

# SOCIALIST REPUBLIC OF VIET NAM

## The death penalty

Amnesty International is gravely concerned that, according to an official review of the People's Supreme Court in Ha Noi, over 100 people were sentenced to death during 1995. A report in the official newspaper *Viet Nam News* on 10 February 1996 states that 95 people were sentenced to death for "homicidal" cases, eight people for drug smuggling convictions and one person for rape. Despite the fact that only 11 executions were officially reported during the course of 1995, Amnesty International fears that most of the 104 death sentences may already have been carried out. It is believed that executions are carried out on a regular basis.

### Legislation

The death penalty in Viet Nam is applicable for a wide range of offenses. Altogether 34 articles in the Criminal Code stipulate the death penalty as an optional punishment. Offenses for which the death penalty may be applied include:

- ◆ treason and offenses classified in the 1986 Criminal Code as a "*Grave violation of national security*" such as espionage, rebellion, terrorism, banditry, sabotage, and attempted prison escapes;
- ◆ other offenses classified as "*involving violation of national security*" such as hijacking, destruction of state property, manufacture and trafficking of weapons, smuggling, and forgery;
- ◆ offenses classified as against "*Human life, health and dignity*" such as murder and rape;
- ◆ offenses classified as crimes against "*Socialist property*" such as armed robbery, theft, misappropriation, embezzlement and damage of state property;
- ◆ offenses classified as against "*Private property rights*" such as armed robbery and misappropriation of an individual's property;
- ◆ "*Economic offenses*" such as manufacturing and selling counterfeit products;
- ◆ offenses against "*Official powers*" such as accepting bribes;
- ◆ offenses against the "*Duties and obligations of military personnel*" such as refusing orders, surrendering to the enemy, abandoning battle position, and destroying military equipment;

◆ offenses “*Undermining peace, crimes against humanity, war crimes*”

◆ in addition, the manufacture and trafficking of narcotics was made a capital offense in December 1992.

According to the Law on Criminal Procedure defendants sentenced to death by a first court are allowed right of appeal to the People’s Supreme Court. The People’s Supreme Court and the Chief Procurator should make a decision on the case within two months. If the sentence is upheld by the Supreme People’s Court, defendants have the right to appeal to the President for clemency; this appeal must be lodged within seven days. Execution is by firing squad.

Amnesty International has long been concerned that defendants in Viet Nam may not receive fair trials. This concern is heightened when the death penalty is applicable as a punishment and therefore any risk of error is irreversible. For example, it appears that in some cases defendants are not assigned a defender until just before a case is going to trial, leaving insufficient time for adequate preparation of a defence. It also appears that defenders may not communicate with their clients during the course of a trial and that they are not given the right to call and examine witnesses for or against the defendant, a right upheld in international standards for fair trial.

### **Death sentences in 1995**

Amnesty International is aware of only three cases in 1995 where it was officially reported at the time that the death penalty had been imposed.

One case concerned **Nguyen Van Quang**, who was sentenced to death by a court in Son La province in March for trafficking 227 kilos of opium. He had been arrested on 24 January 1995. Another case concerned **Sieng Pheng**, a 36-year-old Lao national, who was sentenced to death in June after being found guilty of drug trafficking. He had been arrested in January while allegedly driving to Ha Noi with 15.5 kilos of heroin hidden in his car. The third case concerned **Dinh Van Phat** and **Hoang Bich Hai** who were sentenced to death by Lai Chau People’s Court in October. They were convicted of misappropriating money from the state budget to buy narcotics and hire a pickup truck to transport the illegal drugs. They had reportedly been arrested in December 1993.

### **Executions in 1995**

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Contrary to previous practice of not publicizing executions, Amnesty International is aware of 11 cases reported in the official media during 1995. It believes that this change in policy reflects an attempt by the government to crack down on perceived rising crime. The first official confirmation of a death sentence having been carried out since 1985 occurred in March 1995 with the execution of a 37-year-old policeman, **Nguyen Tung Duong**. He was sentenced to death for murder on 21 October 1994 after a three-day trial at the People's Court in Ha Noi. His appeal was heard at the People's Supreme Court in December 1994. Thousands of people demonstrated outside the court in support of the death sentence. In upholding the sentence, the Supreme Court said that the murder had damaged police credibility "*thus causing bad political and social consequences*". His appeal to the President was rejected in early 1995. Nguyen Tung Duong was convicted for the murder and robbery in 1993 of a 21-year-old man whom he had stopped for a traffic violation.

Four other people were executed later in the same month - **Duong Van Than** and **Nguyen Si Tuan** had been sentenced to death in August 1994 for drug trafficking offenses. They were executed after their appeal was rejected by the President; two unnamed people were executed in Ha Noi and Danang after convictions for murder.

**Wong Chi-Shing**, a 34-year-old Hong Kong British national, was sentenced to death in May 1993. The President rejected his appeal in September 1993 and despite appeals for clemency from the British Government his execution was carried out in June 1995. In July **Do Thai Binh**, **Nguyen Nhung**, **Nguyen Tanh Phuong** and **Ho Thanh Son** were executed following rejection of their appeals. They had been sentenced to death in November 1994 by a court in Danang for carrying out a series of armed robberies over a period of two years. In September **Bui Thi Biet**, a 25-year-old woman, was executed after being sentenced to death for murder in September 1994 by a court in Tien Giang province. Her appeal for clemency to the President had also been rejected.

An Australian Parliamentary delegation visited Viet Nam in April 1995 to engage in a dialogue with the Vietnamese authorities on a number of issues including the legal system and the human rights situation. A published report on the visit<sup>1</sup> stated that a Supreme Court Official told the delegation that about 100 people were sentenced to death during 1994, of whom 90 had been executed. Amnesty International cannot confirm these figures. However, given this report and unofficial evidence, Amnesty International is concerned that executions have been taking place regularly whether

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<sup>1</sup> See *Australia-Vietnam Dialogue: the Currents of Change, The Report of the Visit of the Australian Parliamentary Consultative Delegation to Vietnam, 5-12 April 1995*

publicised or not, and that it is therefore possible that many of the 104 people sentenced to death during 1995 have already been executed.

## **Conclusions**

Amnesty International opposes the death penalty in all cases on the grounds that it is a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment, as proclaimed in the Universal Declaration of Human Rights (Articles 3 and 5) and the International Covenant on Civil and Political Rights (ICCPR - Articles 6 and 7). The Vietnamese Government ratified the ICCPR in 1982, and is therefore bound by its terms. Articles 6 and 7 of the ICCPR state:

### **Article 6**

- “1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*
- 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime.”*

### **Article 7**

*“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*

Amnesty International has long had serious concerns about the judicial system in Viet Nam, in particular that defendants do not receive a fair trial and that their rights as suspects under the ICCPR are routinely ignored. In cases where the death penalty may be applied this becomes a matter of heightened concern to the organization. People can be killed by the state in a country where due process of international law is not upheld.

Amnesty International also believes that available studies on the subject result in an overwhelming conclusion that there is no reliable evidence that the death penalty acts as a deterrent against the serious crimes for which it is applied.

Amnesty International is calling on the Vietnamese Government to commute all existing death sentences and to give full consideration to abolition of the death penalty as a punishment for all offenses in law. In addition, it urges the government to sign and ratify the Second Optional Protocol to the ICCPR, adopted by the United Nations General Assembly in December 1989, which entered into force in July 1991. This Optional Protocol aims for worldwide abolition of the death penalty. Article 1 states:

*“1) No one within the jurisdiction of a State party to the present Optional Protocol shall be executed.*

*(2) Each State party shall take all necessary measures to abolish the death penalty within its jurisdiction.”*

Amnesty International notes that signing of the Second Optional Protocol was a subject of discussion during the Australian Parliamentary delegation visit to Viet Nam in April. The organization hopes that a positive decision on this will be taken in order to uphold the basic right to life of all individuals in Viet Nam.