

# **SOCIALIST REPUBLIC OF VIET NAM**

## **A human rights review based on the International Covenant on Civil and Political Rights**

### **Introduction**

Viet Nam has submitted two reports to the United Nations Human Rights Committee since it ratified the International Covenant on Civil and Political Rights (ICCPR) in 1982. The second periodic report<sup>1</sup> was considered by the Human Rights Committee in July 2002.<sup>2</sup>

Amnesty International, in keeping with its usual practice, submitted a briefing detailing the organization's concerns regarding Viet Nam's compliance with the ICCPR to the Human Rights Committee in May 2002. The Committee takes submissions from non-governmental organisations into consideration as part of its deliberations.

This document contains the full briefing submitted to the Committee by Amnesty International as well as the full and unedited concluding observations of the Human Rights Committee.<sup>3</sup> The government of Viet Nam subsequently issued comments on the concluding observations of the Human Rights Committee.<sup>4</sup>

Amnesty International welcomes Viet Nam's compliance with the reporting process, but believes that Viet Nam has failed to fully respect its obligations as enshrined in many Articles of the ICCPR.

During this reporting exercise, the Vietnamese delegation provided information to the Committee that highlights two of our many concerns.

Firstly, according to the statistics provided by the Supreme People's Court, during the period from 1997 to 2002, 931 people were sentenced to death. According to the 1999 revised Criminal Code there are 27 offences for which the death penalty may be applied. It is noteworthy that of the 931, 535 were related to violations of the right to life, 310 were convicted of drug crimes, 24 were cases of corruption, and five were cases of violations of the right to property.<sup>5</sup> Amnesty International regards the death penalty as the ultimate cruel,

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<sup>1</sup> The report with UN document number CCPR/C/VNM/2001/2 was due to be submitted in 1991.

<sup>2</sup> CCPR/C/SR.2019-2021

<sup>3</sup> CCPR/CO/75/VNM

<sup>4</sup> CCPR/CO/75/VNM/Add.1.

<sup>5</sup> United Nations Press Release dated 12 July 2002 afternoon.

inhuman or degrading punishment and opposes it in all cases.<sup>6</sup> The Chairperson of the Human Rights Committee concluded its consideration of Viet Nam's report by urging Viet Nam to confine the death penalty to the most serious offences and move towards its complete abolition.<sup>7</sup>

Secondly, Viet Nam gave figures for the number of defendants tried on charges of crimes against national security: 75 persons in 2001 and 9 in 2002.<sup>8</sup> Amnesty International is concerned that the charges of crimes against national security, which include such categories as high treason, subversion and espionage, are vague, ill defined, and operate in a 'catch-all' manner with the risk that those who disagree with State doctrine may find themselves detained for doing no more than exercising their rights to freedom of expression as set forth in Article 19 of the ICCPR. Numerous prisoners of conscience have been imprisoned under national security legislation for peacefully exercising their rights to freedom of expression and for their political or religious beliefs.

Amnesty International welcomes Viet Nam's compliance with its reporting obligations as a State Party to the ICCPR. However, the organization greatly regrets that many of the fundamental rights guaranteed under the Covenant are not upheld in Viet Nam, and that this is not accurately reflected in the State Party's report. The organization believes that a greater degree of openness, and a willingness to accept constructive criticism would bring about concrete progress in upholding the rights and fulfilment of Viet Nam's obligations under the treaty.

## **Amnesty International's briefing to the UN Human Rights Committee on the Socialist Republic of Viet Nam (submitted in May 2002)**

### **1. Introduction**

1.1 Amnesty International submits this briefing for consideration by the UN Human Rights Committee in view of its forthcoming examination of the Socialist Republic of Viet Nam's Second Periodic report on measures taken to implement the provisions of the International Covenant on Civil and Political Rights (ICCPR). Amnesty International welcomes Viet Nam's compliance with the reporting process, but believes that it has failed to fully implement many Articles of the ICCPR. This briefing will summarise the organization's concerns about Articles 2, 6, 7, 9, 10, 12, 14, 17, 18, 19 and 21 of the ICCPR. It does not

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<sup>6</sup> Please also refer to the Amnesty International report *Socialist Republic of Viet Nam: The Death Penalty – Recent Developments*, March 2000 (AI index: ASA 41/01/00).

<sup>7</sup> United Nations Press Release dated 12 July 2002 afternoon.

<sup>8</sup> United Nations Press Release dated 11 July 2002 afternoon.

attempt to cover all the failures to implement the ICCPR by the Vietnamese authorities, but rather to address some of the most serious breaches.

1.2 Viet Nam acceded to the ICCPR on 24 September 1982. Amnesty International notes that in its first periodic report to the Human Rights Committee in July 1989 the government focussed almost exclusively on legal issues. The Committee noted that more information was required on the practical implementation of the ICCPR and that there were many areas where ‘Vietnamese law and practice were far from being in conformity with the Covenant.’ Amnesty International notes that the second periodic report from Viet Nam to the Human Rights Committee is also preoccupied with details of legislative reform, but is disturbed that the report fails to address the concrete violations of the ICCPR which are a daily reality for many of the Vietnamese population.

## **2: Specific violations of Articles of the ICCPR**

### **2.1 ICCPR Article 2: The obligations of the State**

While the Vietnamese constitution in Article 52 states ‘All citizens are equal before the law’ the duty of the State as stipulated in Article 2 of the ICCPR, to ensure all individuals enjoy the rights of the Covenant, without distinction of any kind, is not guaranteed. Specifically, the duty to ensure that no distinction is made on the basis of ‘political or other opinion’ is absent from Vietnamese law, and indeed, individuals are imprisoned on the basis of political or other opinion that questions the political supremacy of the Communist Party of Viet Nam. While there are now procedures for ‘denunciations’ by people dissatisfied with the conduct of public affairs in their area, there is no right to effective remedy for individuals whose rights under the ICCPR are violated.

### **2.2 ICCPR Article 6: The right to life**

Viet Nam retains the death penalty as a judicial punishment. Amendments to the Criminal Code in 1999 reduced the number of offenses punishable by death to 27 but this is still a high number, and the death penalty is widely applied.<sup>9</sup> Pregnant women, nursing mothers and children under 18 are exempt from the death penalty. Official statistics for death sentences

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<sup>9</sup>Official reporting states that there are 29 offences for which the death penalty may be imposed. However, careful examination of the laws by Amnesty International reveals 27 such offences. Paragraph (II) of the state party’s report points out that the application of the death penalty has been widened for drugs offences and fraud since 1989. However, some other offences no longer carry the death penalty, resulting in an overall reduction in the number of capital offences.

are sometimes published but statistics for executions are rarely made available. By way of example, in 1996 death sentences were passed on 113 people, while at least five were executed. In 1999, almost 200 people were sentenced to death, at least five were executed, but again the actual numbers for executions are believed to be much higher. Amnesty International believes that the majority of people sentenced to death in Viet Nam are executed within a year of the sentence being handed down. Executions are carried out by firing squad, and often take place in public, in violation of the UN *Safeguards guaranteeing protection of the rights of those facing the death penalty*, which state “where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.”<sup>10</sup> Victims are tied to wooden stakes, and blindfolded; their relatives are not usually informed in advance of the execution, and are simply told several days later to collect executed prisoners’ belongings. Pardon or commutation of sentences is extremely rare. It is not clear from the State Party’s report, or from the research of Amnesty International whether convicted individuals have the right to appeal against a death sentence, or whether this is discretionary. However, Amnesty International draws the attention of the Committee to paragraph (mm) 2 of the State Party’s report: “In the case that the convicted appeals for pardon or commutation the death sentence shall be executed after the country’s President rejects the appeal.” This statement is sadly correct; the President does reject appeals, and the sentences are carried out.

Amnesty International’s concerns about the use of the death penalty in Viet Nam are compounded by the unfair nature of many trials in the country, as detailed below in paragraph 2.7.

### **2.3 ICCPR Article 7: Torture and cruel, inhuman or degrading treatment or punishment.**

The Vietnamese constitution in Article 71 states:

‘the citizen shall enjoy inviolability of the person and protection of the law with regard to his life, health, honour and dignity. ... It is strictly forbidden to use all forms of harassment and coercion, torture, violation of his honour and dignity, against a citizen.’

However, the provisions in law to uphold these rights are weak, and torture is not codified as a specific offence in the Penal Code.

Article 107 of the Penal Code states:

“Those who, while performing their official duties, resort to violence outside the scope permitted by law, thus inflicting or causing harm to the

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<sup>10</sup> Point number nine of these safeguards, which were approved by UN Economic and Social Council resolution 1984/50 of 25 May 1984.

health of other persons with an infirmity rate of 31% or higher shall be sentenced to non-custodial reform for up to three years, or between three months and three years imprisonment.”

Article 298 of the Penal Code on ‘Applying corporal punishment’ states:

“1. Those who apply corporal punishment in investigating, prosecuting, adjudicating and/or judgement-executing activities shall be sentenced to between six months, and three years’ imprisonment.

“2. Committing the crime and causing very serious consequences, the offenders shall be sentenced to between two years and seven years imprisonment.

“3. Committing the crime and causing very serious or particularly serious consequences, the offenders shall be sentenced to between five years and 12 years imprisonment.

“4. The offenders shall also be banned from holding certain posts for one to five years.”

Amnesty International considers the legal safeguards against torture and ill-treatment in Viet Nam to be inadequate. The crime of torture is not defined in law, and Amnesty International knows of no cases where law enforcement personnel have been tried and convicted for inflicting torture or cruel, inhuman or degrading treatment or punishment on a suspect or prisoner, in spite of much evidence that such treatment is by no means exceptional. Lack of access to detainees for lawyers, doctors and family members in the early stages of detention is common, allowing situations to arise where torture and cruel, inhuman or degrading treatment can easily take place.

Political and religious dissidents have been and are detained in extremely harsh conditions, including for extended periods in solitary confinement, often amounting to cruel, inhuman and degrading treatment, and this is sanctioned by the state. Amnesty International has also received reports of cases where individuals have been beaten at the hands of the police (including most recently, Montagnard people arrested on return from seeking refuge in Cambodia), and no action has been taken against the perpetrators.

In April 1996, Duong The Tung was convicted of the murder of a policeman. The young man, who had pleaded guilty to the charge and begged for clemency, was reportedly tortured by police officers armed with electric batons in an anteroom at the court while awaiting the passing of sentence.

Prolonged shackling of prisoners is also a standard procedure, including as punishment, in violation of UN standards for the treatment of prisoners. Amnesty International notes that the State Party’s report records this as a fact, and justifies it as ‘a necessary form of punishment [which] does not mean corporal punishment,’ even though the

Standard Minimum Rules for the Treatment of Prisoners state explicitly that ‘instruments of restraint...shall never be applied as punishment’ (Rule 33).

The organization believes that further legal safeguards against torture, cruel, inhuman and degrading treatment are required, and enforcement mechanisms, including independent monitoring of places of detention must be introduced as a matter of priority to uphold the rights of suspects and prisoners.

## 2.4 ICCPR Article 9: Liberty and Security of Person

Violations of Article 9 of the ICCPR in Viet Nam occur in the main because the law often criminalizes some fundamental ICCPR rights. Thus while individuals may be arrested on charges of having violated Vietnamese law, the nature of these laws is in some cases arbitrary, resulting in violations of Article 9. For example, Article 87 of the Penal Code on ‘Undermining the unity policy’ states:

‘Those who commit one of the following acts with a view to opposing the people’s administration shall be sentenced to between five and 15 years of imprisonment.

‘a. Sowing division among people of different strata, between people and the armed forces or the people’s administration or social organizations;

‘b. Sowing hatred, ethnic bias and/or division, infringing on the rights to equality among the community of Vietnamese nationalities;

‘c. Sowing division between religious people and non-religious people, division between religious believers and the people’s administration or social organizations;

‘d. Undermining the implementation of policies for international solidarity.’

This article is used by the Vietnamese authorities to criminalize peaceful political and religious dissent from government policy, and leads to the arbitrary arrest, detention and sentencing of those who, on account of their conscientiously-held, peaceful views, oppose government policy on a variety of issues. Specifically, individuals are subject to detention and imprisonment for exercising the rights and freedoms guaranteed by the ICCPR. Amnesty International has received many compelling reports of such cases over the last 10 years.

### CASE STUDY

Father Thadeus Nguyen Van Ly, a Catholic priest was arrested at An Truyen church, Phu An commune in central Thua Thien-Hue province in May 2001. Father Ly had previously spent one year in prison between 1977 and 1978 and then a further nine years in prison between

May 1983 and July 1992, having been sentenced to 10 years' for 'opposing the revolution and destroying the people's unity.' According to a report from the state-controlled radio Voice of Viet Nam, Father Ly was brought to trial on 19 October 2001 at the People's Court of Thua Thien-Hue Province. The trial is reported to have lasted only half a day, at the end of which he was sentenced to a total of 15 years' imprisonment, plus five years' probation on his release.

Father Ly was sentenced to 13 years' imprisonment for violating Article 87 of the Penal Code. The charge under Article 87 is believed to relate generally to Father Ly's peaceful activities carried out in the practice of his religious beliefs over a number of years, including his consistent calls for more religious freedom and criticism of the Vietnamese authorities for their human rights policies, for which he has been publicly denounced by the official media. Accusations against him included disseminating "reactionary materials which distort the truth and cause doubt and contrariness between the local people and the administration...sowing the seeds of division between the local religious believers and the administration and undermining the state policy of great unity."

Father Ly was sentenced to a further two years' imprisonment under Article 269 for failing to comply with a two year administrative arrest order placed upon him on 26 February 2001, which he stated was "wrong and unjust". Under the terms of this order Father Ly was effectively placed under house arrest, because of his "activities, which violate laws and threaten national security". The order was imposed by the People's Committee of Thua Thien-Hue province following Father Ly's written testimony to the United States Commission on International Religious Freedom earlier in February, in which he strongly criticized the situation in Viet Nam, stating that "in the realm of religion, the control of the communist government has stripped all churches of their independence and freedom". According to the media report, Father Ly had "refused to behave himself and continued to oppose local authorities, incite religious believers to cause social disorder, prevent local people from fulfilling their obligations, and undermine the state policy of national unity."

Between his arrest and trial Father Ly was held in custody, although there has never been any evidence to suggest that he was a risk to the public, or likely to abscond.

Similarly, political dissidents are also not permitted to enjoy their rights under Article 9 of the ICCPR. The Vietnamese authorities use Directive 31/CP from April 1997 on Administrative Detainment to confine political and religious dissidents to a certain locality, and in some cases to their residence for a period of six months to two years, on the basis of a decision taken by local authorities, rather than a court of law. Such administrative detention orders are applied to certain individuals on a regular basis - such as journalist Bui Minh Quoc, and physicist Nguyen Thanh Giang.

## **2.5 ICCPR Article 10: Humane treatment of those deprived of their liberty**

Amnesty International believes that individuals deprived of their liberty in Viet Nam are not guaranteed humane treatment. The organization has documented dozens of cases of prisoners whose treatment fell short of humane standards, ranging from denial of access to adequate medical care, prolonged solitary confinement leading to severe mental distress and suffering, lack of access to family members, shackling of prisoners as a form of punishment, and lack of adequate nutrition. The organization disputes the account of the State Party in its report, and regrets that independent monitors are denied access to Viet Nam, thus preventing monitoring of conditions. Released prisoners suffer a range of ailments, including tuberculosis, post-traumatic stress disorder, and conditions relating to ill-treatment such as shackling. While some progress may have been made in recent years, the rights of individuals deprived of their liberty in Viet Nam are frequently violated.

## **2.6 ICCPR Article 12: The right to freedom of movement**

The rights of individuals within Viet Nam under Article 12 are not guaranteed. Legal restrictions on freedom of movement are extensive, and applied against individuals regarded as likely to ‘undermine the policy of unity’ or those who are considered socially undesirable. Religious dissidents in particular have had their rights to freedom of movement severely curtailed, most notably senior monks of the Unified Buddhist Church of Viet Nam (UBCV), which is not recognised as a legal entity by the Vietnamese authorities. Senior monks from the UBCV are routinely confined to their pagodas, and not permitted to travel freely throughout the country or visit each other.

Freedom to leave Viet Nam and the right to return are also not guaranteed. Amnesty International has received reports of cases of political dissidents who have left Viet Nam, and then been denied permission to return, and of individuals who dare not leave the country for fear of not being permitted to return. Four people in the Central Highlands province of Gia Lai were sentenced to prison terms ranging from three years to six and a half years in January 2002 for ‘organizing illegal migrations’ of local people, hundreds of whom have fled across the border to Cambodia in recent months, to escape persecution in Viet Nam.

## **2.7 ICCPR Article 14: The right to a fair trial**

Article 14 of the ICCPR is routinely breached in Viet Nam. Specifically, the following rights are not guaranteed: the right to a fair and public hearing, by 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 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 December 2001, the head of the Ministry of Justice's Department of Legal Assistance stated that there was a shortage of defence lawyers, that people did not trust them and that most people could not afford to pay for a lawyer. The official stated that fewer than one third of criminal and civil legal cases are conducted with defence lawyers present and that there are only 1,700 active lawyers for 61 provincial and 500 district-level People's Courts.<sup>11</sup> 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. Amnesty International draws the attention of the Committee to paragraph (vvv) of the State Party's report: "The defence counsel has the right to be present when the defendant is questioned and during other investigating activities. With the agreement of the investigator, the defence counsel is permitted to question the defendant." This falls far short of the provisions of Article 14 of the ICCPR, and leaves defendants vulnerable and unprepared for their appearances in court. 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, without prior notification of the date. 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. The independence of 'people's assessors' who are likely to be party members, and who may also sit on local People's Committees (a branch of government) cannot be guaranteed, in breach of Article 14(1) of the ICCPR.

Amnesty International also believes that the right to be presumed innocent until proven guilty is comprehensively 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. A recent example of the way the state-run media labels an individual can be found in the case of Father Thadeus Nguyen Van Ly. Throughout February and March 2001, the army newspaper *Quan Doi Nhan Dan* and the Communist Party newspaper *Nhan Dan* published articles denouncing Father Ly as a 'reactionary' with a 'rabid and challenging attitude' and stating 'Everyone knows about the wrongdoing of Nguyen Van Ly and wants him punished severely.' In May 2001 following Father Ly's arrest the official Viet Nam News Agency stated that Father Ly had caused public disorder, incited believers to cause unrest, and spread propaganda against the government.

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<sup>11</sup> *Reuters*, 27 December 2001

Amnesty International is disturbed that the State Party's report to the Committee does not recognise any shortcomings in the legal system with regard to fair trial. Under the current system, an individual can be sentenced to death and executed, after an unfair trial, and yet there is no acknowledgment of the need for improvements in the State Party's report.

## **2.8 ICCPR Article 17: The right to privacy**

Amnesty International disputes the assertion of the State Party that the rights under Article 17 are upheld in Viet Nam. Individuals regarded as 'politically suspect' have been prevented from accessing the Internet, regularly find that their mail is not delivered, or has been opened prior to delivery, and are subject to constant interference with their telephone lines. Those particularly at risk from this type of surveillance are released prisoners, who have served prison sentences for their peacefully held political or religious beliefs. Monks from the Unified Buddhist Church of Viet Nam have experienced this type of interference as have a number of political dissidents, including Bui Minh Quoc, Nguyen Dan Que and Nguyen Thanh Giang. The legal safeguards that exist do not protect these people, because the law also criminalizes their peaceful dissent.

## **2.9 ICCPR Article 18: The right to freedom of thought, conscience and religion**

The gap between the rights guaranteed by Article 18 of the ICCPR and those guaranteed by Vietnamese law is striking. Article 70 of the Vietnamese Constitution states:

'The citizen shall enjoy freedom of belief or religion; he can follow any religion or none. All religions are equal before the law. The places of worship of all faiths and religions are protected by the law. No one can violate freedom of belief and of religion; nor can anyone misuse belief and religions to contravene the law and State policies.'

This provision falls far short of the guarantee of Article 18, and indeed the reality in Viet Nam falls short even of the constitution, as all religions are not equal before the law. Only those with official recognition have any rights before the law, and these rights are limited. Vietnamese people whose faith and conscience calls them to peaceful activities regarded as 'hostile' by the state are vulnerable to arbitrary arrest and detention and often to long prison sentences.

The Vietnamese government still insists on control over religious institutions. Those that refuse to comply with this demand face persecution. All religious organizations have to be affiliated to the Communist Party-run Fatherland Front. Government permission is still required for: holding training seminars, meditation sessions and general meetings; for major

repairs or construction of places of worship; charitable activities; operation of religious schools; ordinations and promotions of clergy; and any international activities of religious communities. Those people who are linked to religious groups which are not part of the state-sanctioned churches are frequently harassed, arrested and imprisoned. Even state-approved churches face many problems, notably a lack of clergy due to the severe restrictions placed on the training and ordination of individuals to the priesthood in the various religions. State-approved religious training includes promoting the policy of socialism, and state-approved churches are required to promote government policies on a wide variety of issues.

Persecution of religious dissidents continues, with senior monks from the unofficial UBCV confined to their pagodas and cut off from the outside world. In 1995, a group of UBCV monks and lay people were sentenced to prison terms, for organizing an unauthorised charitable mission to an area of the Mekong Delta severely affected by flooding. The Supreme Patriarch of the UBCV, the Venerable Thich Huyen Quang, who is over 80 years' old, is held under house arrest, in very isolated circumstances, many miles from his fellow monks and followers. In addition hundreds of people from ethnic minority groups, many of whom are Protestants in unauthorised churches, have fled from Viet Nam to Cambodia in the last year, following a renewed crackdown on their basic rights, including the right to freedom of worship. Members of the Hoa Hao religious group have also been sentenced to prison terms in the last year, on charges which Amnesty International believes relate solely to their religious activities.

In October 1998, the UN Special Rapporteur on Religious Intolerance was finally able to visit Viet Nam, after repeated requests to do so, since 1995. His movements in the country were strictly controlled, and he was prevented from meeting with some key religious prisoners and dissidents. His official report was published in March 1999, to which the Vietnamese authorities reacted angrily, accusing the Special Rapporteur of 'bad faith'. Amnesty International believes the report was a fair assessment of the situation in the country.

## **2.10 ICCPR Article 19: The right to freedom of opinion and expression**

The rights guaranteed under Article 19 of the ICCPR are not protected in Viet Nam, and Vietnamese law criminalizes the right to freedom of opinion and expression. Individuals are harassed, detained, and imprisoned because of their conscientiously held peaceful 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.

On 15 January 2002, the Vietnamese authorities ordered the seizure and destruction of writings published by two dissidents, retired General Tran Do (a former senior Communist Party official), and physicist Nguyen Thanh Giang. The books by these authors will be

destroyed on the basis of a new directive allowing for the destruction of publications which are not authorised by the Communist Party. Journalist Bui Minh Quoc was placed under house arrest again in January 2002, again because of his continuing attempts to exercise his right to freedom of opinion and expression. Le Chi Quang, a 31 year old law graduate was arrested on 21 February 2002 at an Internet cafe in Ha Noi. He is reportedly detained in B14 prison camp, facing charges of sending “dangerous” information overseas. His arrest followed the publication of a document “Beware of Imperialist China” on the Internet. Dr Son Hong Pham was reportedly arrested on 29 March 2002, apparently in connection with the translation of an article about democracy from the website of the United States Embassy in Viet Nam, which was then published on the Internet. He is also said to have published a letter on the Internet in protest at interrogation by the police and confiscation of personal belongings, including papers and computer equipment. His current whereabouts are unknown. Professor Tran Khue, a writer and literary scholar was arrested on 10 March 2002 and placed under house arrest. He is reported to have been arrested in connection with a letter he wrote to China’s President Jiang Zemin, concerning border agreements between Viet Nam and China. The letter is reported to have been published on the Internet. These examples clearly show the extent to which Article 19 of the ICCPR is breached in Viet Nam.

Dozens of the prisoners and former prisoners adopted by Amnesty International as prisoners of conscience in the last decade have been held because of their attempts to exercise their rights under Article 19 of the ICCPR. It is a matter of great concern to the organization that the Vietnamese authorities continue to insist that these and other prisoners are held because they are law-breakers. Vietnamese law is clearly and deliberately drafted to criminalize the right to freedom of expression. Anyone whose political views differ from those of the Communist Party of Viet Nam, and who dares to say so, has committed a criminal offence in Viet Nam. The official Voice of Viet Nam website stated on 25 October 2001:

“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.”<sup>12</sup>

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<sup>12</sup>*Voice of Viet Nam* text website, Ha Noi, in Vietnamese 25 October 2001, as reported by BBC monitoring

This is the official view of the government of Viet Nam, and the law, far from guaranteeing the rights of the ICCPR, criminalizes some of the most fundamental, including the right to freedom of opinion and expression. Thus members of ethnic minority groups in the Central Highlands whose views on how their region should be governed are different from those of the government are sent to prison for as long as five years for ‘distributing propaganda and inciting the local ethnic minority to cause social unrest.’ The official media described the sentences in October 2001 as an illustration of ‘the lenient policy of the Vietnamese party and state.’

Newspapers and the broadcast media are expected to promote government policy and party ideology. Speaking to journalists on 4 February 2002, President Tran Duc Luong praised media workers efforts which have ‘contributed to preserving political stability, national construction and defence ... in particular, last year also witnessed the mass media’s concerted efforts to expose heinous schemes and attempts by hostile forces to distort and slander the Vietnamese people’s revolutionary cause.’<sup>13</sup> The media is not independent, and may not publish dissenting views.

### **2.11 ICCPR Article 21: The right of peaceful assembly**

The right of peaceful assembly is not guaranteed in Viet Nam. Groups which attempt to assemble to protest are likely to be dispersed, and individuals arrested. The last two years have witnessed a number of very small protests in Ha Noi, with people gathering to protest, mainly over land disputes. Such gatherings are extremely rare, and not officially permitted. Demonstrations by ethnic minority groups in the Central Highlands in February 2001 were crushed with force, which Amnesty International believes was excessive, and people from these minority communities have been sentenced to prison terms for their alleged involvement in these protests. Many hundreds fled to Cambodia to escape from the harsh treatment in Viet Nam.

## **3. Conclusion**

Amnesty International welcomes Viet Nam’s compliance with its reporting obligations as a state party to the ICCPR. However, the organization greatly regrets that many of the fundamental rights guaranteed under the Covenant are not upheld in Viet Nam, and that this is not accurately reflected in the State Party’s report. The organization believes that a greater degree of openness, and a willingness to accept constructive criticism would bring about concrete progress in upholding the rights of the ICCPR and result in greater protection of human rights in the country.

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<sup>13</sup>*Viet Nam News Agency*, Ha Noi, 4 February 2002

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**Convention Abbreviation:** CCPR  
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UNEDITED VERSION

Consideration of reports submitted by States parties under article 40 of the Covenant  
Concluding observations of the Human Rights Committee

Vietnam

1. The Committee considered the second periodic report of Vietnam (CCPR/C/VNM/2001/2) at its 2019th, 2020th and 2021st meetings, (CCPR/C/SR.2019, 2020 and 2021) held on 11 and 12 July 2002 and adopted the following concluding observations at its 2031st meeting (CCPR/C/SR.2031) held on 19 July 2002.

A. Introduction

2. The Committee welcomes Vietnam's second periodic report, which contains

detailed information on domestic legislation in the area of civil and political rights, and the opportunity to resume the discussion with the State party. The Committee welcomes the State party's decision to send a strong delegation from its capital, composed of representatives of various government authorities, for the examination of the report. The Committee regrets, however, the considerable delay in the submission of the report which was due in 1991. It also regrets the lack of information on the human rights situation in practice, as well as the absence of facts and data on the implementation of the Covenant. As a result, a number of credible and substantiated allegations of violations of Covenant provisions which have been brought to the attention of the Committee could not be addressed effectively and the Committee found it difficult to determine whether individuals in the State party's territory and subject to its jurisdiction fully and effectively enjoy their fundamental rights under the Covenant.

#### B. Positive aspects

3. In this regard, the Committee has noted developments within the State party that reflect some relaxation of the political restraints that have raised serious questions of gross violations of rights protected by the Covenant.

4 The Committee takes note of the efforts which are being made by the State party to reform its domestic legal order, to comply with its international, in particular human rights commitments.

#### C Principal areas of concern and recommendations

5. The Committee is concerned with the status under domestic law of the rights provided for in the Covenant, which remains unclear. It is also concerned that certain constitutional provisions would appear to be incompatible with the Covenant and that the Vietnamese Constitution does not enumerate all Covenant rights, nor the extent and criteria under which they may be limited. The Committee is concerned that according to Vietnamese law the Covenant rights must be interpreted in such a way which may compromise the enjoyment of these rights by all individuals.

The State party should guarantee the effective protection off all rights enshrined in the Covenant and ensure that they are fully respected and enjoyed by all. (article 2)

6. The Committee is concerned with the statement of the delegation that, because persons under the jurisdiction of the State party have recourse to national mechanisms,

the State party does not need to accede to the Optional Protocol.

The State party should consider acceding to the Optional Protocol, in order to enhance the protection of human rights afforded to persons under its jurisdiction.

7. 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.

The State party should continue to review the list of crimes for which the death penalty may be imposed, in order to reduce and limit these to those which may be strictly considered as the most serious crimes as required by article 6, paragraph 2 and with a view to abolishing capital punishment in furtherance of article 6 of the Covenant.

8. Notwithstanding the information provided by the delegation that only three persons were currently subject to administrative detention, referred to as probation by the delegation, the Committee remains concerned with the continued use of this practice as prescribed under decree CP-31, since it provides for persons to be kept under house arrest for up to 2 years, without the intervention of a judge or a judicial officer. The Committee is equally preoccupied by the provisions of Art. 71 of the code of Criminal Procedure pursuant to which the Principal Prosecutor may prolong the duration of the preventive detention of an individual without time limits, "if required" and for serious offences against national security"

The State party should ensure that no persons are subjected to arbitrary restriction on their liberty and that all persons deprived of their liberty are promptly brought before a judge or other officer authorised to exercise judicial power by law and that they can only be deprived of their liberty on the basis of a judgement based on law, as required by article 9, paragraphs 3 and 4, of the Covenant.

9. The Committee is concerned that the judicial system remains weak due to the scarce number of qualified professionally trained lawyers, lack of resources for the judiciary and their susceptibility to political pressure. The Committee is also concerned that the Supreme People' Court is not independent of government influence. It is further concerned that the judiciary seek the opinion of the National Assembly's



Standing Committee in regard to the interpretation of laws and that the Standing Committee is responsible for setting criteria and instructions which are binding for the judiciary.

In order to implement article 14 of the Covenant, the State party should take effective measures to strengthen the judiciary and to guarantee its independence, and ensure that all allegations of undue pressure on the judiciary are dealt with promptly.

10. The Committee is concerned with the procedures for the selection of judges as well as their lack of security of tenure, appointments of only four years in particular, combined with the possibility, provided by law, of taking disciplinary measures against judges because of errors in judicial decisions. All these expose judges to political pressure and jeopardise their independence and impartiality.

The State party should enact procedures to be applied in judicial appointments and assignments, in order to safeguard and ensure the independence and impartiality of the judiciary in line with article 14 of the Covenant. It must ensure that judges may not be removed from their posts, unless they are found guilty of behaviour not becoming a judge, by an independent tribunal.

11. The Committee is concerned that the State party has not yet established an independent, legally constituted body with power to oversee and investigate complaints of human rights violations, including complaints against members of the police, security services and prison guards. This fact may account for the small number of recorded complaints, in contrast to the information about large numbers of violations received from non-governmental sources. (articles 2, 7 and 10)

The State party should establish, by legislation, a permanent independent human rights monitoring body, with adequate powers and resources to receive and investigate allegations of torture or other abuses of power by public officials, including security services and initiate criminal and disciplinary proceedings against those found responsible.

12. The Committee regrets the lack of precise information provided by the delegation with respect to number and location of all detention centres, or institutions in which persons are held against their will, and the conditions under which people are held. (article 10)

The State party should provide information in respect of all the institutions in which persons are held against their will, number and names of the institutions and the number of inmates in each and whether these are remand or convicted persons.

13. The Committee is concerned that the legal right of detainees to access to counsel, medical advice and members of the family is not always respected in practice.

The State party should ensure scrupulous respect for these rights by its law enforcement agencies, procuracy and judiciary.

14. The Committee is concerned that the State party asserts that this it is a new phenomenon, and although some efforts have been made, there is no comprehensive approach to preventing and eliminating domestic violence against women, and punishing perpetrators. (articles 3, 7 ,9 and 26)

The State party should assess the impact of measures already taken to address the incidence of domestic violence against women. It should strengthen and improve the effectiveness of legislation, policies and programmes aimed at combating such violence. The State party should further implement training and sensitisation programmes for the judiciary, law enforcement officials and members of the legal profession, as well as awareness-raising measures to ensure no tolerance in society of violence against women.

15. The Committee is concerned that the State party has not undertaken adequate measures to help women prevent unwanted pregnancies and to ensure that they do not undergo life threatening abortions. (article 6)

The State party should take adequate measures to help women prevent unwanted pregnancies and avoid resorting to life threatening abortions, and to adopt appropriate family planning programmes to this effect.

16. The Committee notes that the information provided by the delegation was insufficient for the Committee to have a clear view of the situation in Vietnam with regard to religious freedoms. In the light of information available to the Committee that certain religious practices are repressed or strongly discouraged in Vietnam, the Committee is seriously concerned that the State party's practice in this respect does not meet the requirements of article 18 of the Covenant. The Committee is deeply concerned by allegations of harassment and detention of religious leaders and regrets that the delegation failed to provide information relating to such allegations. In this context, the Committee is

concerned at the restrictions placed on outside observers who wished to investigate the allegations.

The State party is requested to provide the Committee with up-to-date information about the number of individuals belonging to various religious communities and the number of places of worship, as well as the practical measures taken by the authorities to guarantee the freedom of exercise of religious practice.

17. The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.

18. The Committee is concerned at reports of the extensive limitations on the right to freedom of expression in the media and the fact that the Press Law does not allow the existence of privately owned media. It is also concerned at the press laws which impose restrictions on publications which, inter alia, are said to cause harm to political stability or insult national institutions. These broadly defined offences are incompatible with paragraph 3, of article 19, of the Covenant.

The State party should take all necessary measures to put an end to direct and indirect restrictions on freedom of expression. The press laws should be brought into compliance with article 19 of the Covenant.

19. While noting that the State party denies any violation of the Covenant rights in this respect, the Committee remains concerned at the abundance of information regarding the treatment of the Degar (Montagnard) indicating serious violations of article 7 and 27 of the Covenant. The Committee is concerned at the lack of specific information concerning indigenous peoples, especially the Degar (Montagnard), and about measures taken to ensure that their rights under article 27 to enjoy their cultural traditions, including their religion and language, as well as their agricultural activities, are respected.

The State party should take immediate measures to ensure that the rights of members of indigenous communities are respected.

Non-governmental organisations and other human rights monitors should be granted

access to the central highlands.

20. While noting the explanations provided by the delegation regarding the exercise of the right to freedom of association, the Committee is concerned at the absence of specific legislation on political parties and at the fact that only the Communist party is permitted. The Committee is concerned at reported obstacles imposed on the registration and free operation of non-governmental human rights organisations and political parties (article 19, 22 and 25). It is especially concerned with obstacles placed in the path of national and international non-governmental organisations and special rapporteurs whose task it is to investigate allegations of human rights violations in the territory of the State party.

The State party should take all the necessary steps to enable national and international non-governmental human rights organisations and political parties to function without hindrance.

21. The Committee is concerned about the restrictions on public meetings and demonstrations. (article 25)

The State party should provide additional information on the conditions for public assemblies and, in particular, to indicate whether and under what conditions the holding of a public assembly can be prohibited and whether such measures can be appealed.

22. The State party should make public the present examination of its second periodic report by the Committee, the written answers it has provided in responding to the lists of issues drawn up by the Committee and, in particular, these concluding observations.

23. The State party is requested pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding paragraphs 7, 12, 14, 16, 19, and 21. The Committee requests that information concerning the remainder of the recommendations be included in the third periodic report, to be submitted by 1 August 2004 .



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