AFP*, 8 August 2002.

⁵³ *Ibid*.

⁵⁴ *Viet Nam News Agency*, 13 August 2002.

⁵⁵ See footnote 52.

⁵⁶ Viet Nam’s first private ISP, One-Connection Internet, was launched in June 2003.

dissidents to use the relative anonymity of Internet cafés and anonymous e-mail accounts. The case of Le Chi Quang possibly demonstrates that the authorities are able to trace or perhaps follow political dissidents outside their homes.

The government seems reluctant to use the closure of Internet cafés as a control mechanism, given the importance attached to the Internet for economic development. Instead, the authorities attempt to control Internet use in these outlets, either by forcing Internet café owners to take responsibility for the use of the Internet by their customers, or by the direct monitoring of individual Internet café users. There is little cyber-dissidents can do to avoid detection, if official agencies, ISPs and Internet café owners cooperate in monitoring activities.

Legal Obligations of ISPs, Internet café owners and users

Decree No.55 contains two articles which refer to legal obligations of providers and users of Internet services. Providers and users “are responsible for information accessed, transmitted on the Internet”,⁵⁷ and also for “facilitating State management units to implement technical methods and professional measures to ensure the safety and security of the information and equipment system on the Internet”.⁵⁸ It is unclear how these provisions are being implemented and it is not known to what extent owners and users are aware of the Decree and the risks that they may be taking when using the Internet.

Regional initiatives and cyber-terrorism

Regional cooperation is increasing within the Association of Southeast Asian Nations (ASEAN) on areas of common concern, especially in relation to issues of national security. At a meeting of ASEAN information and communications ministers in Singapore in September 2003, the Prime Minister of Singapore proposed developing a “common and sustained approach to the security of our telecommunications and computer networks so that we can enjoy the fruits of a fully connected region.”⁵⁹ Amnesty International fears that the growing trend in the region of using national security legislation, in the wake of September 11, to stifle lawful dissent, risks spreading to cyberspace.⁶⁰

⁵⁷ Decree No.55/2001/ND-CP, Article 6.2.

⁵⁸ Decree No.55/2001/ND-CP, Article 18.3.

⁵⁹ “ASEAN urged to develop common firewall against cyber attacks”, *AFP*, 18 September 2003.

⁶⁰ Recent amendments to Singapore’s Computer Misuse Act were described by a Singapore member of parliament as sounding like “*the cyber-space equivalent of the Internal Security Act*”, according to a *Financial Times* article, “Singapore tightens control over internet”, 12 November 2003. The Singapore Internal Security Act allows for indefinite detention without trial in certain cases.

Rights to freedom of expression, freedom of information, freedom of assembly, inviolability of domicile and privacy

1992 Constitution of the Socialist Republic of Vietnam⁶¹

“The State shall promote information work, the press, radio, television, cinema, publishing, libraries and other means of mass communication. The State shall strictly ban all activities in the fields of culture and information that are detrimental to national interests, and destructive of the personality, morals, and fine lifestyle of the Vietnamese.” **Article 33**

“In the Socialist Republic of Viet Nam human rights in the political, civic, economic, cultural and social fields are respected. They are embodied in the citizen’s rights and are determined by the Constitution and the law.” **Article 50**

“The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and hold demonstrations in accordance with provisions of the law.” **Article 69**

“The citizen is entitled to the inviolability of his domicile. No one can enter the domicile of another person without his consent, except in cases authorized by the law. Safety and secrecy are guaranteed to the citizen’s correspondence, telephone conversations and telegrams. Domiciliary searches and the opening, control, and confiscation of a citizen’s correspondence and telegrams can only be done by a competent authority in accordance with the provisions of the law.” **Article 73**

Although Viet Nam’s 1992 Constitution appears to guarantee many of the same fundamental human rights as the ICCPR, rights related to freedom of expression should be seen through the restrictive prism of Article 33 of the Constitution (see above). According to Article 69 of the Constitution (see above), the rights can only be enjoyed “in accordance with provisions of the law”. In this instance “the law” refers to legislation with special relevance to freedom of expression, access to information, peaceful assembly, and right to privacy in cyberspace and includes, *inter alia*, a raft of Internet decrees, the Press Law (amended in 1999), the

⁶¹ Translations of the articles are found in “A selection of Fundamental Laws of Viet Nam”, *The Gioi Publishers*, Hanoi, 2001.

Publishing Law, and the State Secrets Protection Ordinance and above all the 1999 Criminal Code. All comprise ambiguous and loosely-worded provisions that Amnesty International believes are used in an arbitrary manner to stifle rights to freedom of expression and related rights. Amnesty International believes that important provisions of these laws are in breach of international human rights law standards as enshrined in treaties that Vietnam has ratified.

In its Concluding Observations on the consideration of its second periodic report of Viet Nam, the UN Human Rights Committee expressed concern about “extensive limitations on the right to freedom of expression in the media”. Making specific mention of the Press Laws, the committee expressed concerns about “restrictions on publications which..., *inter alia*, are said to cause harm to political stability or insult national institutions”. It concluded that “these broadly defined offences are incompatible with paragraph 3, of article 19 of the Covenant”.⁶² Amnesty International believes that these concerns are equally valid for freedom of expression in cyberspace.

For example, even though the following General Comment was drafted in pre-Internet 1983, it indicates that state law and practice must keep pace with the development of communications technology so as to truly guarantee the freedoms in Article 19 of the ICCPR. The 1983 Human Rights Committee General Comment on Article 19 states that:

*“2. Paragraph 2 [of Article 19 of the ICCPR] 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 ‘regardless of frontiers’ and in whatever medium, ‘either orally, in writing or in print, in the form of art, or through any other media of his choice’. ...because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in paragraph 3 [of Article 19 of the ICCPR] ”.*⁶³

⁶² Concluding Observations of the Human Rights Committee: Viet Nam. 26/07/2002. CCPR/CO/75/VNM. (Concluding Observations/Comments), para. 18.

⁶³ UN Human Rights Committee, General Comment 10, Article 19, (Nineteenth session, 1983), UN Doc. HRI/GEN/1/Rev.1 at 11 (1994).

Article 19 of the ICCPR

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 public order (ordre public), or of public health or morals.

As stated in Article 19 of the ICCPR, States are permitted to limit rights of their citizens to freedom of expression under certain limited circumstances. These circumstances have been set out in United Nations interpretative principles and jurisprudence from other jurisdictions. The 1983 General Comment on Article 19 states:

“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 the 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 restriction may be imposed: the restrictions must be “provided by law”; they may only be imposed for one of the purposes set out in subparagraph (a) and (b) of paragraph 3; and they must be justified as being “necessary” for that State Party for one of those purposes”.

The UN Siracusa Principles⁶⁴

The UN Siracusa Principles outline the legal test for these limits. They specify that:

“(2) the scope of a limitation referred to in the Covenant [ICCPR] shall not be interpreted so as to jeopardize the essence of the right concerned. (3) All limitation clauses shall be interpreted strictly and in favor of the rights at issue. (4) All limitations shall be interpreted in the light and context of the particular right concerned. (5) All limitations on a right recognized by the Covenant shall be provided for by law and be compatible with the objects and purposes of the Covenant. (6) No limitation referred to in the Covenant shall be applied for any other purpose other than that for which it has been prescribed. (7) No limitation shall be applied in an arbitrary manner.... (11)

⁶⁴ UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1985/4 (1985).

In applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation”.

The Principles provide definitions as to what is meant by “prescribed by law”, “in a democratic society”, “public order”, “public health”, “public morals”, “national security”, “public safety”, “rights and freedoms/reputations of others”, and “restrictions on public trial”.

The Johannesburg Principles⁶⁵

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, of 1996, state that “no restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government”.

In the case of cyber-dissidents in Viet Nam, “national security” legislation has been used by the authorities to justify the criminalization of freedom of expression in cyberspace.

While it is open to the Vietnamese authorities to restrict freedom of expression when there are national security interests at stake, Principle 2 (b) of the Johannesburg Principles states:

“In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.”

International law does not grant an unfettered discretion to states to define for themselves what constitutes an issue of national security. The UN Special Rapporteur on freedom of opinion and expression has stated in this respect:

⁶⁵ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, UN Doc E.CN.4/1996/39. These Principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of Witwatersrand, in Johannesburg. The Principles are based on international and regional law and standards relating to the protection of human rights, evolving state practice (as reflected, *inter alia*, in judgements of national courts), and the general principles of law recognized by the community of nations. These Principles acknowledge the enduring applicability of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights and the Paris Minimum Standards of Human Rights Norms in a State of Emergency.

*“For the purpose of protecting national security, the right to freedom of expression and information can be restricted only in the most serious cases of a direct political or military threat to the entire nation”*⁶⁶

Articles 80 and 88 fall under Chapter XI of the 1999 Criminal Code titled “Crimes of infringing upon national security”.⁶⁷ Article 80 relates to “spying” and Article 88 to “conducting propaganda against the Socialist Republic of Viet Nam”. Cyber-dissidents, Pham Hong Son and Le Chi Quang were prosecuted and convicted under these articles respectively. Others await trial under this legislation.

Investigative methods and the right to privacy

The Vietnamese government has claimed in a recent report on its implementation of the ICCPR for the United Nations Human Rights Committee that “for the execution of investigation and law enforcement purposes, the competent authorities are permitted to search the offenders’ domicile, examine, seize or freeze the objects, documents, letters, telegrams, packages and parcels, provided that all these activities strictly comply with the legal procedures and authorities.”⁶⁸

However, the arbitrary use of investigative methods in many of the above cases suggest that there has been a serious breach of the accused’s right to privacy. The charge sheets against Le Chi Quang, Dr Pham Hong Son, and Nguyen Thi Hoa, Nguyen Vu Viet, and Nguyen Truc Cuong, reveal the use of highly intrusive surveillance and investigative methods, including monitoring of e-mails, telephone calls and other forms of search and surveillance. Amnesty International believes that individuals regarded as politically suspect are subject to unacceptable levels of surveillance and scrutiny, often for years. In many cases this amounts to a breach in the right to privacy as protected by both articles 69 and 73 of the Vietnamese Constitution, as well as article 17 of the ICCPR.⁶⁹

International standards in cyberspace

Amnesty International believes that human rights principles should also apply in cyberspace. Given the potential ease for arbitrary government control and interference with the right to freedom of expression and related rights in cyberspace, enhanced practical provisions need to be made to protect the fundamental human rights of the individual. The Human Rights Committee has made clear that guarantees of freedom of expression need to keep pace with

⁶⁶ See “Report of the Special Rapporteur, Mr. Abid Hussein, pursuant to the Commission on Human Rights Resolution 1993/45”. Reference E/CN.4/1995/32, 14 December 1995, para 48.

⁶⁷ Please refer to full texts of these articles in Appendix 2.

⁶⁸ *Viet Nam’s submission* to the 2001 Human Rights Committee, CCPR/C/VNM/2001/2/Add.1 para. 185.

⁶⁹ ICCPR Article 17: “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.”

technological developments in communications to be meaningful.⁷⁰ The cases outlined above and the charge sheets against individuals illustrate the urgent need to address this issue.

International standards in this domain have continued to develop in recent years. Notably the Johannesburg Principles on National Security, Freedom of Expression and Access to Information and the Siracusa Principles, whilst not specifically referring to cyberspace, nevertheless set out clearly where and when the State can restrict the underlying basic rights.

Given the recent advent of these technologies and related issues, specific international conventions or treaties on human rights in cyberspace do not yet exist. Nevertheless, the right to freedom of expression and privacy in cyberspace is being addressed by supranational organizations. One of the most active international organizations in the field of human rights in cyberspace is the Council of Europe.

In their “Declaration on Freedom of Communication on the Internet” of 28 May 2003, the member states of the Council of Europe emphasize the need to assert human rights in cyberspace by stating “that freedom of expression and the free circulation of information on the Internet need to be reaffirmed”. In a statement for the World Summit on the Information Society (WSIS)⁷¹, the Council’s Committee of Ministers reminds the participants of the WSIS that “new information and communication technologies offer unprecedented opportunities for the full enjoyment of the freedom of expression and information” and that they expect the summit to “enable the principles of human rights, democracy, respect for cultural diversity and trust between peoples to be firmly embedded in the new information society”.

Two European organizations have recently produced statements on the rights to freedoms on the Internet: the Council of Europe (CoE) and the Organization for Security and Co-operation in Europe (OSCE). In its declaration of freedom of communication on the Internet, the CoE suggests seven principles to safeguard the fundamental human right of freedom of expression and information in cyberspace.⁷²

The OSCE, through its Representative on Freedom of the Media, issued its own statement: the “Amsterdam Recommendations on Freedom of the Media and the Internet.”⁷³ According to these recommendations, “barriers [to access to the Internet] at all levels, be they technical, structural or educational, must be dismantled” and “More and more people are able to share their views with a widening audience through the Internet without resorting to ‘classic media’. Privacy of communication between individuals must be respected...”. The Recommendations, arguably only a regional standard, go on to state under a paragraph titled “Freedom of Expression” that: “In a modern democratic and civil society citizens themselves

⁷⁰ See footnote 63.

⁷¹ The World Summit on the Information Society is scheduled take place from 10 to 12 December 2003 in Geneva, Switzerland.

⁷² “Declaration on freedom of communication on the Internet” adopted by the Committee of Ministers of the Council of Europe on 28 May 2003 at the 840th meeting of the Ministers’ deputies.

⁷³ The “Amsterdam Recommendations” were presented by the OSCE Representative on Freedom of the Media on 14 June 2003.

should make the decision on what they want to access on the Internet. The right to disseminate and to receive information is a basic human right. All mechanisms for filtering or blocking content are not acceptable”.

These principles and recommendations, whilst not legally binding, are indicative of an emerging international trend, exemplified by the UN Human Rights Commission in Resolution 2002/48 adopted in April 2002 which:

“Urges States to refrain from imposing restrictions which are not consistent with the provisions of article 19, paragraph 3, on the International Covenant on Civil and Political Rights on access to or use of modern telecommunications technologies, including radio, television and the Internet”.

Whilst recognizing the Vietnamese government’s legitimate responsibility to protect the security of its citizens, Amnesty International believes that this should not be used as a pretext to stifle criticism, freedom of expression and human rights generally, in cyberspace.

Conclusions

The Vietnamese government has made dedicated efforts, which Amnesty International applauds, to spread access to the Internet throughout the country. Decreasing access costs and increased availability of the Internet continues to provide growing parts of the population with opportunities to improve their economic and social conditions through additional availability of information and ease of communication.

Despite acknowledging the legitimate right of the State to limit the right to freedom of expression in specific circumstances as provided for in international standards, Amnesty International believes that the burden of demonstrating the validity of the restriction rests with the government. The Vietnamese government has not met the necessity test and has acted disproportionately and arbitrarily in the draconian crackdown on its critics.

The rights guaranteed under Article 19 of the ICCPR (freedom of expression) are not protected in Viet Nam, and Vietnamese law criminalizes the right to freedom of opinion and expression in violation of international law. Individuals are harassed, detained, and imprisoned because of their conscientiously held non-violent opinions, and their attempts to share them with others. The media is state-controlled, access to information is subject to legal restrictions, including access to the Internet, and peaceful political dissent is a criminal offence in Viet Nam.

Government control of the Internet in Viet Nam increases the ability of the Vietnamese authorities to monitor the opinions and free expression of its population by tracing e-mail exchanges between organizations and individuals considered “reactionary” both within and outside Viet Nam. Foreign websites continue to be blocked, the creation of local websites are subject to restrictions and ISPs and Internet café owners are encouraged to report abuse of the Internet. Government critics are kept under high levels of surveillance that cover every aspect of their lives, often for many years.

The recent series of arrests and long prison sentences given to individuals critical of the Vietnamese authorities attest to a sense of paranoia among the leadership, who feel under threat and fear a “peaceful evolution” which could threaten the current supremacy of the ruling Communist Party of Viet Nam. This has resulted in a low level tolerance for dissenting opinions, particularly when expressed by means of the mass media, such as radio, television and the Internet, as shown in the Directive issued in early 2003 by the CPV’s Politburo to the Executive Committee of the Vietnamese Veterans Association.

Growing numbers of Internet laws and decrees contain restrictions on rights to freedom of expression, freedom of information and the right to peaceful assembly in cyberspace. The provisions in this raft of Internet-related legislation provide for the imposition of fines as a punishment. The authorities instead use loosely worded articles in the Criminal Code to harshly punish alleged violations and have meted out long prison sentences to growing numbers of people detained for sharing dissenting views on the Internet.

Amnesty International believes that the arbitrary use of monitoring activities to target political dissent in cyberspace by the authorities constitutes a violation of the fundamental human rights of the general population which are guaranteed under the Vietnamese Constitution and the ICCPR to which Viet Nam is a State Party. National security legislation is being used by the authorities to criminalize peaceful political dissent.

Amnesty International believes that it is in the long term interests of Viet Nam’s continued economic development to ensure that basic human rights of its citizens are guaranteed, including human rights in cyberspace.

Recommendations

Amnesty International calls for the Vietnamese authorities to:

- immediately and unconditionally release prisoners of conscience Le Chi Quang, Dr Pham Hong Son, Dr Nguyen Dan Que, Pham Que Duong, Nguyen Thi Hoa, Nguyen Vu Viet, Nguyen Truc Cuong, Nguyen Vu Binh, Nguyen Khac Toan, and Tran Khue, and all of the many others who have been detained for the peaceful exercise of their rights to freedom of expression and access to information;
- ensure that, pending their release, all those detained are given immediate access to their families, medical care and legal counsel in accordance with Viet Nam's obligations under international law;
- revise the 1999 Criminal Code as a matter of urgency to bring it into line with Viet Nam's international obligations. In so doing, ensure that ambiguous provisions relating to national security which carry draconian punishments are clearly defined or removed, so they cannot be applied in an arbitrary manner to stifle legitimate dissent, debate, opposition, and freedom of expression;
- revise criminal procedures as a matter of urgency to bring them into line with Viet Nam's international obligations relating to fair trial, with particular attention to the unlawful use of *incommunicado* detention;
- ensure that all provisions in Internet laws and decrees are in full compliance with the Vietnamese Constitution, the ICCPR and Viet Nam's other international legal obligations.
- make reference to international standards such as the Johannesburg and Siracusa Principles in the drafting of any legislation related to freedom of expression.
- ensure that freedom of expression and related rights are protected from arbitrary interference whilst fulfilling the legitimate concerns and obligations of the state to protect its security and the rights of its citizens. Monitoring and surveillance should not be carried out in an arbitrary manner and should not infringe on the rights to freedom of expression.
- remove restrictions on management of the Internet, including ISPs, creation of personal websites, and operation of Internet cafés to guarantee the rights to freedom of expression, information, and assembly as set out in international standards, as well as inviolability of domicile and privacy as established in the Vietnamese Constitution.

Appendix 1

Facts and Figures

- In Viet Nam in 2003, the total adult literacy rate was reported as being 93%.⁷⁴
- The Internet became commercially available through gateways in Ha Noi and Ho Chi Minh City, in December 1997. A third gateway was established in Da Nang in 2003.
- In August 2003, the number of Internet users was estimated at almost 2.5 million⁷⁵, out of a total population of about 80 million people, or close to 2.75% of the population.⁷⁶ The number of Internet cafés is estimated to be in the 4,000 – 5,000 range.
- The majority of Internet users are based in the main urban areas of Ha Noi/Hai Phong, Ho Chi Minh City and Da Nang, although Internet access is widely available throughout the entire country and Internet cafés can also be found in smaller towns.
- According to recent visitors to the country, hourly access rates for using the Internet in Internet cafés have come down to under 0.20 US dollars in Ha Noi and Ho Chi Minh City, 0.20 to 0.30 US dollars in university and larger provincial towns and 0.30 to 0.40 US dollars in smaller provincial towns, making the Internet accessible for a larger part of the population.
- Most Internet users have access through Internet cafés, with the majority of those users being between 14 and 24 years of age. According to a 2002 survey by the Ministry of Culture & Information of customers in Internet cafés in Viet Nam, they tend to spend 70% of their time on Internet chatting, 10% on playing games, 10% on sending and receiving e-mails and 10% on surfing the Internet.⁷⁷

⁷⁴ <http://www.unicef.org/infobycountry/vietnam.html>.

⁷⁵ Data on the number of users in Viet Nam is unreliable. Initially, estimates were based on multiplying the number of official dial-up connections by a factor of three. However, the ever growing number of Internet cafés in combination with continuously decreasing access rates has made using that multiplication factor inaccurate. The figure of almost 2.5 million, using a multiplication factor of about seven, is a generally accepted estimate at present.

⁷⁶ ISP subscriber statistics for August 2003, Viet Nam Network Information Centre of the Ministry of Post and Telematics, www.vnnic.net.vn/english/index.html

⁷⁷ “Internet café owners asked to watch over customers access”, August 2002, Viet Nam News Agency, www.vietnamnews.vnagency.com.vn/2002-08/17/stories/07.htm.

- The number of local websites legally hosted by ISPs is estimated to be around 3,000.
- Officially approved experiments with VSAT technology, which bypass Internet gateways, are conducted on business parks in Ho Chi Minh City and Da Nang.⁷⁸
- Internet telephony, ADSL services and multimedia messaging services by mobile phone were launched in 2003.
- Since the Internet's launch in 1997, Viet Nam has mainly focused on the economic development benefits of information technology. Despite this, a June 2002 Asia-Pacific Economic Conference (APEC) regional workshop on the Internet revealed that the percentage of Vietnamese companies using the Internet for commercial purposes was only about 3%. Another 7% expressed some intention to take up e-commerce.⁷⁹
- The current legal framework for the Internet consists of a government decree and separate decisions issued by the Directorate General for Post and Telecommunications (DGPT), the Ministry of Finance, the Ministry of Culture and Information, the Ministry of Public Security and the Ministry of Science, Technology and Environment.
- In October 2002, the Ministry of Culture and Information issued a decision setting out several restrictions for information provision, including creating locally based websites.⁸⁰
- The Internet regulatory framework is particularly concerned with preventing "Internet abuses, causing negative impact [on] the national security and breaking national morality, traditional fine customs".⁸¹ The formulation refers to distributing "national secrets", mostly undefined or ambiguously worded, by means of the Internet and to posting "depraved information and pictures" (presumably pornography).⁸²
- The Internet's regulatory framework "encourages" Internet Service Providers, Internet

⁷⁸ "Software parks lining up to use satellite Internet access", *VNS*, 10 April 2003.

⁷⁹ "Government promotes the development of e-commerce applications in Viet Nam", paper given by Nguyen Thanh Hai at a workshop on electronic commerce policy and regional cooperation, 19-21 June 2002, in Bangkok, Thailand, available on request.

⁸⁰ The Statute on Management and Granting of Licenses for Provision of Information and Creation of Websites on the Internet (Issued together with Decision No. 27/2002/QD-BVHTT dated 10 October 2002).

⁸¹ Article 3.1, Decree No. 55/2001/ND-CP, 23 August 2001.

⁸² Article 41.5h, Decree No. 55/2001/ND-CP, 23 August 2001, Article 4.2, Decision No. 27/2002/QD-BVHTT dated 10 October 2002.

⁸³ See footnote 9.

⁸⁴ Article 8, Decree No. 55/2001/ND-CP, 23 August 2001.

access providers, such as Internet cafés, and individual Internet users to report perceived abuse of the Internet.⁸³

- Although exact information on numbers is not available, various agencies are said to be monitoring websites, chat rooms, discussion forums and e-mail exchanges. The legal framework for the Internet explicitly states that “information supervision on the Internet shall be carried out by competent State agencies as stipulated by law”.⁸⁴
- The Internet’s legal framework provides for fines, not for prison sentences, in case of violations. Instead the Vietnamese authorities mainly use national security legislation in the Criminal Code to convict people arrested while using the Internet for political purposes.
- Despite recently introduced legislation which allows for foreign companies to operate as ISPs in Viet Nam, all but one Internet-related organizations are Vietnamese owned, with the key companies (the only gateway operator, for example) being wholly state-owned.
- An unknown number of foreign based websites cannot be accessed from within Viet Nam, due to blocking activities either by ISPs or the gateway operator.

Appendix 2

Articles 80 and 88 of the Criminal Code of Viet Nam

Article 80. Spying

1. Those who commit one of the following acts shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment:
 - a. Conducting intelligence and/or sabotage activities or building up based for intelligence and/or sabotage activities against the Socialist Republic of Viet Nam;
 - b. Building up bases for intelligence and/or sabotage activities at the direction of foreign countries; conducting scouting, informing, concealing, guiding activities or other acts to help foreigners conduct intelligence and/or sabotage activities;
 - c. Supplying or collecting for the purpose of supplying State secrets to foreign countries; gathering or supplying information and other materials for use by foreign countries against the Socialist Republic of Viet Nam.
2. In case of less serious crimes, the offenders shall be sentenced to between five and fifteen [years] of imprisonment.
3. Persons who agree to act as spies but do not realize their assigned tasks and confess, truthfully declare and report such to the competent State bodies shall be exempt from penal liability.

Article 88. Conducting propaganda against the Socialist Republic of Viet Nam

1. Those who commit one of the following acts against the Socialist Republic of Viet Nam shall be sentenced to between three and twelve years of imprisonment;
 - a. Propagating against, distorting and/or defaming the people's administration;
 - b. Propagating psychological warfare and spreading fabricated news in order to foment confusion among people;
 - c. Making, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Viet Nam.
2. In the case of committing less serious crimes, the offenders shall be sentenced to between ten and twenty years of imprisonment.