

Socialist Republic of Viet Nam

The death penalty - inhumane and ineffective

Introduction

In July 1999, Amnesty International welcomed the reduction in the number of capital offences in the Socialist Republic of Viet Nam.¹ According to the revised Criminal Code, 27 capital offences remain on the statute books. However, Amnesty International is alarmed by the recent dramatic rise in the reported use of the death penalty in Viet Nam, particularly for drugs-related offences. The organization recorded 48 death sentences and 27 executions for the whole of 2002. At the time of publishing this report in August, 2003, a total of 62 death sentences and 19 executions have been recorded, double the rate of last year.²

Amnesty International remains concerned that there is still a broad range of offences which are punishable by the death penalty. The 27 offences in the Criminal Code which continue to carry the death penalty include crimes against national security such as treason, taking action to overthrow the government, espionage, rebellion, banditry, terrorism, sabotage, hijacking, destruction of national security projects, undermining peace, war crimes and crimes against humanity. The death penalty can also be imposed for manufacturing, concealing and trafficking in narcotic substances, murder, rape, robbery, embezzlement, and fraud. At least one third of all publicized death sentences are imposed for drug-related crimes.

Amnesty International believes that the continuing use of the death penalty in Viet Nam is the ultimate form of cruel, inhuman, and degrading punishment and a violation of the right to life, and that the conditions surrounding its application are in contravention of international human rights standards. Routinely unfair trials in Viet Nam mean that the death penalty is imposed under conditions which may lead to irreversible miscarriages of justice.

Recent information on executions and death sentences

The Vietnamese authorities do not make public full official statistics on the number of death sentences imposed and executions which have been carried out, and only a limited number of cases are described in the official media. Amnesty International is reliably informed however that most people sentenced to death are executed once their cases have gone through the final appeals procedure. In July 2003, 49 people under sentence of death from the Ho Chi Minh City People's Court had their final appeals for clemency turned down by the President.³

¹ Socialist Republic of Viet Nam: New debate on the death penalty? (AI Index ASA 41/04/99, July 1999).

² These statistics are taken from reports on individual cases in the media monitored by Amnesty International but are unlikely to reflect the true figures, which are believed to be higher.

³ Amnesty International Urgent Action UA 228/03 AI Index: ASA 41/021/2003, 30 July 2003.

Available statistics on officially reported death sentences and executions are recorded by Amnesty International.

According to incomplete statistics provided by the Supreme People's Court, during the period from 1997 to 2002, 931 people were sentenced to death. Of the 931, 535 were convicted of murder, or other violence resulting in death, 310 were convicted of drug crimes, 24 were cases of corruption, five were convicted of property-related crimes.⁴

International Law

Viet Nam is a state party to the International Covenant on Civil and Political Rights (ICCPR) which it ratified in 1982. It has an obligation to implement provisions of the Covenant. In his report to the National Assembly on 12 May 1999, Justice Minister Nguyen Ninh Loc is reported to have said that the new Criminal Code would ensure Viet Nam's respect of provisions of international treaties to which Viet Nam had become a signatory or participant⁵.

International standards stipulate that the death penalty should only be imposed for the most serious of crimes, and favour states moving towards complete abolition.

Article 6(2) of the ICCPR states: *In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes...@*. The UN Human Rights Committee, established to oversee the implementation of the ICCPR, provides authoritative interpretation of the ICCPR. It has stated that *the expression >most serious crimes= must be read restrictively to mean that the death penalty should be a quite exceptional measure@*.⁶

In July 2002, the Human Rights Committee published its Concluding Observations following consideration of Viet Nam's State party report on implementation of the ICCPR. In Paragraph C7 the Committee stated:

*"notwithstanding the reduction in the number of crimes that carry the death penalty, from 44 to 29, the Committee remains concerned with the large number of crimes for which the death penalty may still be imposed. The penalty does not appear to be restricted only to those crimes that are considered as the most serious ones. In this respect, the Committee considers that the definition of certain acts such as opposition to order and national security violations, for which the death penalty may be imposed, are excessively vague and are inconsistent with article 6, paragraph 2, of the Covenant."*⁷

Safeguard 1 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: *"In*

⁴ United Nations Press Release dated 12 July 2002 afternoon.

⁵ *Viet Nam News*, 13 May 1999.

⁶ Para.7, General Comment 6 (Article 6), 27 July 1982, HRI/GEN/1/Rev.3, 15 August 1997.

⁷ UN Document Concluding Observations of the Human Rights Committee: Viet Nam. 26/07/2002, CCPR/CO/75/VNM, 26 July 2002.

countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes, with lethal or other extremely grave consequences.”

In most years, including 2003, the United Nations Commission on Human Rights (UNCHR) has passed Resolutions calling for states still retaining the death penalty:⁸

A5(a) Progressively to restrict the number of offences for which the death penalty may be imposed.....;

(b) To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions;

(c) To make available to the public information with regard to the imposition of the death penalty and to any scheduled execution;

(d) To provide to the Secretary-General and the relevant United Nations bodies information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty as contained in Economic and Social Council resolution 1984/50;@

This resolution also urges all States that still maintain the death penalty:

*A4(d) To ensure that the notion of *most serious crimes*@ does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, non-violent religious practice or expression of conscience and sexual relations between consenting adults;@*

Unfair trials and the death penalty

Concern about the use of the death penalty in Viet Nam is compounded by the routine unfairness of trials which do not conform to international standards. Defendants do not have the right to appoint counsel of their own choice. A lawyer will be assigned to them, but often not until the very last moment before their case is heard. The defence is not allowed to call or question witnesses, and private consultation with counsel may be limited. In many cases all the defence counsel can do is plead for clemency on a defendant=s behalf.

Safeguards for the conduct of fair trials are contained in Article 14 of the ICCPR. They include the right of anyone facing a criminal charge to a fair and public hearing by a competent, independent and impartial tribunal; the right to be presumed innocent until proved guilty; the right to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charges against him or her; the right to communicate with counsel of the defendant=s choosing; the right to free legal assistance for defendants unable to pay for it; the right to examine witnesses for the prosecution and present

⁸ The question of the death penalty, E/CN.4/RES/2003/67, 24 April 2003.

witnesses for the defence; the right to free assistance of an interpreter if the defendant cannot understand or speak the language used in court.

On the issue of fair trial the Special Rapporteur on Extrajudicial, summary or arbitrary executions stated at the 2001 Commission on Human Rights session that:

*The death penalty must under all circumstances be regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner possible. It is also indispensable that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights instruments are fully respected in proceedings relating to capital offences.”*⁹

Amnesty International believes that trials in Viet Nam fall far short of these international standards, raising grave concerns that the death penalty is imposed under circumstances which may lead to irreversible miscarriages of justice.

One example of this might be political pressure to convict and impose the death penalty. The *Lao Dong Daily* newspaper reported that Vietnamese legislators in debate complained about the length of time to implement death sentences because of >lengthy= appeals. The same article reported that Deputy Education and Training Minister Nguyen Tan Phat was worried that law officials were concerned about appeals. One legislator, Nguyen Kim Thoa is reported to have expressed alarm at the fact that a full 80 % of death penalties were appealed, asking whether the high rate was the fault of judges or prosecutors. Another, La Van Tran reportedly said he was even more concerned by defendants’ high success rate in getting death sentences overturned or commuted to prison terms on appeal.¹⁰ According to Amnesty International’s information, the commutation of death sentences in Viet Nam is rare.

In the case of Canadian citizen, Nguyen Thi Hiep, Canadian officials accused the Vietnamese authorities of pressing ahead with her execution without taking into account evidence she had been unwittingly used to carry drugs out of Viet Nam.¹¹ Nguyen Thi Hiep was arrested in April 1996 together with her mother Tran Thi Cam at Ha Noi airport. She was charged and later convicted of trafficking five kilograms of heroin in a trial in March 1997 at the Ha Noi People’s Court. The sentence was upheld by the Supreme People’s Court in August 1997. Nguyen Thi Hiep’s eventual execution on 25 April 1999 sparked a major diplomatic rift between Canada and Vietnam.

An example of a show trial which did not comply with international fair trial standards, including the presumption of innocence, is the shocking case of 19-year-old Duong The Tung. He was sentenced to death in April 1996 for murdering a policeman during New Year celebrations earlier in February. The case received a lot of publicity in Viet Nam, and it was

⁹ Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions to the Fifty-Seventh Session of the Commission on Human Rights, VN.DOC.E/CN.4/2001/9, Para. 76, 11 January 2001.

¹⁰ AFP news report “Viet Nam MPs bemoan slow execution of death penalties”, 23 November 2000.

¹¹ AFP news report on the case dated 27 November 2000.

reported that 2000 people watched and applauded the trial proceedings from the grounds of Ha Noi People's court.

Duong The Tung was also taken into an anteroom while waiting for the court verdict, where he was reportedly tortured by police armed with electric batons. Although in good health when he was removed from the courtroom, on his return he was clearly suffering from the physical effects of the electric shock torture. On imposing the death sentence, the Chief Judge said that he did so in order to avoid indignation of the people and to preserve discipline and threaten the other criminals. Duong The Tung was executed on 24 April 1997.¹²

In the notorious case of Nam Cam or Truong Van Cam, the linchpin of a criminal gang with high-level connections in the government and Communist Party, six people, including Nam Cam were given death sentences after being found guilty of murder, giving bribes, gambling and sheltering criminals.¹³ Their trial, described by one commentator as 'carefully scripted'¹⁴, began on 25 February 2003. The Chief Judge in the case announced the detailed timetable for the trial, including the end date and sentencing soon after the trial began.¹⁵ The trial was accompanied by extensive and day by day reporting of the State's case against Nam Cam.¹⁶ There was clearly no presumption of innocence in this case.

Concerns that trials are not held in suitable surroundings and risk being influenced by public opinion and 'mob justice' are epitomised by the recent case of Phan Thanh Hung, who was found guilty of murdering a prostitute. His trial is reported to have taken place in the middle of a village with the accused surrounded by local residents awaiting the verdict. Hung was sentenced to death.¹⁷

Death sentences for economic crimes

The Human Rights Committee has repeatedly stated that it considers economic crimes do not fall within the "most serious crimes" for which the death penalty may be imposed under Article 6(2) of the ICCPR.¹⁸

In December 1996 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions urged that *the death penalty should be eliminated for crimes such as economic crimes and drug-related offences.*¹⁹

¹² Amnesty International Urgent Action, AI Index ASA 41/09/97, 25 April 1997.

¹³ *Nhan Dan*, 5 June 2003.

¹⁴ Carl Thayer, Vietnam expert and academic, quoted by *AFP*, 24 February 2003, Vietnam prepares for show trial of mafia boss.

¹⁵ *VNA* report dated 10 April 2003.

¹⁶ *Nhan Dan*, The case of Truong Van Cam and his criminal syndicate – Crime and punishment parts 1 – 3, 24 February 2003 and following days.

¹⁷ *AFP*, 16 April 2003, Prostitute-killer sentenced to death in Vietnam.

¹⁸ UN Document CCPR/C/1/Add, Para 7; CCPR.C.50/Add.2; CCPR/C/SR.927,SR.932; CCPR/C/SR.982.

Amnesty International has recorded the following cases of death sentences imposed and executions carried out for economic crimes in Viet Nam in 2003.

Date	Case
28 March 2003	<p>Nguyen Ton Van, former director of Quoc Binh private enterprise, was sentenced to death in Ho Chi Minh City for “defrauding and appropriating public property”. Van and his accomplices were found guilty of failing to repay more than six million dollars borrowed from the banks. Two co-defendants were sentenced to life imprisonment, and a dozen others were sentenced from two to 20 years. The trial lasted five days.</p> <p><i>(AFP, 28 March 2003)</i></p>
24 April 2003	<p>Truong Thi Thanh Huong lost her appeal when her death sentence was upheld by a court in Ho Chi Minh City. She was sentenced to death in November 2002 after being found guilty of embezzling 14 million dong between 1996 and 1999.</p> <p><i>(AFP, 24 April 2003)</i></p>
28 April 2003	<p>Hoang Van Nam was sentenced to death by a court in Dong Nai province after being found guilty of running a ring smuggling forged banknotes into Viet Nam from China in 2001.</p> <p><i>(AFP, 29 April 2003)</i></p>
6 June 2003	<p>The death sentence imposed on Le Thi Kim Phuong, (f) 44, was upheld by Ho Chi Minh City People’s Court. She had been sentenced to death in January for running a fraudulent investment scheme. She was found guilty of pocketing around 1.6 million dollars from a dozen banks and investors.</p> <p><i>(AFP, 10 June 2003)</i></p>
11 July 2003	<p>Tang Minh Phung and Pham Nhat Hong were executed at the Thu Duc execution ground in Ho Chi Minh City. They were among six people sentenced to death in August 1999. Their appeals for clemency were rejected by the President in May 2003. They were convicted of fraud and corruption involving 357 million dollars of state funds. Tanh Minh Phung was a director of a company involved in the fraud. Pham Nhat Hong was the deputy director in the Industrial and Commercial Bank of Viet Nam.</p> <p><i>(AFP, 11 July 2003)</i></p>

¹⁹ Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur, E/CN.4/1997/60, para 91, 24 December 1996.

12 August 2003	Hoang Tu Lien (f), 43 and Tran Thi My Ha (f), 30, were sentenced to death after a four-day trial by Quang Nam People's Court. They were found guilty of running the country's largest counterfeit money ring trafficking counterfeit money worth nearly 90,000 USD between March 2001 and May 2002 from southern China. (AFP, 13 August 2003)
19 August 2003	Phan Ngoc Hanh (f) was sentenced to death for defrauding and appropriating property and fleeing a detention center. She was found guilty of defaulted debts worth 20 billion dong and 300 taels of gold she obtained from eight enterprises and individuals. During 1994-95 she obtained money illegally from business partners. She was arrested, but escaped and allegedly continued with dishonest business dealings. (VNExpress web site, 21 August 2003)

Drugs and the death penalty

The death penalty for drugs-related offences was introduced in December 1992 under Article 96a of the Criminal Code as an optional punishment for the offence of “*illegally manufacturing, concealing, trafficking in or transporting narcotic substances in a manner contrary to state regulations when the offence is committed in particularly serious circumstances*”.

Possession of 100 grams (3.5 ounces) of heroin or five kilograms (11 pounds) of opium warrants a conviction of trafficking and in some cases the imposition of the death penalty.²⁰ The number of drugs-related death sentences and executions has increased dramatically over the last few years. At least one third of all death sentences monitored by Amnesty International in Viet Nam are imposed for drugs-related crimes.

Lack of Evidence of a Unique Deterrent Effect

The reason usually given for introducing the death penalty for drug offences is that it will help in the fight against drugs by deterring potential traffickers. Yet the evidence that it will do so has never been produced. In the countries which have introduced the death penalty for drug offences and in those which have carried out executions, Amnesty International is aware of no evidence of a decline in drug trafficking which could be clearly attributed to the threat or use of the death penalty. This is also the case for Viet Nam. This is consistent with findings internationally that present no convincing evidence to support the assertion that the death penalty deters crimes more effectively than any other punishment.

Violence of Traffickers

There is growing evidence that the increased use of the death penalty and harsher sentences is leading to traffickers faced with a possible death penalty being more ready to kill to avoid capture, increasing the danger to law enforcement officials and civilian bystanders alike. It

²⁰ Article 194 section 4 of the 1999 Criminal Code of Viet Nam.

has been reported that Vietnamese authorities are “deeply disturbed” by the increasing possession and use of weapons by traffickers to resist arrest. The same report goes on to claim that previously drug traffickers in Vietnam seldom used weapons and that suicide threats, retaliation and refusal to cooperate upon arrest are unusual reactions for Vietnamese criminals.²¹ In March 2001 a Sublieutenant was killed and five other border guards seriously injured when two alleged drug traffickers who were being escorted to a border post in Central Vietnam threw a grenade at the officers.²²

Execution of Foreigners

The international character of drug trafficking causes an additional complication when foreign nationals are convicted and sentenced to death. Foreign nationals may not be familiar with the laws of the country where they are tried, and they will have difficulty understanding the charges against them or participating in the proceedings if facilities for interpretation are inadequate. The government of their home country will want to protect its citizens abroad, but its appeals for clemency, although motivated by humanitarian considerations, may lead to accusations of interference in the workings of justice under the laws of the country concerned. The government of a country which sentences a foreigner to death is also placed in a dilemma. If it carries out the execution, it risks damaging its relations with the government of the prisoner’s country of origin. If it does not, people may claim that a double standard is being applied.

Some of the above problems emerged in the Nguyen Thi Hiep case. The Canadian Embassy claimed that they were never officially notified of her and her mother’s arrest. Under the terms of the Vienna Convention on Consular Relations (VCCR), Vietnam has a responsibility to notify detained foreign nationals of their right to have their consular representative informed of their detention. However, Vietnam does not recognize dual nationality and therefore views any Canadians of Vietnamese origin as Vietnamese nationals only. As such they reportedly did not feel obliged to inform Canada of the arrest of dual nationals or grant Canadian officials consular access to them. Consular access was nonetheless eventually granted.²³ Additionally, almost certainly as result of Canadian diplomatic intervention, Ms. Hiep was permitted to wear only one leg iron as opposed to irons on both legs which is the usual treatment for those sentenced to death.

²¹ International Narcotics Control Strategy Report 1999, released by the Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State, Washington DC, March 2000, Vietnam Section.

²² AFP 16 March 2001, Vietnam soldier killed by drug traffickers.

²³ Article 4(f) of the UN Commission on Human Rights resolution 2003/67, The question of the death penalty, urges all States that still maintain the death penalty to observe the safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under article 36 of the 1963 Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance within the context of a legal procedure.

Treatment in detention for those sentenced to death

The use of shackles is routine in Vietnamese prisons (see the Nguyen Thi Hiep case below). The family of another prisoner who was facing the death penalty reported the following to Amnesty International:

“My brother is currently chained to a horizontal pipe. Due to the restraints, he is physically unable to walk or go on tiptoes. He can only stand, lay or sit. Many prisoners put in the same condition have lost the use of their limbs due to inactivity”

The use of leg irons and chains as instruments of restraint is prohibited by international standards.²⁴ Other restraints such as handcuffs and strait-jackets may never be applied as punishment, and are only allowed in very limited circumstances. Leg irons and chains and the prolonged use of other restraints amount to cruel, inhuman or degrading treatment and add to the cruelty of the application of the death penalty.

How executions are carried out



Preparing execution of criminals by firing squad. © Private.

After a person has been sentenced to death by a court, she or he has the right to appeal to the Appeals Court and then to the Supreme People=s Court. If the Supreme People=s Court upholds the death sentence, then the person may appeal to the President within seven days for commutation. If this appeal is rejected then the person will be executed. Commutations are rare, although Amnesty International has monitored at least 10 cases in 2003 which the organization welcomes.

²⁴UN Standard Minimum Rules for the Treatment of Prisoners, Article 33.

Lack of official information on individual cases makes it impossible to assess accurately how long prisoners are held on death row before execution. However, the maximum time recorded by Amnesty International for a case to go through the appeals process before execution was four years and the minimum period was five months.

Executions are carried out by a firing squad of five people, apparently often in public, followed by quick burial. Relatives are not informed beforehand, but are asked to collect executed prisoner=s belongings two to three days afterwards. Other people are encouraged to attend. One witness of a public execution which took place in March 1998 described how six men and one woman convicted of drug trafficking were taken to a field on the outskirts of Ha Noi at dawn, blindfolded and tied to wooden stakes. More than 1000 people are reported to have watched. The woman is reported to have been very distressed and fainted three times before execution. Five shots were fired at each of the prisoners= bodies, with a final shot to the head. Other accounts of executions describe the victims being taken to the execution ground blindfolded and gagged with lemons in their mouths.

Amnesty International believes that executions are also brutalizing for those who have to carry them out. In July 1996 the Human Rights Committee stated that APublic executions are....incompatible with human dignity.@²⁵

Recommendations

Amnesty International believes that Viet Nam is failing to meet international standards concerning the use of the death penalty, and urges the government to take the following measures to move towards abolition of the death penalty in law and in practice, in line with global trends:

1. in accordance with UNCHR Resolution on the Question of the death penalty, April 2003, establish a moratorium on executions;
2. commute all remaining death sentences;
3. reduce the number of capital offences, with the aim of total abolition in line with Viet Nam's obligations under the ICCPR, and following recommendations of the Human Rights Committee;
4. ratify the Second Optional Protocol to the ICCPR, aimed at the worldwide abolition of the death penalty;
5. immediately improve conditions for all prisoners in Vietnamese prisons, and outlaw the use of shackles, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners;

²⁵Concluding observations of the Human Rights Committee on the initial report of Nigeria submitted under Article 40 of the Covenant, UN document No. CCPR/C/79/Add.65, 24 July 1996, paragraph 16.

6. ensure that all prosecutions, particularly for those crimes carrying the death penalty as an optional punishment, meet international standards for fair trial in accordance with the safeguards outlined in Article 14 of the ICCPR;
7. make publicly available all information about the imposition of the death penalty and encourage discussion amongst National Assembly members and other appropriate legislative institutions on the subject of complete abolition of the death penalty.