

# PRISONS WITHIN PRISONS

TORTURE AND ILL-TREATMENT OF PRISONERS OF CONSCIENCE IN VIET NAM

AMNESTY  
INTERNATIONAL



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First published in 2016

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: ASA 41/4187/2016

Original language: English

[amnesty.org](http://amnesty.org)



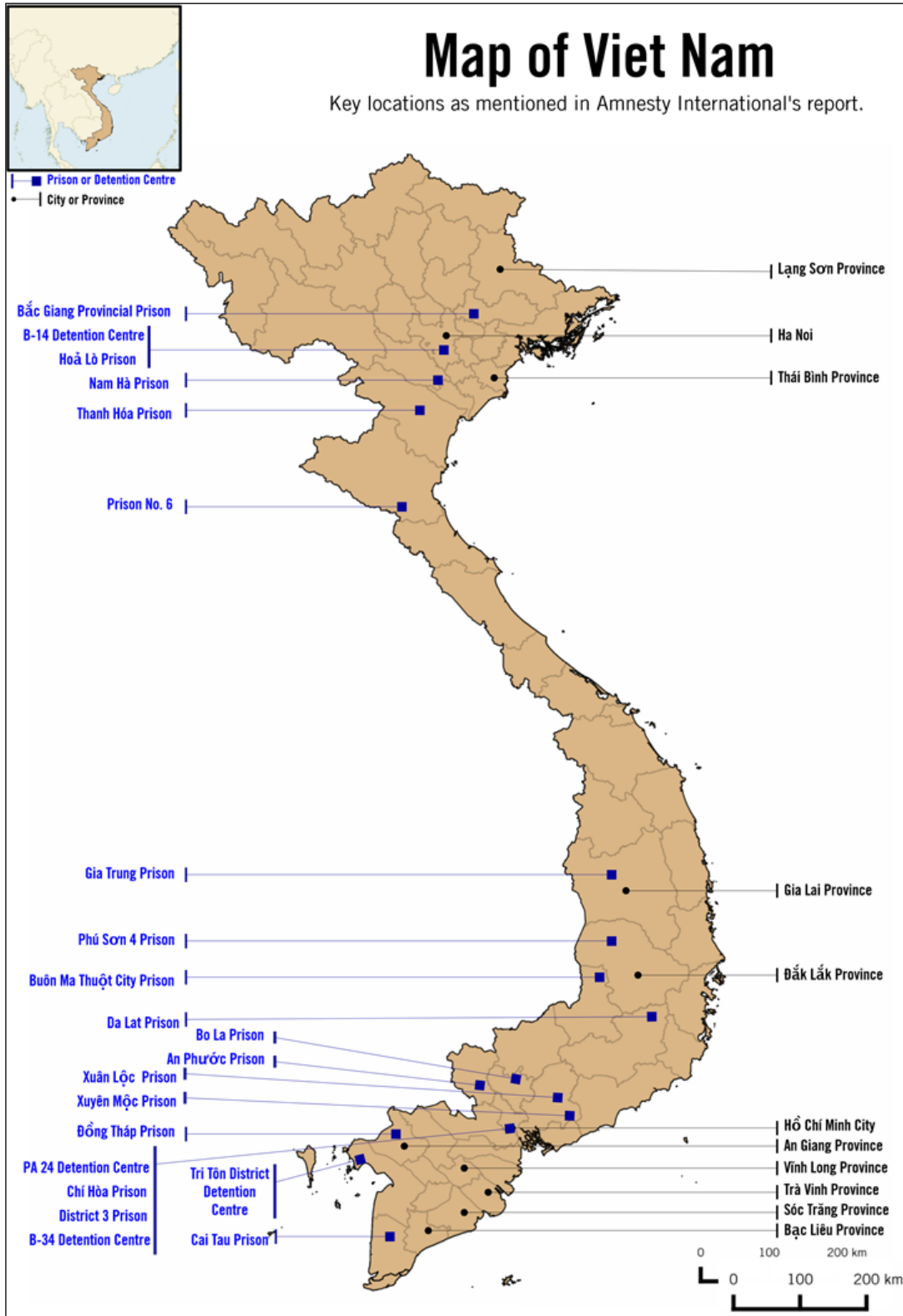
*Cover photo: Illustration depicting solitary confinement experienced by prisoners of conscience in Viet Nam © Colin Foo*

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Map depicting prisons and detention centres located in Viet Nam, as featured within this report. Locations depicted above are approximate. Note that certain violations took place in facilities not depicted on the map. These locations were not named in the report to protect the identity of victims. © Amnesty International

# EXECUTIVE SUMMARY

**“When they arrested me they threw me into a dark cell for 10 months [...] I can’t calculate exactly how many times they beat me, they just did it whenever they wanted [...] They told me that this was all for my crimes but all I had done was demonstrate, to ask for freedom, land rights and religious equality [...] They told me that I would die in prison, that I would die in that cell and my family would never know.”**

Dar (Pseudonym), an ethnic and religious minority former prisoner of conscience

Dar (pseudonym) is an ethnic and religious minority Montagnard former prisoner of conscience from the Central Highlands of Viet Nam. He was accused of organizing demonstrations by Montagnard groups, arrested in 2008 and imprisoned for over five years. For three months after his arrest, Dar’s family believed he had been killed and his body dumped in the jungle. They eventually learned that he was still alive from the family of another inmate in the detention facility where Dar was being held.

For the first 10 months of his detention, Dar was held in solitary confinement in complete darkness and total silence, permitted only to wear underwear in a cell he estimates was no bigger than four square metres. For two months, he was taken from his cell every day, interrogated and beaten. He was hit with sticks and rubber tubes, punched, kicked, shocked with electricity, burnt along the length of his legs with a lit paper, and made to stand with his legs apart and arms held above his head for periods of up to eight hours. On one occasion, he was hung by the arms from the ceiling for 15 minutes while police beat him until he lost consciousness. On other occasions, police officers, who were sometimes drunk, came to his cell in the middle of the night and beat him there.

Dar was held in solitary confinement for 10 months, permitted to see his sister only once throughout this period in a meeting where they were not permitted to speak their native language and which was cut short when his sister beseeched him to maintain his faith in god. Dar was tried without legal representation and

without notification being sent to his family. He spent over five years in jail, being released in 2014 after being subjected to countless acts of torture and ill-treatment.

Dar's case is illustrative of practices of torture and other ill-treatment that are inflicted in Viet Nam detention centres and prisons on prisoners of conscience; individuals imprisoned for their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status who have not used violence or advocated violence or hatred. This report – Prisons Within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam – outlines these brutal practices which include incommunicado detention, enforced disappearances, the infliction of severe physical pain and suffering, solitary confinement, the denial of medical treatment, and punitive prison transfers.

The report is written on the basis of a series of interviews conducted by Amnesty International with 18 former prisoners of conscience, seven women and 11 men, all of whom have been released in the last five years. These men and women described appalling conditions in the country's detention centres and prisons, and brutal treatment at the hands of police and prison authorities. They described a system of abuse that spurs into action at the moment of arrest; in many cases, the pressure exerted on detainees is particularly intense in the pre-trial period as authorities seek to extract a confession but abuses often persist throughout the entire period of incarceration up until release.

On 7 November 2013, Viet Nam signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and ratified it on 5 February 2015. On signing the UNCAT, Lê Hoài Trung, Viet Nam's Ambassador to the United Nations asserted it represented his country's "unwavering commitment to prevent all acts of torture and cruel, inhuman or degrading treatment and punishment" and "to better protect and promote fundamental human rights". The cases of Dar and the other 17 former prisoners of conscience interviewed for this report highlights the gulf that exists between Viet Nam's public, explicit commitment to ending the scourge of torture and the reality for prisoners of conscience in the country's police stations, prisons and detention centres.

While Viet Nam's ratification of UNCAT is a welcome development, wide-ranging measures, including legislative, administrative, judicial amongst other measures, are urgently required for Viet Nam to uphold its obligations under the treaty and to bring about and punish the practices outlined in this report. Amnesty International calls on Viet Nam to end arrests and prosecutions of men and women for their beliefs and peaceful activism; to bring about an end to all torture and other ill-treatment in police stations, detention centres and prisons; to investigate all complaints and reports of torture and other ill-treatment promptly, impartially, independently and effectively; and to amend domestic laws to ensure compliance with UNCAT and international standards on the treatment of prisoners.

During the course of our investigation, the term "prisons within prisons" ("nhà tù trong nhà tù" or "tù trong tù" in Vietnamese) was repeatedly used by different interviewees to describe a system of physical and emotional isolation with several deliberate aims: to break prisoners of conscience into "confessing" to the crimes they are charged with; to punish them for challenging the authority of the Communist Party of Viet Nam (CPV) by asserting their rights; and to prevent them from interacting with fellow prisoners and continuing their activism behind bars. This report offers an explanation of Viet Nam's legal and political background and lays out in separate chapters some of the forms of torture and other ill-treatment that are being inflicted on the country's prisoners of conscience. The report concludes with information on current prisoners of conscience, including descriptions of specific cases of individuals currently experiencing the forms of abuse outlined in this report.

## **TORTURE AND ILL-TREATMENT IN DOMESTIC AND INTERNATIONAL LAW**

Under international law, torture and other ill-treatment are prohibited in all circumstances without exception. Not only is the obligation to prevent, stop, punish and ensure reparations for torture and other ill-treatment provided for in several treaties to which Viet Nam is a state party, this obligation is also a rule of customary international law binding on all nations irrespective of treaty obligations.

The UNCAT and the Convention on the Rights of Persons with Disabilities, ratified on the same day, are the sixth and seventh core human rights treaties ratified by Viet Nam. As a party to the International Covenant on Civil and Political Rights (ICCPR) since 1982, Viet Nam was already bound by the prohibition on torture. By ratifying the UNCAT however, Viet Nam committed, amongst other things, to taking “effective legislative, administrative, judicial or other measures to prevent acts of torture”.

Viet Nam’s Constitution prohibits torture in broad terms. However, since signing the UNCAT, Viet Nam failed to use the opportunity in 2015 of amending the country’s Penal Code and Criminal Procedure Code to ensure that they comply with Viet Nam’s UNCAT obligations; including for example, by explicitly criminalising torture as defined in UNCAT Article 1(1). A new Law on Enforcement of Custody and Detention, passed in December 2015 and due to come into force in July 2016, will bring about some useful, but still insufficient, changes in the country’s legal system with regards to torture.

## **PRISONERS OF CONSCIENCE AND THE MINISTRY OF PUBLIC SECURITY**

Viet Nam, a one-party state under the CPV, has long been one of Asia’s most prolific jailers of prisoners of conscience. The CPV brooks no challenge, whether real, perceived or imagined, to its hegemony and is ruthlessly vindictive towards those it views as contesting its authority or undermining its interests. While the entire apparatus of the state is used to silence dissent, the Ministry of Public Security has a unique role in this regard. The Ministry oversees the police and the prison system and is largely responsible for the violations outlined in the Report.

However, despite the overwhelming challenges and desperate consequences they face, people in Viet Nam are speaking out; raising awareness of injustices; calling for multi-party democracy; and advocating for human rights. Throughout 2015, several of these activists were attacked in the streets by plainclothes police officers or thugs acting at the behest of the authorities. A much more established means of punishing activists however is imprisonment: men and women are routinely arrested for their peaceful activism and convicted on baseless charges, often on charges of infringing national security, and given lengthy prison sentences in the country’s notorious prison system where they are subjected to the torture and other ill-treatment detailed in this report.

## **INCOMMUNICADO DETENTION AND ENFORCED DISAPPEARANCES**

An incommunicado detention is when a detainee is held without access to the outside world, particularly to family, friends, lawyers and independent doctors. The practice encourages torture and ill-treatment, and prolonged periods of incommunicado detention themselves violate the prohibition on torture. The practice is inbuilt into Viet Nam’s system of torture and ill-treatment of prisoners of conscience and is imposed as a matter of course after an arrest. All of those interviewed for the report were subjected to prolonged periods of incommunicado detention, the longest lasting over two years.

Amnesty International's interviews also documented cases of enforced disappearance; that is, deprivations of liberty by the state "followed by a refusal to acknowledge the deprivation of liberty or the concealment of the fate or whereabouts of the disappeared persons which place the individual outside the protection of the law". An enforced disappearance, in most cases, constitutes an act of torture or cruel, inhuman and degrading treatment, as well as a violation of the right to life, the right to liberty and security of the person, and the right of persons deprived of their liberty to be treated with humanity and dignity. In the cases documented by Amnesty International, the individuals were held by authorities who failed to notify their families about their whereabouts and well-being, and denied them legal counsel, placing them beyond the protection of the law.

## **INFLICTION OF SEVERE PHYSICAL PAIN AND SUFFERING**

Amnesty International documented several cases involving physical abuse of prisoners of conscience that constituted torture or other ill-treatment. One victim, Lu (pseudonym), was tortured daily for four months as prison authorities sought to force him to confess. His tormentors regularly beat him unconscious and degraded him by, amongst other things, making him eat food that had been left uneaten by a dog.

Abuse constituting torture or other ill-treatment documented by Amnesty International was perpetrated by police and prison officials, as well as by prisoners, some of whom were "antennae" ("ăng ten" in Vietnamese); prisoners who abuse prisoners at the instigation of or with the consent of prison staff.

Paulus Lê Văn Sơn, who was subjected to numerous acts of violence during his four year prison term, described sharing his cell with four men who admitted to being "antennae". When he first arrived in his cell, the four men beat him for 30 minutes, taking turns to kick and punch him. Over a period of five months in this cell, Lê Sơn says that his cellmates beat him on four or five occasions. He was eventually moved to another cell after going on hunger strike to protest being detained in that cell.

## **SOLITARY CONFINEMENT**

Isolation is the primary method by which Viet Nam's prison authorities ensure that prisoners of conscience are left alone and abandoned inside 'prisons within prisons'. The UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) define "solitary confinement" as "confinement of prisoners for 22 hours or more a day without meaningful human contact". "Prolonged solitary confinement" is solitary confinement which goes on for a period in excess of 15 consecutive days; it is prohibited as it amounts to torture or other cruel, inhuman or degrading treatment or punishment.

In Viet Nam, prisoners of conscience are routinely subjected to solitary confinement in appalling conditions during pre-trial detention and as punishment for activism behind bars. Amnesty International documented cases involving solitary confinement for periods up to 10 months and interviewed individuals who described feeling completely abandoned and believing they would be left to die. In the words of Dar, an ethnic Montagnard who spent the first 10 months of his sentence in solitary confinement in total darkness, "[the police] told me that I would die there, that I'd die in that cell and my family would never know".

Another form of isolation documented by Amnesty International involves detaining prisoners of conscience in a cell for 24 hours a day in the company of an "antenna". Mai Thị Dung, a female former prisoner of conscience was put into isolation with an 'antenna' in a cramped, airless and dark cell for more than two years: conditions so unbearable that the series of antennae that shared the cell had to be switched every two or three days.



## THE RIGHT TO HEALTH AND THE DENIAL OF MEDICAL TREATMENT

Given the appalling conditions and brutal treatment, it is not surprising that prisoners of conscience routinely fall ill in Viet Nam's detention centres and prisons. In some cases, those interviewed for the report received poor quality generic medicine following months of complaints to the authorities. In others, prisoners of conscience experienced months of severe pain and suffering and were told by the authorities that they would not receive any medical treatment unless they confessed to their alleged crimes. Such denial of medical treatment is a passive but clear form of torture, as it involves the intentional infliction of pain and suffering by officials for the purpose of extracting a confession, thus meeting all the criteria in the definition of torture as set out in Article 1(1) of the UNCAT.

## PUNITIVE PRISON TRANSFERS

A central component of Viet Nam's systematic abuse of prisoners of conscience is subjecting them to repeated prison transfers: a deliberate practice that aims to further isolate them from their families, break their spirits and punish them for engaging in prison activism. Without advance warning to them or their families, prisoners of conscience are routinely moved from one detention centre or prison to another, often bringing them the length and breadth of the country and leaving them hundreds of kilometres from their homes and support networks.

The men and women interviewed for this report all experienced prison transfers. The practice is common in the cases of recalcitrant prisoners of conscience who refuse to plead guilty or who resist "re-education", as well as high-profile or influential prisoners who authorities fear will persuade other prisoners to protest prison conditions and ill-treatment. Prominent former prisoners of conscience Nguyễn Văn Hải, better known as Điếu Cày, was transferred 20 times in six and a half years in prison.

The transfers interviewees described were cruel, inhuman and degrading; some involved journeys lasting over 24 hours, during which prisoners were shackled and deprived of food and water.

## PRISONERS OF CONSCIENCE IN VIET NAM TODAY

Viet Nam's lack of transparency, particularly regarding its prisons, makes it extremely difficult for independent monitors to gather information about prison conditions. Despite these challenges, Amnesty International has been able to document torture and other ill-treatment of a number of current prisoners of conscience, several of whom are known to have been or are being subjected to the types of treatment outlined in this report. This report is written on the basis of interviews with former prisoners of conscience who have been released in recent months and years but the practices they experienced continue today. The final substantive chapter of the report provides information on the cases of current prisoners of conscience who are or have been the victims of these practices.

Democracy activists Nguyễn Văn Đài and Lê Thu Hà have been held incommunicado since their arrests in December 2015; land rights activist Bùi Thị Minh Hằng, and Hòa Hảo Buddhist Trần Thị Thúy are being denied medical treatment; Catholic activist Đặng Xuân Diệu has been held in solitary confinement for prolonged periods of time; he has been subjected to brutal physical torture, as have labour rights activists Đoàn Huy Chương and Nguyễn Hoàng Quốc Hùng, prominent human rights defender Trần Huỳnh Duy Thức, ethnic minority activist Siu Wiu, and Khmer Krom Buddhist monk Thạch Thuol; Trần Huỳnh Duy Thức has also been subject to several prison transfers since 2009.

## CONCLUSION AND RECOMMENDATIONS

The cases outlined in the Report highlight the gap between Viet Nam's public commitment to preventing and ending torture and other ill-treatment and the reality for prisoners of conscience in the country's detention centres and prisons. The ratification of the UNCAT is a welcome development but Amnesty International is concerned that since ratification, Viet Nam has already missed vital opportunities to bring the country closer to realising its UNCAT obligations: including the amendments to the Penal Code and Criminal Procedure Code in late 2015, and the passage of the Law on Enforcement of Custody and Detention. All three laws came into force on 1 July 2016. Their shortcomings are such that further legislation is needed to ensure Viet Nam's compliance with UNCAT.

To prevent torture and other ill-treatment however, Viet Nam will need to do more than just change its laws. Under UNCAT Article 2, "effective legislative, administrative, judicial [and] other measures" are needed to end torture and other ill-treatment. To bring about an end to the abuses outlined in this report and ensure that Viet Nam fully complies with its obligations under the UNCAT, Amnesty International makes the following recommendations:

- End arrests, prosecutions and convictions of men and women for their beliefs and peaceful advocacy for human rights, religious freedom, multi-party democracy and workers' rights, and immediately release all prisoners of conscience currently behind bars;
- End all torture and other ill-treatment in police stations, detention centres and prisons, including enforced disappearances, incommunicado detention, solitary confinement, physical violence, punitive transfers between facilities, and the withholding of medical treatment, committed by public officials, police, prison staff and prisoners;
- Investigate all complaints and reports of torture and other ill-treatment promptly, impartially, independently and effectively, suspending all officials suspected of committing these acts and ensuring protection from reprisals for complainants, witnesses and others at risk, and prosecute all those against whom sufficient, admissible evidence is gathered of their responsibility for torture or other acts of ill-treatment regardless of rank or official status and the time that has elapsed since the commission of the crime;
- Amend domestic laws, namely the Penal Code, the Criminal Procedure Code, the Law on the Execution of Criminal Judgements and the new Law on Enforcement of Custody and Detention to comply with UNCAT and international standards on the treatment of prisoners, and end reliance on Circular 37 of the Ministry of Public Security as a means to facilitate the discriminatory treatment of prisoners of conscience.

## METHODOLOGY

The Report is the product of over 150 hours of interviews conducted with 18 prisoners of conscience; 11 men and seven women. Thirteen of the interviewees are ethnic Kinh, the majority ethnic group in Viet Nam, of whom five are members of minority religious groups, three being Catholic and the other two being Hòa Hảo Buddhist. The other interviewees are members of ethnic and religious minority groups including individuals who are ethnic Jarai, Ede, Tay and Khmer Krom. The interviewees have worked on a broad spectrum of rights issues – including freedom of expression, labour, land, and religious freedoms – and come from a variety of professions – including government, journalism, and the legal profession. Between them, the interviewees spent over 77 years in prison. While one of the interviewees was held in the home of a former policeman for one month before escaping and fleeing the country, the other 17 spent between two and just under 10 years in prison respectively. The prison population in Viet Nam in mid-2015, including pre-trial detainees, was 136,245.<sup>1</sup> Amnesty International is aware of 84 prisoners of conscience currently detained in Viet Nam.

Human rights research in Viet Nam is challenging due to the country's closed political system. Access to the victims of human rights violations is difficult to establish and people are sometimes reluctant to share information about their experiences due to well-founded fears of reprisal. The country's detention centres and prisons are closed to external observers, including independent bodies or human rights groups. However, during a mission to Viet Nam in June 2016, Amnesty International representatives were given a guided tour of the women's facility in Bắc Giang provincial prison, which houses 600 women inmates amongst the facility's total inmate population of 4,000 men and women.

Where possible, Amnesty International has sought to corroborate the information provided by interviewees through secondary materials, including reports by non-governmental organizations and the UN bodies. In some cases, interviews with other prisoners provided corroboration where they were held in the same facility at the same time and experienced and/or witnessed the same violations.

This report focuses entirely on torture and other ill-treatment of prisoners of conscience and does not consider violations of the rights of the general prison population. A prisoner of conscience is a person imprisoned or otherwise physically restricted because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status who has not used violence or advocated violence or hatred.<sup>2</sup> The former prisoners of conscience interviewed for this report stated repeatedly that there are differences between the treatment of prisoners of conscience and the general prison population: stating that restrictions on access to family are more prevalent in cases involving prisoners of conscience, but that other prisoners are more frequently the victims of physical abuse, including beatings, which amount to torture or other ill-treatment. This report deals with a range of inter-related human rights violations and the interviewees all experienced a combination of these violations. To avoid repetition, the details of each case are not restated in each relevant chapter.

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<sup>1</sup> See, "World Prison Brief – Viet Nam", *Institute for Criminal Police Research*, available at [http://www.prisonstudies.org/country/vietnam?\\_sm\\_au\\_=iVvf05nkjF87FLQ8](http://www.prisonstudies.org/country/vietnam?_sm_au_=iVvf05nkjF87FLQ8).

<sup>2</sup> Police violence against detainees arrested for common criminal offences, including beatings and other forms of torture resulting in deaths, has been documented by Vietnamese and international human rights organizations. See for example, "Public Insecurity: Deaths in Custody and Police Brutality in Vietnam", *Human Rights Watch*, 16 September 2014, available at <https://www.hrw.org/report/2014/09/16/public-insecurity/deaths-custody-and-police-brutality-vietnam>; "Torture of Political and Religious Prisoners in Vietnam", *Campaign to Abolish Torture in Vietnam*, 16 January 2014, available at <http://www.stoptorture-vn.org/torture-report.html>; "Vietnam: Widespread Police Brutality, Deaths in Custody", *Human Rights Watch*, 22 September 2010, available at <https://www.hrw.org/news/2010/09/22/vietnam-widespread-police-brutality-deaths-custody>. In March 2015, Vietnam's Ministry of Public Security reported that there were 226 deaths of detainees in police stations between October 2011 and September 2014. See, "Doubts linger as Vietnam reports causes of 226 deaths in custody", *Thanh Nien News*, 22 March 2015, available at <http://www.thanhniennews.com/politics/doubts-linger-as-vietnam-reports-causes-of-226-deaths-in-custody-40112.html>.

To protect sources against retribution, the names and other identifying information of some interviewees are not provided in the text. This includes information pertaining to their charges, the dates of their court procedures, the facilities they were held in, the dates of transfers between facilities, and the dates of the interviews conducted with them by Amnesty International. As indicated throughout the text, the names used to refer to certain interviewees are pseudonyms. All interviews were conducted by Amnesty International between April 2015 and April 2016. Amnesty International is grateful to all those who interviewed for this report.

This report includes an analysis of Viet Nam's penal and criminal procedure codes, both of which were amended in 2015, with the amended versions due to come into force on 1 July 2016. As those interviewed for this report were arrested and convicted before the coming into force of the amended codes, analysis of the previous codes is included in the body of the text throughout the report, with information pertaining to corresponding articles in the amended codes provided in footnotes. On 1 July, the scheduled effective date of the amended codes, it was announced by the National Assembly that the coming into force of both codes, as well as the Law on Enforcement of Custody and Detention and the Law on Criminal Investigation Agencies, was being postponed due to flaws in the Amended Penal Code.<sup>3</sup> Amnesty International views the postponement of these laws as a welcome development which provides an opportunity to the Vietnamese authorities to resolve the issues outlined in this report arising from the texts of those instruments and to ensure compliance of the country's legal system with its international human rights obligations, including under the UNCAT.

In June 2016, an Amnesty International delegation undertook an official visit to Viet Nam at the invitation of the Vietnamese government to discuss the findings outlined in this report. During the visit, Amnesty International met with officials from the Ministry of Public Security; the Ministry of Justice; the Ministry of Foreign Affairs; the Ministry of Labour, Invalids and Social Affairs; the National Assembly Foreign Affairs Department; the Permanent Office on Human Rights of Viet Nam; the Viet Nam Union of Friendship Organizations; the People's Aid Coordinating Committee; and the Commission for External Relations of the Communist Party of Viet Nam. Amnesty International is grateful to all government interlocutors who took part in these meetings.

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<sup>3</sup> "NA approves delay to Penal Code 2015", *Viet Nam News*, 1 July 2016, available at <http://vietnamnews.vn/politics-laws/298919/na-approves-delay-to-penal-code-2015.html#ylcgjDQiLHbIQ5CK.97>.

# 1. TORTURE AND OTHER ILL-TREATMENT IN INTERNATIONAL AND DOMESTIC LAW

Under international law, torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) are prohibited absolutely, in all circumstances and without exception. The prohibition of torture and other ill-treatment was recognized in 1948 in Article 5 of the Universal Declaration of Human Rights. The prohibition has been included in many subsequent human rights treaties, and other international and regional instruments, not least the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)<sup>4</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>5</sup> The prohibition of torture and other ill-treatment is also a rule of customary international law,<sup>6</sup> binding on all states whether or not they are parties to particular treaties which contain the prohibition. Indeed, the prohibition of torture is widely recognised as one of a relatively small number of particularly fundamental norms of general international law.<sup>7</sup>

Viet Nam signed the UNCAT on 7 November 2013 and ratified it on 5 February 2015.<sup>8</sup> Viet Nam is also party to several other treaties which prohibit torture and other ill-treatment, including the ICCPR, which it signed in 1982. Article 7 of the ICCPR prohibits torture and cruel, inhuman and degrading treatment and punishment,<sup>9</sup> while Article 4 provides that this prohibition is non-derogable, that is, it cannot be repealed or relaxed even in “times of emergency threatening the life of the nation”.<sup>10</sup>

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<sup>4</sup> UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNGA res. 39/46, 10 December 1984, entered into force 26 June 1987.

<sup>5</sup> International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976, Article 7 (and see also Article 4).

<sup>6</sup> See e.g. International Court of Justice, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, Judgment of 20 July 2012, para. 99; International Court of Justice, *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment of 30 November 2010, para. 87; UN General Assembly Resolution 66/150 (19 December 2011), third preambular paragraph; International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v Furundzija*, no IT-95-17/1, Trial Judgment, 10 December 1998, paras. 137-146.

<sup>7</sup> International Court of Justice, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, Judgment of 20 July 2012, para 99; UN General Assembly Resolution 66/150 (19 December 2011), third preambular paragraph; International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v Furundzija*, no IT-95-17/1, Trial Judgment, 10 December 1998, paras 153-157.

<sup>8</sup> See, CAT Status of ratifications, UN Office of the High Commissioner for Human Rights, available at <http://indicators.ohchr.org/>.

<sup>9</sup> See, ICCPR Status of ratifications, UN Office of the High Commissioner for Human Rights, available at <http://indicators.ohchr.org/>.

<sup>10</sup> See Article 15 of The Convention on the Rights of Persons with Disabilities ratified in 2015. See also, Article 37 of The Convention on the Rights of the Child, ratified by Viet Nam in 1990. The Convention on the Elimination of All Forms of Racial Discrimination, ratified by Viet Nam in 1969, does not contain the prohibition on torture, however, Article 5 guarantees the security of the person and the protection of the

## THE UN CONVENTION AGAINST TORTURE

The UNCAT defines torture in Article 1(1) as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

Article 2 of the UNCAT requires states parties, among other things, to take “effective legislative, administrative, judicial or other measures to prevent acts of torture” in their territory and precludes reliance on any exceptional circumstances, including internal political instability, as a justification for torture.

Article 16 requires states parties to undertake to prevent “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture” which are committed by, at the instigation or with the consent or acquiescence of officials. UNCAT does not define cruel, inhuman or degrading treatment or punishment.

Vietnamese law prohibits torture. The Constitution, amended in 2013, provides that “[e]veryone shall enjoy inviolability of the individual and the legal protection of his or her life, health, honor and dignity, and is protected against torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health”.<sup>11</sup> Neither the Penal Code (1999) nor the Amended Penal Code (2015), which was due to come into force on 1 July 2016 but which has been postponed due to flaws in its content, explicitly criminalise torture or other cruel, inhuman and degrading treatment and punishment.<sup>12</sup> Article 107 of the 1999 code criminalised other acts of violence perpetrated by those acting in an official capacity, as follows:

*Those who, while performing their official duties, resort to violence outside the scope permitted by law, thus inflicting injury on or causing harm to the 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 of imprisonment.*<sup>13</sup>

Article 97 of the 1999 Code provided for a punishment of two to seven years for the offence of “causing death to people in the performance of official duties”;<sup>14</sup> while Article 298 of the 1999 Code provided for the imprisonment of “[t]hose who apply corporal punishment in investigating, prosecuting, adjudicating and/or judgement-executing activities” for up to 12 years;<sup>15</sup> and Article 299 provided for a punishment of up to 10 years’ imprisonment for “[t]hose who, while conducting investigation, prosecution or trial, employ illegal tricks in order to force persons being questioned to give false evidence”.<sup>16</sup> No explanation of the term

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State against violence and bodily harm. The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) was ratified by Viet Nam in 1983. The Committee on the Elimination of Discrimination Against Women has stated that gender-based violence which impairs the enjoyment of human rights by women, including the right not to be subject to torture and other ill-treatment, is discrimination within the meaning of CEDAW Article 1.

<sup>11</sup> Constitution of the Socialist Republic of Viet Nam, as amended, adopted by the National Assembly on 28 November 2013, Article 20. An unofficial English translation of the amended constitution by International Democracy and Electoral Assistance (IDEA) is available at [http://www.constitutionnet.org/files/tranlation\\_of\\_vietnams\\_new\\_constitution\\_enuk\\_2.pdf](http://www.constitutionnet.org/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf). The current Constitution took effect on 1 January 2014. The previous Constitution, adopted in 1992 and amended in 2001, guaranteed, in Article 71, that “[c]itizens have the right to physical inviolability and to have their lives, health, honour and dignity protected by law” but did not contain any express reference to torture or other forms of cruel, inhuman, or degrading treatment or punishment. Article 71 also provided that “[a]ll forms of coercion, humiliation and violation of a citizen’s honour and dignity are strictly prohibited”. The 1992 Constitution, as amended, is available at [http://www.vietnamlaws.com/freelaws/Constitution92\(aa01\).pdf](http://www.vietnamlaws.com/freelaws/Constitution92(aa01).pdf).

<sup>12</sup> See “NA approves delay to Penal Code 2015”, *Viet Nam News*, 1 July 2016, available at <http://vietnamnews.vn/politics-laws/298919/na-approves-delay-to-penal-code-2015.html#ylcgjDQiLHblQ5CK.97>.

<sup>13</sup> Penal Code of the Socialist Republic of Viet Nam, National Assembly, No. 15/1999/QH10, 21 December 1999, Article 107, available at <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn017en.pdf>. See Article 137 of the Amended Penal Code, National Assembly, No. 100/2015/QH13, 27 November 2015, available in Vietnamese at <http://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-hinh-su-2015-296661.aspx>. All references to the content of the Amended Penal Code contained in this Report are taken from an unofficial translation by Amnesty International.

<sup>14</sup> See Article 127 of the Amended Penal Code which increases the punishment range for this offence to imprisonment from five to 10 years.

<sup>15</sup> See Article 373 of the Amended Penal Code which refers to the use of corporal punishment, cruel treatment and humiliation “during the process of criminal procedure, judgement execution or enforcement of measures such as compulsory reform schools, compulsory re-education centres, compulsory [and] detoxification camps”.

<sup>16</sup> See Article 374 of the Amended Penal Code.

“employ illegal tricks” is provided in the law.

Despite this legal framework, however, police brutality, including torture and lethal beatings in police custody, has been reported throughout Viet Nam; victims include not only prisoners of conscience but also people arrested for other crimes.<sup>17</sup> Police officials have been charged and convicted in cases involving deaths in prison. Charges have tended to include lesser offences than murder. For example, Nguyễn Văn Ninh, a police lieutenant colonel, received a four year prison sentence under Article 97 of the 1999 Code for the killing in police custody of a man named Trịnh Xuân Tùng.<sup>18</sup>

The Criminal Procedure Code (2003) did not explicitly refer to torture or other cruel, inhuman, or degrading treatment or punishment.<sup>19</sup> However, Article 4 broadly provided that those implementing the Code “respect and protect the legitimate rights and interests of citizens”; Article 6 forbade “[a]ll forms of coercion and corporal punishment” and Article 7 provided for the right of citizens to have “their life, health, honor, dignity and property protected by law”. The Amended Criminal Procedure Code (2015), which was due to come into force on 1 July 2016 but which has been postponed due to flaws in the Amended Penal Code, does expressly provide in Article 10 that “it is strictly prohibited to use torture, extortion, corporal punishment or any other forms of treatment that violate a person’s body, life and health”.<sup>20</sup>

The Law on the Execution of Criminal Judgements (2010) also does not contain an explicit prohibition on torture and cruel, inhuman or degrading treatment or punishment nor does it outline any prohibition on violence or corporal punishment against detainees.<sup>21</sup> Article 4, however, does broadly state, without further elaboration, that the “[p]rinciples of execution of criminal judgements” include “[a]bidance by the Constitution and law, guarantee of the interests of the State and the legitimate rights and interests of organizations and individuals”. Paragraph 4 of the same Article guarantees “respect for the dignity and legitimate rights and interests of sentenced persons”.

The new Law on Enforcement of Custody and Detention, which was also due to come into force on 1 July 2016 and which has also been postponed due to flaws in the Amended Penal Code states that the “[p]rinciples of management, enforcement of custody, detention” include “ensur[ing] humanity; no torture, violence, coercion, corporal punishment or any other forms of treatment infringing the legitimate rights and legitimate interests of people in custody and detention”.<sup>22</sup> Article 8(1) includes in a list of acts prohibited by the law, “[t]orture, corporal punishment and other forms of treatment and punishment which [are] cruel, inhuman and humiliating towards people; or any other forms of infringement of the rights and legitimate interests of people in custody and detention”. Other elements of the amended code which represent an improvement on existing law include the creation of a more detailed complaints procedure for those in custody and detention albeit one which lacks several of the safeguards outlined in the Mandela Rules.<sup>23</sup>

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<sup>17</sup> See, for example, “Report on Human Rights in Vietnam 2012”, *Vietnam Human Rights Network*, 11 April, 2013. See also, “Public Insecurity: Deaths in Custody and Police Brutality in Vietnam”, *Human Rights Watch*, 16 September 2014, pp. 36-42, available at <https://www.hrw.org/report/2014/09/16/public-insecurity/deaths-custody-and-police-brutality-vietnam>; “Lại thêm một người chết trong đồn công an” (Another Death in Police Station), *Radio Free Asia*, 23 January 2013, available at [http://www.rfa.org/vietnamese/in\\_depth/poli-abus-powe-01232013065741.html](http://www.rfa.org/vietnamese/in_depth/poli-abus-powe-01232013065741.html).

<sup>18</sup> *Ibid*, *Human Rights Watch*, pp. 36-42.

<sup>19</sup> Criminal Procedure Code of the Socialist Republic of Viet Nam, National Assembly, No.: 19/2003/QH11, 26 November 2003, available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=184178](http://www.wipo.int/wipolex/en/text.jsp?file_id=184178).

<sup>20</sup> Amended Criminal Procedure Code of Socialist Republic of Viet Nam, National Assembly, 101/2015.QH13, 27 November 2015, available in Vietnamese at <http://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-to-tung-hinh-su-2015-296884.aspx>. All references to the content of the Amended Criminal Procedure Code contained in this Report are taken from an unofficial translation by Amnesty International. Article 10 of the Amended Criminal Procedure Code is the amended equivalent to Article 6 of the 2003 Code.

<sup>21</sup> The Law on the Execution of Criminal Judgements (2010) is available in Vietnamese at <http://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Luat-thi-hanh-an-hinh-su-2010-108086.aspx>; and in English at <http://lawfirm.vn/download.php?id=1894>.

<sup>22</sup> Law on Enforcement of Custody and Detention, Article 4(3).

<sup>23</sup> See Chapter IX, “Complaint, Denunciation and Resolving Complaint, Denunciation about the Management and Enforcement of Custody, Detention”. Article 44 provides for the right to complain about any infringement of detainee and prisoner rights. However, Chapter IX fails to guarantee, amongst other things, that complaints may be made “without censorship as to substance”; submitted “in a confidential manner”; and that the complainant “must not be exposed to any risk of retaliation, intimidation of other negative consequence as a result of having submitted a request or complaint” as required by Mandela Rules 56 and 57.

The 2010 Law on the Execution of Criminal Judgements and the new Law on Enforcement of Custody and Detention overlap significantly, contradicting each other on several issues. The dynamics between the two instruments, and the primacy of one over the other, is unclear. There is no provision in the Law on Enforcement of Custody and Detention providing for the abrogation of its provisions over pre-existing laws with which it overlaps and/or contradicts. In a meeting with representatives of the Ministry of Justice of Viet Nam on 9 June 2016, Amnesty International was informed that the 2010 Law on Execution of Criminal Judgements is to be reviewed and amended to take into account, amongst other things, Viet Nam's new obligations under the UNCAT.

Viewed in its entirety, the Vietnamese legal framework pertaining to torture and ill-treatment is wholly inadequate and falls well below the standards required by the UNCAT. The Constitution broadly prohibits torture but this prohibition means little in practice in the absence of a criminal offence based on a conclusive definition of torture, as defined in UNCAT Article 1(1). In this regard, the Committee against Torture has stated, in its authoritative General Comment on Article 2, that "States parties must make the offence of torture punishable as an offence under its criminal law, in accordance, at a minimum, with the elements of torture as defined in article 1 of the Convention, and the requirements of article 4."<sup>24</sup> The Committee has consistently called on states parties to criminalise torture as a specific crime and to define that crime in accordance with Article 1(1).<sup>25</sup> This most basic protection is absent from Vietnamese law.

The Penal Code provisions that do address violence by state officials do so in language that avoids torture and other ill-treatment terminology. The result is vague and deficient criminal offences that tend to reduce the gravity of the criminal conduct involved in a manner which is totally inconsistent with the fundamental and immutable nature of the prohibition on torture and other ill-treatment. The Penal Code also relies on a troubling injury classification scheme which appears to actually permit a wide range of torture and ill-treatment practices. Article 107 of the 1999 Code criminalised the use of violence by state officials which results in harm or injury "with an infirmity rate of 31%", therefore appearing to permit harm or injury of a lower infirmity rate.<sup>26</sup> Further, as Article 107 did not appear to account for the mental and psychological element of torture and ill-treatment, and as it relied on a certain level of infirmity, it failed to prohibit torture and ill-treatment which, by design, seek to avoid the infliction of physical injury.

The Criminal Procedure Code similarly fails to provide real substance to the country's broad constitutional ban on torture. In addition to the provisions outlined above which require those implementing the code to respect the "rights and interests of citizens", the Code also contains some procedural safeguards. However, these are limited as a means to prevent torture and ill-treatment and fall short of international standards on fair trial rights. For example, while Article 58 of the 2003 Code provided that "defense counsels shall participate in the [criminal] procedure from the time the custody decisions are issued", a decision which had to be taken within 24 hours of an arrest, participation of defence counsel could be suspended until the "termination of investigation" in cases that involved crimes of infringing upon national security.<sup>27</sup> Similarly, while Article 58 also provided for the "right" of defense counsel to "ask questions to the persons in custody or the accused", this was subject to the consent of the investigators. Article 58(2)(f) of the 2003 Code stated that defense counsel also have the "right" to "meet the persons kept in custody; and [to] meet the accused or defendants being under temporary detention" but failed to provide that these meetings were to be conducted in confidentiality and without monitoring or supervision by police or prosecution officials.

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<sup>24</sup> See for instance, Committee against Torture, General Comment No. 2: Implementation of article 2 by States parties. UN Doc. CAT/C/GC/2, 24 January 2008, para. 8.

<sup>25</sup> See for instance, Committee against Torture, Concluding observations on the initial report of Thailand, UN Doc. CAT/C/THA/CO/1, 20 June 2014, para. 9(a); Andorra, UN Doc. A/69/44 (2013-14), para. 54(6); Belgium, *ibid.* para. 55(8); Burkina Faso, *ibid.* para. 56(8).

<sup>26</sup> It is noteworthy that the infirmity rate outlined in Article 107 where violence by state officials is concerned, 31%, exceeds the infirmity rate in other provisions not dealing specifically with state officials. See for example, Article 104 which criminalises the infliction of injury at a rate of infirmity between 11% and 30% as well as, where certain other conditions such as the use of a weapon are involved, injuries at an infirmity rate of less than 11%.

<sup>27</sup> This limitation is particularly significant for the purposes of this report as a large proportion of prisoners of conscience are arrested under charges of infringing national security. See Chapter 2.



While the Law on Enforcement of Custody and Detention, when it comes into force, will bring about some improvements to the legal framework, it still falls startlingly short of ensuring real protection against torture and other ill-treatment. For example, the text of the new law contains restrictions on visitation by family and legal representation which, as outlined in Chapter 3, are an essential safeguard against torture and other ill-treatment and can, in certain circumstances, themselves amount to torture and ill-treatment.<sup>28</sup> The new law also provides for disciplinary procedures that could constitute torture and other ill-treatment, including shackling.<sup>29</sup>

As mentioned above, the coming into force of the Amended Penal Code, Amended Criminal Procedure Code and the Law on Enforcement of Custody and Detention, due to take place on 1 July 2016, has been postponed due to flaws in the Amended Penal Code. Amnesty International views the postponement of these laws as a welcome development which provides an opportunity to the Vietnamese authorities to resolve the issues outlined in this report arising from the texts of those instruments and to ensure compliance of the country's legal system with its international human rights obligations, including under the UNCAT.

Despite the significant shortcomings outlined above, the country's national laws provide for standards of practice which are higher than the standards contained in other instruments that do not have the status of national law but are heavily relied upon in practice in detention centre and prisons throughout Viet Nam. One such set of standards is Circular No. 37 of the Ministry of Public Security (2011), which provides the legal basis for many of the human rights violations documented in this report.<sup>30</sup> Circular 37 is examined in detail in the following chapter.

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<sup>28</sup> The law states that visits by family are supervised and monitored "closely by the agency dealing with the case and by detention facilities" and provides for denial of visitation rights "of people in custody or detention [who] have violated the rules of detention facilities and custodial management system twice or more" despite the bar, in Mandela Rule 45, on the prohibition of family contact as a disciplinary measure.

<sup>29</sup> See Article 23(3).

<sup>30</sup> Circular 37, Detailing Classification and Incarceration of Inmates according to Categories, Ministry of Public Security, No. 37/2011/YY-BCA, (2011).

# 2. PRISONERS OF CONSCIENCE AND THE MINISTRY OF PUBLIC SECURITY

**“Two men from the Ministry of Public Security came to see me in prison and asked whether I would keep up my activism when I was released. I told them that everything I do comes from my conscience, as a true Vietnamese patriot. One of them replied ‘then we will meet each other in this situation again Nghiê’n’ ”**

Former prisoner of conscience Phạm Thanh Nghiê’n<sup>31</sup>

## PRISONERS OF CONSCIENCE IN VIET NAM

Viet Nam is ruled by the Communist Party of Viet Nam (CPV). The Constitution states that Viet Nam is “a socialist rule of law State of the People, by the People for the People”<sup>32</sup> in which the “State guarantees and promotes the People’s mastery”.<sup>33</sup> State bodies exercise legislative, executive and judicial powers<sup>34</sup> but the CPV “is the leading force of the State and society”; “the Vanguard of the Vietnamese working class, simultaneously the vanguard of labourers and of the Vietnamese nation, the faithful representatives of the interests of the working class, labourers and the whole nation”.<sup>35</sup>

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<sup>31</sup> Amnesty International interview, January 2016.

<sup>32</sup> Constitution of the Socialist Republic of Viet Nam (Constitution), Article 2(1).

<sup>33</sup> Constitution, Article 3.

<sup>34</sup> Constitution, Article 2(3).

<sup>35</sup> Constitution, Article 4(1).

According to the constitution, the state “acknowledges, respects, protects and guarantees human rights”;<sup>36</sup> while “[a]ll acts against the independence, sovereignty, unity, and territorial integrity, against the course of building and defence of the Fatherland, must be strictly punished”.<sup>37</sup> The most recent constitution came into being in 2013 and contains a chapter titled “Human Rights and Citizens’ Fundamental Rights and Duties”, the inclusion of which was a landmark achievement by the Vietnamese authorities. Article 25 of the 2013 Constitution guarantees “the citizen shall enjoy the right to freedom of opinion and speech, freedom of the press, to access to information, to assembly, form associations and hold demonstrations”; whereas Article 24 guarantees “freedom of belief and religion”, and the equality of all religions before the law. In reality, exercise of these rights is severely restricted and is subject to the caveat that their exercise cannot appear to undermine the CPV’s pre-eminence in all aspects of public and private life.<sup>38</sup>

The country has no independent media, and while the recent negotiations of the Trans-Pacific Partnership raise the prospect of autonomous trade unions,<sup>39</sup> independent civil society groups continue to be denied legal and formal existence.<sup>40</sup>

Despite these limitations, a small but committed independent civil society does exist: this includes individuals and informal groups that are questioning the overwhelming hegemony of the CPV; raising awareness about injustices in society; and calling for human rights and democracy. In so doing, they face significant challenges and can suffer devastating consequences; since the beginning of 2015, for example, there has been an alarming increase in physical attacks on human right defenders, with activists brutally assaulted on the street in broad daylight by police and men in plain-clothes.<sup>41</sup> Arrests, prosecutions and convictions are a more established form of abuse and intimidation of human rights defenders in the country. For many years, Viet Nam has had the ignominious reputation of being one of Asia’s most prolific jailers of peaceful activists.<sup>42</sup> Amnesty International is aware of at least 84 prisoners of conscience currently behind bars in Viet Nam.

Those jailed over the years, come from all regions of the country and from diverse backgrounds and walks of life: CPV cadre who have spoken out against the party’s policies and practices; farmers who have stood up to defend their community’s land; and labour activists who have advocated for the rights and interests of the country’s factory workers, as well as the lawyers who have defended them, and the independent journalists and bloggers who have sought to report on their cases or published articles critical of government or advocating for democratic reforms.

The authorities in Viet Nam are particularly sensitive to advocacy of multi-party democracy. In April 2006, a group called Bloc 8406 issued a manifesto calling for democratic reforms and political pluralism. Several of

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<sup>36</sup> Constitution, Article 3.

<sup>37</sup> Constitution, Article 11(2).

<sup>38</sup> Article 15(4) of the Constitution states that the “practice of human rights and citizens’ rights cannot infringe national interests and legal and legitimate rights and interests of others”. In reality, the “national interests” and the interests of the CPV are viewed as one and the same thing.

<sup>39</sup> See draft “US-VN Plan for Enhancement of Trade and Labor Relations” section under Chapter 19 of the Trans Pacific Partnership, which provides, in Section II, para. 2, that “Viet Nam shall ensure that its laws and regulations permit workers, without distinction, employed by an enterprise to form a grassroots labour union (in Vietnamese “to chuc cua nguoi lao dong”) of their own choosing without prior authorisation”. Available at <https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-VN-Plan-for-Enhancement-of-Trade-and-Labor-Relations.pdf>; See also, “The TPP’s Uneven Attempt at Labor Protection”, *The Atlantic*, 22 January 2016, available at <http://www.theatlantic.com/business/archive/2016/01/tpp-mexico-labor-rights/426501/>.

<sup>40</sup> The country’s complicated regulatory system for associations precludes the formal existence and operation of human rights groups while registration and operations of any groups seeking to work on politically sensitive issues is extremely difficult. See, Hayman, R., Crack, A., Okitoi J., and Lewis, S., “Legal Frameworks and Political Space for Non-Governmental Organisations: An Overview of Six Countries: Phase II”, European Association of Development and Training Institutes (EADI) Policy Paper Series, June 2014, available at <http://www.intrac.org/data/files/resources/801/Legal-Frameworks-and-Political-Space-for-NGOs-an-overview-of-six-countries-Phase-II.pdf>.

<sup>41</sup> See, “Threats and Attacks Against Human Rights Defenders in Vietnam”, *Civil Rights Defenders*, 5 February 2015, available at <http://www.civilrightsdefenders.org/news/threats-and-attacks-against-human-rights-defenders-in-vietnam/>.

<sup>42</sup> See, Annex I, List of current Prisoners of Conscience in Viet Nam. See also, “Silenced Voices: Prisoners of Conscience in Viet Nam”, *Amnesty International*, 7 November 2013, available at <https://www.amnesty.org/en/documents/asa41/007/2013/en/>.

the individuals who signed the manifesto were subsequently jailed: for example, in March 2007, co-founder Father Nguyễn Văn Lý was sentenced to eight years in prison followed by five years' house arrest under Penal Code Article 88 for "conducting propaganda against the state".<sup>43</sup> Activists involved in more recent efforts to promote democracy have faced a similar fate. In December 2015, Nguyễn Văn Đài, a prominent pro-democracy activist and founder of the Viet Nam Human Rights Committee, was arrested and charged under Article 88 of the 1999 Penal Code, a charge that carries a maximum sentence of 20 years in prison.<sup>44</sup> His colleague, Lê Thu Hà, was arrested on the same day and has also been charged under Article 88.<sup>45</sup> Đài, also a member of Bloc 8406, was previously arrested in 2007 and imprisoned for four years under Article 88.<sup>46</sup>

The authorities are also extremely sensitive to any exercise of the rights to freedom of expression and assembly by members of ethnic and religious minority groups. Members of minority groups who are active in human rights and advocacy for religious freedom are regularly jailed for exercising their rights, particularly those who are members of independent religious groups not sanctioned by government.<sup>47</sup> In 2001, 2004, and 2008, large numbers of ethnic minority Montagnards, Christians from the country's Central Highlands, were arrested following demonstrations calling for freedom of religion and an end to confiscation of land owned by Montagnard groups.<sup>48</sup> The fallout from these events continues in 2016 with Montagnards regularly leaving the country fearing arrest and persecution to seek asylum in Cambodia, Thailand and elsewhere.<sup>49</sup>

Members of other minority ethnic and religious groups have also been arrested and jailed. These include, Khmer Krom Buddhists from the Mekong Delta area in the south of the country, Hòa Hảo Buddhists also predominantly in the south, and members of the Unified Buddhist Church of Viet Nam.<sup>50</sup> In February 2013, 22 members of a little known self-styled religious and environmental group whose name, Hội đồng Công luật Công án Bia Sơn, translates as Council for the Laws and Public Affairs of Bia Son, were jailed for between 10 years and life for "aiming to overthrow the people's administration".<sup>51</sup>

On the basis of the activists known to Amnesty International, there appears to be a reasonably even gender division in human rights activism in Viet Nam. Men and women are engaged in different forms of advocacy across the board although certain professions, the legal profession for example, are male dominated. Male prisoners of conscience from ethnic minority groups appear to outnumber females but in most other respects, the authorities do not appear to discriminate on gender grounds when it comes to arresting, detaining and convicting human rights defenders.<sup>52</sup>

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<sup>43</sup> See, "Vietnam: End Attacks on Year-Old Democracy Movement: Government Still Imprisons Writers, Religious Leaders, Rights Lawyers", *Human Rights Watch*, 6 April 2007, available at <https://www.hrw.org/news/2007/04/06/vietnam-end-attacks-year-old-democracy-movement>.

<sup>44</sup> "Viet Nam: Human Rights Lawyer Arrested, At Risk: Nguyễn Văn Đài", *Amnesty International*, Urgent Action, Index No. ASA 41/3098/2015, 17 December 2015, available at <https://www.amnesty.org/en/documents/asa41/3098/2015/en/>.

<sup>45</sup> "Viet Nam: Human Rights Activist Held, At Risk of Torture", *Amnesty International*, Urgent Action, Index No. 41/3126/2015, 22 December 2015, available <https://www.amnesty.org/en/documents/asa41/3126/2015/en/>.

<sup>46</sup> "Viet Nam: Silenced critics must be released", *Amnesty International*, Public Statement, Index No. ASA 41/004/2007, 24 April 2007, available at <https://www.amnesty.org/en/documents/document/?indexNumber=ASA41%2F004%2F2007&language=en>.

<sup>47</sup> See, for example, the case of Nguyễn Văn Lía, in "Freedom of Religion of Belief in Vietnam: The alternative report", *Christian Solidarity Worldwide*, 2014, p. 25, available at <http://www.cswusa.org/filerequest/3325.pdf>. See also, "Vietnam: Torture of Political and Religious Prisoners", *Campaign to Abolish Torture in Vietnam*, 16 January 2014, available at <http://www.stoptorture-vn.org/torture-report.html>.

<sup>48</sup> See, "Socialist Republic of Viet Nam / Kingdom of Cambodia: No sanctuary: the plight of the Montagnard minority", *Amnesty International*, 18 December 2002; "Annual Report, 2004: Viet Nam", *Amnesty International*, Index No. POL 10/0004/2004, 25 May 2004, available at <https://www.amnesty.org/en/documents/pol10/0004/2004/en/>; and "Montagnard Christians in Vietnam: A Case Study in Religious Repression", *Human Rights Watch*, 30 March 2011, available at [https://www.hrw.org/report/2011/03/30/montagnard-christians-vietnam/case-study-religious-repression#\\_ftn6](https://www.hrw.org/report/2011/03/30/montagnard-christians-vietnam/case-study-religious-repression#_ftn6).

<sup>49</sup> "Cambodia: End refoulement of Montagnard asylum seekers", *Amnesty International*, Public Statement, Index No. ASA 23/1126/2015, 4 March 2015, available at <https://www.amnesty.org/download/Documents/ASA2311262015ENGLISH.pdf>.

<sup>50</sup> See, "Vietnam: Torture of Political and Religious Prisoners", *Campaign to Abolish Torture in Vietnam*, 16 January 2014, available at <http://www.stoptorture-vn.org/torture-report.html>.

<sup>51</sup> See, Amnesty International letter to President Trương Tấn Sang, *Call for Release of Prisoners of Conscience*, (Index No. ASA 41/2296/2015), 28 August 2014, available at <https://www.amnesty.org/download/Documents/ASA4122962015ENGLISH.pdf>. "Vietnam jails 22 for subversion", *BBC News*, 4 February 2013, <http://www.bbc.co.uk/news/world-asia-21318836>; "Vietnam sentences 22 activists to jail", *The Telegraph*, 4 February 2013, <http://www.telegraph.co.uk/news/worldnews/asia/vietnam/9846697/Vietnam-sentences-22-activists-to-jail.html>.

<sup>52</sup> See, "Silenced Voices: Prisoners of Conscience in Viet Nam", *Amnesty International*, 7 November 2013, available at <https://www.amnesty.org/en/documents/asa41/007/2013/en/>.

Activists interviewed for this report said they knew from the moment of their arrest that prosecution and conviction were inevitable. They explained how the police, procuracy and courts work towards a predetermined common objective and those caught in the dragnet are left alone to face the overwhelming might of the CPV and the state. Nguyễn Thị Thúy Quỳnh, a female land rights activist imprisoned for “causing public disorder” under Article 245 of the Penal code, told Amnesty International that when she was brought to trial she was handed a pre-prepared indictment which was simply read out in court. She explained that 15 of her 17 defence witnesses were prevented from entering the courtroom, and the two who were permitted to take the stand were not questioned on anything substantive or relevant to the issues under consideration. However, she then heard an announcement, over the courthouse intercom system at the end of the trial, calling the witnesses who had testified against her to collect the money they were promised to cover the costs of their traveling to the court to take part in the proceedings.<sup>53</sup>

In recent years, human rights defenders were mostly charged and convicted with crimes under Chapter XI of the 1999 Penal Code: “Crimes of Infringing National Security”. Chapter XI contains 15 provisions: 14 of which outline crimes with the 15<sup>th</sup> providing for additional penalties for those who commit crimes contained in Chapter XI. The additional penalties included the “depriv[ation] of a number of civic rights for between one year and five years”, probation and house arrest for between one and five years, and the confiscation of property.<sup>54</sup>

The crimes in Chapter XI of the 1999 Penal Code are defined in a vague and malleable manner. For example, Article 88, “Conducting propaganda against the Socialist Republic of Viet Nam”, which has been commonly used in cases of human rights defenders and which carried a penalty of between three and 20 years in prison, for the following acts:

- Propagating against, distorting and/or defaming the people’s administration;
- Propagating psychological warfare and spreading fabricated news in order to foment confusion among people;
- Making, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Viet Nam.<sup>55</sup>

These definitions are so broad as to potentially encompass any form of expression and the mere possession of documents pertaining to human rights and peaceful advocacy. Article 88 has been regularly invoked to imprison men and women for peaceful acts, which are protected by constitutional and international human rights law.

Other national security offences that have been regularly used to arrest and imprison peaceful activists included Article 79, “Carrying out activities aimed at overthrowing the people’s administration” – the maximum penalty for which is the death penalty;<sup>56</sup> Article 87, “Undermining the unity policy”;<sup>57</sup> and Article 89, “Disrupting security”;<sup>58</sup> and Article 91, “Fleeing abroad or defecting to stay overseas in order to oppose the people’s administration”.<sup>59</sup>

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<sup>53</sup> Amnesty International interview, February 2016.

<sup>54</sup> Penal Code, Article 92. Article 122 of the Amended Penal Code.

<sup>55</sup> The equivalent article of the Amended Penal Code, Article 117, is titled “Producing, storing, disseminating or propagating information, documents and/or products against the Socialist Republic of Viet Nam”. Article 117 increases the minimum sentence from three to five years and modifies the means by which the offence is committed: for example, Article 88(1)(a) criminalised “[p]ropagating against, distorting and/or defaming the people’s administration”, whereas Article 117(1)(a) criminalises “[p]roducing, storing, disseminating, or propagating information, documents, and/or products with distorting, defaming contents against the people’s government”. Article 117(3) provides for a one to five year prison sentence for preparing to commit the offence.

<sup>56</sup> The equivalent article of the Amended Penal Code, Article 109, provides for liability for preparing to commit the offence but is otherwise unchanged. Article 109 maintains the death penalty.

<sup>57</sup> See Article 116 of the Amended Penal Code. Article 116(1) increases the minimum sentence under this paragraph from five to seven years and Article 116(3) provides for liability for preparing to commit the offence.

<sup>58</sup> See Article 118 of the Amended Penal Code. Article 118(3) adds liability for preparing to commit the offence.

<sup>59</sup> Article 121 of the Amended Penal Code.

Two further provisions not contained in Chapter XI that were also regularly used in cases involving peaceful activists are Article 245, “Causing public disorder”;<sup>60</sup> and Article 258, “Abusing democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens”.<sup>61</sup> Both carried a penalty of between two and seven years in prison.

Occasionally, the authorities resort to other ordinary criminal charges not generally associated with freedom of expression or association. For example, blogger *Điểu Cày* was convicted on trumped up charges of tax evasion, under Article 161 of the 1999 Code in September 2008,<sup>62</sup> while journalist *Trần Khải Thanh Thủy* was convicted on a fabricated assault charge in 2010 under Article 104.<sup>63</sup>

## THE MINISTRY OF PUBLIC SECURITY

Vietnamese criminal procedure provides for custody<sup>64</sup> and temporary detention<sup>65</sup> of suspects and accused in advance of trial. The Law on the Execution of Criminal Judgements defines an individual serving a prison sentenced as an “inmate”.<sup>66</sup> Under existing law, including laws that have recently come into force, incarceration, whether temporary pre-trial or following a criminal conviction, may be carried out in facilities run by either the People’s Police (“*Công an nhân dân*” in Vietnamese) or the Department of Prison Management (“*Cục quản lý trại giam*” in Vietnamese). Both institutions fall under the control of the Ministry of Public Security.

The interviewees for this report experienced torture and other cruel, inhuman or degrading treatment or punishment while in custody, temporary detention and as convicted persons. In many cases, abuses were more common in the period before conviction as authorities applied pressure to extract a confession or admission of wrongdoing. In others, abuses continued after conviction, with the pressure on specific individuals not abating until the day they were released.<sup>67</sup>

The People’s Police are responsible for investigating all criminal offenses in Viet Nam by individuals not in the army or the judiciary.<sup>68</sup> During the pre-trial period, most individuals interviewed for the report were held in facilities operated by local police at the municipal or district level. After conviction, interviewees were transferred to prisons operated by the Department of Prison Management.

The violations documented in this report were therefore all perpetrated in, or in some cases during transit to, facilities operated by the Ministry of Public Security. In most cases perpetrators were prison staff, officials of the People’s Police or the Ministry itself. In some cases abuses were committed by fellow prisoners acting at the instigation or with the consent or acquiescence of police or officials.

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<sup>60</sup> Article 318 of the Amended Penal Code.

<sup>61</sup> Article 331 of the Amended Penal Code.

<sup>62</sup> “Blogger gets two and a half years in prison after ‘unfair and unfounded’ conviction on tax fraud charge”, *Reporters Without Borders*, 10 September 2008, available at [http://archives.rsf.org/article.php3?id\\_article=28467](http://archives.rsf.org/article.php3?id_article=28467).

<sup>63</sup> See, “Writer who was assaulted gets three-and-a-half-year sentence on trumped-up assault charge”, *Reporters Without Borders*, 5 February 2010, available at <https://rsf.org/en/news/writer-who-was-assaulted-gets-three-and-half-year-sentence-trumped-up-assault-charge>. The full title of the Article 104 offence is “Intentionally inflicting injury or causing harm to the health of other persons”.

<sup>64</sup> Criminal Procedure Code, Article 87. See also, Article 118 of the Amended Criminal Procedure Code.

<sup>65</sup> Criminal Procedure Code, Article 120. See also, Article 173 of the Amended Criminal Procedure Code. The period of time that an individual may be held in temporary detention varies depending on the severity of the crime he/she is charged with.

<sup>66</sup> Article 3.

<sup>67</sup> “Vietnam: Member of the UN Human Rights Council and Human Rights Violation 2014”, *Former Vietnamese Prisoners of Conscience*, 19 January 2015, <http://fvpc.org/wp-content/uploads/2015/01/HR-violation-ENG.pdf>.

<sup>68</sup> Criminal Procedure Code, Article 110. See also, Article 163 of the Amended Criminal Procedure Code.

The prisoners involved in abuses were mostly known or believed to be “antennae” (“ăng ten” in Vietnamese), prisoners who work with the police or prison authorities, gathering information on other prisoners, in exchange for favourable treatment, particularly reductions in sentence and privileges, such as lighter work assignments, better food rations or permission to smoke. Most of the former prisoners of conscience interviewed by Amnesty International described dealings with “antennae” who are an integral part of Viet Nam’s system of torture and other ill-treatment of prisoners of conscience.

### **CIRCULAR 37 OF THE MINISTRY OF PUBLIC SECURITY (2011) AND THE REGIME OF THE INMATE CLASSIFICATION**

Nguyễn Văn Hải, better known as Điều Cày, a prominent former prisoner of conscience, told Amnesty International that prisoners of conscience are kept apart from the general inmate population and held in Security Sections located in walled-off sections within detention centres and prisons.<sup>69</sup> In these sections, he says prisoners of conscience are kept in small cells with two to five cellmates and are prohibited from participating in regular prison activities such as educational programs, vocational training and group sports. They are not permitted to mingle or communicate with other prisoners, except their cellmates, if they have any.

What Điều Cày describes has no basis in the Law on Execution of Criminal Judgements; rather, as he explained to Amnesty International, the basis for this regime is set out in the Ministry of Public Security’s Circular 37 (2011), a non-public document which Amnesty International has obtained a copy of. The Circular, which is implementing legislation under the Law on Execution of Criminal Judgements, sets out detailed and complex regulations for separating prisoners, with an emphasis on ensuring prisoners of conscience are held apart from the general prison population. It is Circular 37 that ensures the separation of prisoners of conscience from other prisoners and provides the basis for many of the violations outlined in Chapters 3 to 7 of this report.

Article 27 of the Law on the Execution of Criminal Judgements provides that certain categories of inmates – women, juveniles and foreigners for example – are to be held separately from the general prison population but does not provide a basis for the separation of prisoners of conscience or for prisoners convicted on charges of infringing national security.<sup>70</sup> The Circular provides for further inmate classification on the basis of four factors: (1) types of crimes, sentence levels, and the nature and extent of danger of the offences to the society; (2) personal characteristics of the individual; (3) his/her attitude towards admission of the crimes; and (4) rehabilitation records.<sup>71</sup> There are three “types” of prisoner and within each type there exists four “categories”.

Broadly speaking, prisoners of conscience are grouped in Type A, which includes inmates who have committed crimes of infringing national security, crimes of undermining peace, war crimes and crimes against humanity, as well as “other inmates classified as Type A due to political and professional requirements”:<sup>72</sup>

- Category AĐB is the highest category of prisoner within Type A. It includes inmates serving 15 years or more, “dangerous re-offenders”, those who have “act[ed] as ringleaders” or who are “key members [or] active participants”, those with “previous convictions”; and those pleading not guilty or who are “die-hard opposers”;<sup>73</sup>

<sup>69</sup> Amnesty International interview, April 2015.

<sup>70</sup> Mandela Rule 11 provides for the separation of men and women prisoners; untried prisoners and convicted prisoners; young prisoners and adults; and persons imprisoned for debt and other civil prisoners from persons imprisoned by reason of a criminal offence.

<sup>71</sup> Circular 37, Section 4.

<sup>72</sup> “Type B” inmates include those with previous convictions as well as those convicted of murder, rape, and drugs related offences. “Type C” inmates include first time offenders, including those who were formerly public officials and members of “social organisations”, and juveniles convicted of committing specific categories of crimes including crimes of infringing upon “citizen’s democratic freedoms”, “public safety [and] public order” and “administrative management order”. Prisoners of conscience convicted under Articles 245 and 258 fall into Type C prisoners although the discretion to include inmates in Type A “due to political and professional requirements” may mean that such prisoners of conscience are included in Type A in practice.

<sup>73</sup> Circular 37, Section 6.

- Inmates may also be placed in the first category of Type A “due to political or professional requirements” or where they were classified in the lower category but are “reclassified into a higher category” as a result of “poor re-education records”.<sup>74</sup>

Critically, an inmate’s classification dictates the conditions of his/her incarceration and treatment. For example, Section 2 of the Circular states that “room sharing is not allowed for inmates in different categories” while Section 10 states that inmates “are divided into groups” according to category “to be detained and supervised for learning, working, vocational training and daily activities”. Inmates in Category ADB are held in “strict incarceration” in cells “which must be ensured to be strong and solid, and equipped with a security-control system for observation and supervision”.<sup>75</sup>

The Law on Enforcement of Custody and Detention, the coming into effect of which was scheduled for 1 July 2016 but has been postponed for the time being, overlaps significantly with the provisions of the Law on Execution of Criminal Judgements and appears to provide a surer footing for the separation of prisoners of conscience from the general prison population. Unlike the Law on Execution of Criminal Judgements, the Law on Enforcement of Custody and Detention expressly provides for a distinct classification of “offenders who infringe national security”. Under Article 18 of the new law, inmates are organised for incarceration according to classification.

Circular 37 is the key implementing legislation for the Law on the Execution of Criminal Judgements. In a meeting with officials of the Ministry of Justice in June 2016, Amnesty International was informed that the Law on the Execution of Criminal Judgements is to be reviewed to take into account, amongst other things, Viet Nam’s obligations under UNCAT. It is a matter of utmost priority that Circular 37 is also reviewed or replaced with an instrument which fully upholds and facilitates the rights of all persons in detention and imprisonment and is in line with the Mandela Rules.

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<sup>74</sup> *Ibid.* The remaining three categories of Type A – Categories A1, A2, and A3 – include those serving 7 to 15 years, three to 7 years, and three years or less, respectively. Inmates may be “reclassified” – placed in a higher or lower category – depending on good or poor “re-education records” at “annual reviewing occasions”. Category “mitigation”, the term used in the Circular to describe reclassification to a lower category, can also be achieved where inmates provide “information that helps the prisons or detention camps hinder inmates’ attempts to oppose or escape from the incarceration places”. On the other hand, aggravation of inmate category can result from “relentless opposing activities”, collusion with other inmates or outsiders to perform “opposing activities”, or where an individual causes “disorder and loss of safety” in his/her facility.

<sup>75</sup> Circular 37, Section 11.



# 3. “ONLY THE DEAD CANNOT EAT THE FOOD WE BRING” – INCOMMUNICADO DETENTION AND ENFORCED DISAPPEARANCES

**“In Viet Nam, detainees are completely isolated from family and the outside; not protected by any law. They can’t consult with a lawyer, or communicate with the outside world about their treatment. They are completely helpless in facing the manoeuvres of the investigator.”**

Former prisoner of conscience Điếu Cày<sup>76</sup>

Every person interviewed for this report was subjected to a lengthy period of incommunicado detention, ranging from 46 days to two years, after his/her arrest. An incommunicado detention is one in which the detainee is held without access to the outside world, particularly to family, friends, lawyers, independent doctors and courts. The practice of incommunicado detention is built into the Vietnamese system of violating

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<sup>76</sup> Amnesty International interview, April 2015.

the rights of prisoners of conscience; it happens as a matter of course and serves to exacerbate prisoners' isolation inside the "prisons within prisons".

In some cases, the interviewee was held in solitary confinement throughout the period of incommunicado detention; in others, the individual was held in a cell alone with an "antenna", whose function was to gather information about the detainee in the hours he/she was not being interrogated. Most detainees interviewed were held in incommunicado detention for the duration of their criminal investigation. In some cases, interviewees were able to receive packages from their families during this period, including food, medicine and sleeping materials; in others, they were not. In several cases, restrictions on access to family were relaxed after the conclusion of the investigation, with one family member usually being permitted to visit once a month. In most cases, restrictions on meetings with lawyers persisted until days before trial, when interviewees were permitted to meet their legal counsel once or twice, usually for an hour or less each time. The interviewees all stated that whatever meetings they were permitted with family and lawyers were monitored by police and prison staff, who took notes and in some cases made video and audio recordings.

The UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment states that "[p]romptly after arrest [...] a detained or imprisoned person shall be entitled to notify [...] members of his family",<sup>77</sup> and that communication with the outside world shall not be denied for more than a matter of days.<sup>78</sup> Vietnamese Law provides that an arrested and detained individual may notify family and communicate with legal counsel. For example, Article 85 of the 2003 Criminal Procedure Code provided that the family of an arrested individual must be immediately informed of his/her arrest,<sup>79</sup> while Article 58 provided for the participation of legal counsel from the moment of a "custody decision".<sup>80</sup> Article 58 however also provided that "in case of necessity to keep secret the investigation of crimes of infringing upon national security" the participation of defence counsel may be suspended until "the time of termination of investigation".<sup>81</sup>

The UN Human Rights Committee<sup>82</sup> and the UN Special Rapporteur on torture<sup>83</sup> have stated that incommunicado detention encourages torture and other cruel, inhuman and degrading treatment and punishment. The Committee has repeatedly ruled that prolonged periods of captivity without contact with the outside world can themselves constitute violations of ICCPR Article 7 (the prohibition on torture), and Article 10 (the right of persons deprived of their liberty to be treated with humanity and dignity)<sup>84</sup> and has called on states to take measures to prohibit the practice.<sup>85</sup> The Special Rapporteur on torture has also stated that "prolonged incommunicado detention in a secret place may amount to torture as described in article 1 of the Convention against Torture".<sup>86</sup> The UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) provide that prisoners must be allowed to regularly receive visits from family and friends, and be

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<sup>77</sup> UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly Resolution A/RES/173, 9 December 1988, (UN Body of Principles) available at <http://www.un.org/documents/ga/res/43/a43r173.htm>, Principle 16.

<sup>78</sup> UN Body of Principles, Principle 15.

<sup>79</sup> See Article 116 of the Amended Criminal Procedure Code. The corresponding articles in the previous and amended codes both provide that the notification may be postponed where it would impede the investigation.

<sup>80</sup> See Article 74 of the Amended Criminal Procedure Code which states that "[i]n case of arrest or custody, defence counsel shall participate in the procedure from the time the arrested is presented at the headquarters of the investigation bodies and agencies tasked with conducting a number of investigative activities or the time custody decisions are issued". Under Article 83 of the previous Code, a custody decision had to be made within 24 hours of an arrest. Under Article 114 of the Amended Criminal Procedure Code, the time period for making custody decisions is reduced to 12 hours after an arrest.

<sup>81</sup> See Article 74 of the Amended Criminal Code which maintains the provision for suspending the participation of defence counsel in cases involving crimes of infringing national security.

<sup>82</sup> Human Rights Committee, General Comment 20, UN Doc. HRI/GEN/Rev.1 at 30, (1994); see also, Concluding Observations of the Human Rights Committee: Peru, UN Doc. CCPR/C/79/Add.67, (1996), para. 17.

<sup>83</sup> Report of the Special Rapporteur on Torture, UN Doc. A/56/156, July 2001, para. 39(f).

<sup>84</sup> *El-Megrisi v. Libya*, Communication 449/1990, UN Doc. CCPR/C.50/D.440/1990, 23 March 1994, para 5.4; *Celis Laureano v. Peru*, Communication 540/1993, UN Doc. CCPR/C/56/D/540/1993, 25 March 1996, para 8.5; *Mukong v. Cameroon*, Communication 458/1991, UN Doc. CCPR/C/51/D/458/1991, 24 July 1994, para 9.4; *El Alwani v. Libyan Arab Jamahiriya*, Communication 1295/2004, UN Doc. CCPR/C/90/D/1295/2004, 29 August 2007, para 6.5.

<sup>85</sup> Human Rights Committee, General Comment 20, UN Doc. HRI/GEN/Rev.1 at 30, (1994), para. 11.

<sup>86</sup> Special Rapporteur on Torture, annual report, UN Doc. A/56/156, (2001), para. 14.

provided with adequate opportunity, time and facilities to be visited by and to communicate with legal counsel in full confidentiality.<sup>87</sup>

Prison authorities in Viet Nam routinely and arbitrarily deny prisoners of conscience family visits for extended periods of time. The mothers of two of the prisoners of conscience interviewed by Amnesty International died whilst their children were in incommunicado detention.

Paulus Lê Văn Sơn, a Christian activist from Ha Noi, told Amnesty International that during his first two years in detention he was only permitted to see a member of his family once. Eight months into his detention, Lê Sơn's mother died but he only heard of this news one year later when he next saw members of his family at his trial. Throughout the 24 months, Lê Sơn was denied permission to send or receive letters. After release, he learned that his family's request that he be temporarily released to attend the funeral had been denied. The authorities had never informed him of the request or told him his mother had died.<sup>88</sup> Tạ Phong Tần, imprisoned for her blogging and advocacy activities, told Amnesty International that during her four years in prison, only her sister was permitted to visit her.<sup>89</sup> Tần's mother, Đặng Thị Kim Liên, twice requested permission to visit her during her pre-trial detention but was denied access. On 30 July 2012, a week before Tần's trial was scheduled to take place, Liên set herself on fire in front of a government office in Bạc Liêu province in protest at the jailing of her daughter. She died from her injuries en route to hospital.<sup>90</sup>

Phạm Thị Lộc, a single mother and land rights activist from northern Viet Nam, described the impact of her incommunicado detention on her young daughter, who was 11 at the time Lộc was arrested. For 20 months after her arrest, Lộc had no contact with her daughter, who was initially cared for by a neighbour and subsequently by the family of Lộc's estranged husband. Despite repeated requests, Lộc was denied permission to write letters to her daughter. Lộc told Amnesty International that her daughter was present when Lộc was arrested but was not told where she had been taken. When Lộc was convicted over a year later, her daughter was not present in court but was informed by the authorities of her mother's conviction. Twenty months after Lộc's arrest she was finally given permission to write to her daughter. Lộc told Amnesty International that the experience had a profound effect on her daughter whose schooling was severely undermined by the resulting emotional turmoil.<sup>91</sup>

The purpose of the practice is straightforward – to increase pressure on an individual to admit wrongdoing and to confess to the charge against him/her. The practice is invariably accompanied by other tactics designed to break the prisoner of conscience into confessing.

Điểu Cày was subjected to several periods of incommunicado detention during his six and a half years in prison, the longest lasting 17 months. For the first six of these 17 months, his family was denied any information about his fate or whereabouts despite numerous written requests to police authorities. He was also subjected to enforced disappearances.

An “enforced disappearance” occurs when a person is arrested, detained or abducted by a state or state agents, who then deny that the person is being held or conceal their whereabouts, placing them outside the

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<sup>87</sup> UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), UN General Assembly Resolution, UN Doc. A/Res/70/175, 17 December 2015, Rules 58 and 61.

<sup>88</sup> Amnesty International interview with Paulus Lê Văn Sơn, November 2015.

<sup>89</sup> Amnesty International interview with Tạ Phong Tần, January 2016.

<sup>90</sup> “Mother of Vietnamese blogger ‘burns herself to death’”, *BBC News*, 30 July 2012, available at <http://www.bbc.co.uk/news/world-asia-19053910>.

<sup>91</sup> Amnesty International interview with Phạm Thị Lộc, March 2016.

protection of the law.<sup>92</sup> While Viet Nam is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance, an enforced disappearance almost invariably constitutes an act of torture.<sup>93</sup>

Describing the ordeal, Điếu Cày told Amnesty International that after his conviction on tax evasion charges in 2008, police continued to investigate him on other charges.<sup>94</sup> In his own words, the authorities “had used tax charges to arrest me quickly” but “their real interest was to go after a national security charge”. While serving his sentence on tax charges in Chí Hòa Prison, in February 2009 Điếu Cày was clandestinely transferred to PA-24 Detention Centre in Hồ Chí Minh City where he was interrogated for a month about his political activities prior to his arrest. A year later, while imprisoned at Xuân Lộc Prison he was again transferred to PA-24 for another month’s interrogation. On both occasions, Điếu Cày was not informed of the new charges under which he was being investigated and his requests for legal representation were denied.

Điếu Cày was returned to Xuân Lộc Prison shortly before his scheduled release date, 20 October 2010. When the day arrived, with his family and friends outside the prison holding a banner to celebrate his release, he was informed that he was to be investigated for another crime, this time under Article 88. He was thrown into a van by police and driven back to PA-24 without being allowed to tell his family what was happening. And so began 17 months of incommunicado detention and close to two years in which he did not see his family. During this time, the Hồ Chí Minh City Security Investigation Office rejected requests by Điếu Cày’s lawyer to represent him, stating in a letter in February 2011:

*“This is a case involving violations of national security with complicated details. Some aspects of the investigation need to be kept secret. Therefore, during the investigation phase, lawyers are not allowed to participate in the defence of the accused person”<sup>95</sup>*

Điếu Cày was not allowed to meet with a lawyer until more than a year later, on 29 March 2012, after the conclusion of the investigation into the Article 88 charges against him.

During the first six months of Điếu Cày’s investigation under Article 88, his former wife, Dương Thị Tân, went to PA-24 Detention Centre 13 times in unsuccessful attempts to visit him, deliver supplies, and find out how much longer he would be detained for. She was turned away by police each time, provided no information about his whereabouts or well-being, and told only that her husband refused to accept the food and other provisions she had brought. On 20 April 2011, after six months with no information, Dương Thị Tân issued a poignant public appeal, in which she wrote:

*So far, there is no response from the security agencies. Our fear for Điếu Cày’s life is weighing heavily on our family, causing a crisis of spirit in my children and making our lives a living hell. We believe that only the dead cannot eat the food we bring; there is no reason that [Điếu Cày] should ‘refuse to accept food and supplies’ as officials of the Security Investigative Office told us verbally (but refused to confirm on paper).<sup>96</sup>*

What Dương Thị Tân did not know, and police officials did not tell her, was that at the time of her public appeal it had been more than five months since Điếu Cày had been held at PA-24 Detention Centre. In November 2010, police had transferred him to B-34, a detention centre in Hồ Chí Minh City administered by

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<sup>92</sup> International Convention for the Protection of All Persons from Enforced Disappearance, adopted by UN General Assembly resolution 61/177 on 20 December 2006, entered into force 23 December 2010, Article 2, available at <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>.

<sup>93</sup> *Quinteros v. Uruguay*, Communication No. 107/1981, UN Doc. CCPR/C/OP/2 at 138 (1990), 21 July 1983, paras. 13-14; and *Celis Laureano v. Peru*, Communication No. 540/1993, UN Doc. CCPR/C/51/D/540/1993, 4 July 1994, para. 9.

<sup>94</sup> Amnesty International interview, April 2015.

<sup>95</sup> “Need for immediate action regarding the detention of Nguyen Van Hai (blogger Diey Cay)”, Human Rights Watch letter to embassies in Ha Noi, 29 April 2011.

<sup>96</sup> Public letter from Dương Thị Tân, 20 April 2011.

the Ministry of Public Security, where they continued to investigate him. Also unknown to Điều Cày's family, and the world, was that in February 2011 he had gone on hunger strike for 28 days at B-34 to protest his illegal and incommunicado detention. On 6 March 2011, his hunger strike came to an end when police found him unconscious and near death. He was rushed to hospital but sent back to B-34 two days later, where his incommunicado detention continued for over a year, until 29 March 2012, when he was finally permitted to see his lawyer.

Tien (pseudonym), a Khmer Krom Buddhist monk from Sóc Trăng province was also the victim of an enforced disappearance. In April 2013, Tien was publicly denounced at his pagoda for teaching Khmer language and culture but attempts by the authorities to arrest him were frustrated by the intervention of Tien's supporters. A month later, scores of police, military and men in plain clothes came to the pagoda. There was a violent confrontation with Tien's supporters and members of his family outside the room where he stayed. Police threatened the supporters with guns, and as Tien watched from inside his room, he saw his mother being beaten by the police. The mixed forces eventually broke into Tien's room, using axes and hammers to break two windows and part of the outer wall.

Ten men entered Tien's room; they beat him, shocked him with electric batons, and threatened to shoot him. He was stripped naked, and made to dress in civilian clothes. He was forced into a police vehicle, where the beating continued until he lost consciousness. When he awoke, he was at the local police station, where the violence continued with police and military beating him as he lay on the floor for around an hour. He was woken when police threw a bucket of water on him as he lay on the floor. He was injected with an unidentified liquid three times. This reduced his physical pain but made him lose consciousness again. When he next woke, he was in the home of a former local police officer, where he was detained in a locked room for one month. Tien said that for five days after his arrest, his mother believed he had been killed. On the fifth day, she was taken to the house where Tien was held as he was filmed by a television crew reading a statement denouncing his previous acts. Tien says that he read the statement because a gun was pointed into his back. Tien thinks he was held in the secret location because the authorities believed he would die from the torture he endured on the day he was detained. When he recovered, he was told he would be sent to court and to prison. Before this could happen, he escaped and fled to Cambodia. For the first two weeks of his detention, Tien says he urinated blood.

Amnesty International also documented two instances of enforced disappearances involving ethnic minority Montagnard former prisoners of conscience which lasted for periods of three and four months respectively.<sup>97</sup> In both cases, the men were brought to trial without legal representation and without their families being notified.

In cases of enforced disappearances, the prohibition of torture is breached not only with regard to the disappeared, but also with regard to his/her relatives on the grounds of the anxiety and anguish caused to them.<sup>98</sup> The families of the four men in the cases of the enforced disappearances documented by Amnesty International suffered this anxiety and anguish in not knowing what had happened to their loved ones and are also victims of a violation of ICCPR Article 7.

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<sup>97</sup> See cases of Lu and Dar in Chapter 5. In the case of Dar, his family believed he had been killed and his body dumped in the jungle where he had been hiding from the authorities. His family eventually learned that he was still alive from the family of another inmate in the same facility where Dar was being held.

<sup>98</sup> *Quinteros v. Uruguay*, Communication No. 107/1981, UN Doc. C/OP/2 at 138 (1990), 21 July 1983, para. 14.

# 4. “EXISTING BUT NOT LIVING” – SOLITARY CONFINEMENT

**“Solitary confinement is the prison within the prison. When we are in prison we have already lost our freedom. In isolation, you lose the notion of time. I felt like I was dead [...] They used the solitary confinement cells to discipline prisoners [and] for prisoners who cannot be re-educated. Some people have died in those cells. When you lay where people have died, you feel haunted.”**

Phạm Văn Trội, former prisoner of conscience who endured six months and seven days of solitary confinement in Nam H Hà prison, Hà Nam province<sup>99</sup>

Isolation is the primary method by which Viet Nam’s prison authorities ensure that prisoners of conscience are made to feel utterly alone and abandoned inside “prisons within prisons”.

Prisoners of conscience described to Amnesty International their experience of months of solitary confinement in dark, fetid cells without access to fresh air, clean water and sanitation. Dar, an ethnic minority Christian, told Amnesty International that for 10 months he lived in complete darkness in solitary confinement not knowing if it was night or day, his isolation punctuated only by interrogation sessions outside his cell or beatings in the cell itself. He told Amnesty International that the only thing that prevented him from causing harm to himself during this desperate period was his belief in God.

Solitary confinement is used against prisoners of conscience for manifold reasons: to exert pressure on them to confess the crimes they are charged with; to punish them for withstanding this pressure and disputing the

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<sup>99</sup> Amnesty International interview with Phạm Văn Trội, December 2016.

charges against them; for refusing to submit to “re-education”; and for raising their voices against the pitiless practices and appalling conditions inside Viet Nam’s prison system.

Solitary confinement is defined in the Mandela Rules as the “confinement of prisoners for 22 hours or more a day without meaningful human contact”.<sup>100</sup> The Rules further prohibit “in all circumstances”, the use of indefinite as well as “prolonged solitary confinement”,<sup>101</sup> that is, “solitary confinement for a time period in excess of 15 consecutive days.”<sup>102</sup> The Rules consider prolonged solitary confinement to “amount to torture or other cruel, inhuman or degrading treatment or punishment.”<sup>103</sup> In addition, restrictions apply on the imposition of solitary confinement on prisoners belonging to certain groups.<sup>104</sup>

Solitary confinement should be used, if at all, only as an exceptional measure, for as short a time as possible, under judicial supervision, with adequate review mechanisms, including the possibility of judicial review.<sup>105</sup> The UN Human Rights Committee,<sup>106</sup> the Special Rapporteur on torture,<sup>107</sup> and the UN Committee against Torture<sup>108</sup> have all stated that prolonged or indefinite solitary confinement can amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture. This view, however, has not been incorporated explicitly into a key international instrument. Vietnamese law provides for solitary confinement. The Law on the Execution of Criminal Judgements provides for “confinement to a disciplinary room” while the newly passed Law on Enforcement of Custody and Detention, which came into force on 1 July 2016, provides for “isolation in disciplinary rooms”.<sup>109</sup> These measures are imposed at the discretion of the heads of detention centres and prisons where prison regulations are violated but no legal provision ensures that those who are disciplined are informed of accusations against them, given an opportunity to defend themselves or permitted to seek judicial review of the decision.<sup>110</sup>

Both the Law on the Execution of Criminal Judgements and the new Law on Enforcement of Custody and Detention provide for solitary confinement for periods of up to 10 days. However, Circular 37 of the Ministry of Public Security (2011) provides for “separate detention” for periods of between three and six months. According to Amnesty International’s findings, the term “separate detention” in practice means solitary confinement. Section 12 of Circular 37 states that where an inmate shows “progress with rehabilitation”, he/she “shall be released from separate detention cells ahead of schedule”. However, where there is no progress, the “separate detention term shall be extended”. The Circular does not set a cap on the number of terms of separate detention that may be imposed on an inmate. Decisions on release and extension of separate detention terms are made by “supervisors at prisons and detention camps”.<sup>111</sup>

Amnesty International is unaware of any provision of Vietnamese law that permits solitary confinement for pre-trial detainees other than as punishment for violating prison regulations and yet several of the prisoners

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<sup>100</sup> UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by UN General Assembly resolution 70/175, 17 December 2015, Annex, Rule 44.

<sup>101</sup> Rules (43(1)(a),(b).

<sup>102</sup> Rule 44.

<sup>103</sup> Rule 43(1).

<sup>104</sup> Rule 45(2).

<sup>105</sup> CAT Concluding Observations: Azerbaijan, UN Doc. CAT/C/AZA/CO/3 (2009), para. 13; CAT Concluding Observations: Denmark, UN Doc. CAT/C/DNK/CO/%, para. 14; and CAT Concluding Observations: Israel, UN Doc. CAT/C/ISR/CO/4 (2009), para. 18. The new Mandela Rules, which were adopted by the UN General Assembly in December 2015, similarly provide “[a]ny form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation” shall “always be subject to authorization by law or by the regulation of the competent authority”.

<sup>106</sup> “General Comment 20, Article 7”, Human Rights Committee, UN Doc. HRI/GEN/1/Rev.1 at 30, 1994, para.6, available at <http://www1.umn.edu/humanrts/gencomm/hrcom20.htm>. See also, *McCallum v. South Africa*, Human Rights Committee, UN Doc. CCPR/C/100/D-1818/2008 (2010), para. 6.5.

<sup>107</sup> UN Special Rapporteur on torture, UN Doc. A/66.268, 5 August 2011, para. 81; Report of the Special Rapporteur on torture, A/63/175, 28 July 2008, para. 77.

<sup>108</sup> CAT Concluding Observations: New Zealand, UN Doc. CAT/C/CR/32/4 (2004), paras. 5(d) and 6(d); CAT Concluding Observations: USA, UN Doc. CAT/C/USA/CO/2 (2006), para. 36

<sup>109</sup> Law on Execution of Criminal Judgements, Article 38(1)(c), and Law on Enforcement of Custody and Detention, Article 23(1)(b).

<sup>110</sup> See Mandela Rules, Rules 41(2, 4).

<sup>111</sup> Circular 37, Detailing Classification and Incarceration of Inmates according to Categories, Ministry of Public Security, No. 37/2011/YY-BCA, (2011).

of conscience interviewed for the Report were subjected to solitary confinement in pre-trial detention despite having committed no violation of prison regulations.

Vi Đức Hòì, a blogger and former member of the CPV, was held in solitary confinement in a detention centre in Lạng Sơn province for eight months after his arrest. For the first two months of his detention, Hòì was denied access to family and to legal counsel. Throughout this period, he was only permitted to leave his cell for interrogation sessions. Not only was Hòì held alone in a cell, the cells surrounding his were emptied in order to further his isolation. When the investigation ended after two months, prisoners were returned to the cells adjoining Hòì's but his solitary confinement continued for six months. During this period, he was permitted to meet his wife once a month for 45 minutes and met his lawyers twice; all of these meetings were monitored by police who took notes, photographs and made audio recordings. At no other time during this six months was he permitted to leave his cell.<sup>112</sup>

In interview with Amnesty International, Hòì described his 12 square metre cell as having no windows and no natural light; a light bulb in the cell was on for 24 hours a day and there was a toilet inside the cell. Due to its location in the north, Lạng Sơn experiences extremes of cold weather. Throughout his isolation, Hòì slept in an unheated cell on an elevated concrete platform with no mattress. The prison provided him with a thin blanket and he used his clothing as extra bedding. The authorities did not permit Hòì's family to provide him additional clothing and sleeping materials. Before his arrest, Hòì suffered from haemorrhoids, high blood pressure and headaches; ailments which were exacerbated by the appalling conditions of his incarceration. His family were not allowed to send him medicine; when he complained he was not given any medical examination or treatment, rather the authorities gave him generic medicine he believed was of poor quality.<sup>113</sup>

In Tri Ton district detention centre, An Giang province, Chau Hen, a Khmer Krom activist, endured three and a half months of solitary confinement after his arrest on charges of "destruction of property" and "causing public disorder" under Articles 143 and 245 of the Penal Code. Chau Hen was held in a dark windowless cell which was enclosed behind two levels of steel doors. His isolation was punctuated by interrogation sessions which took place every three or four days when he was brutally beaten and humiliated. During this time he had no contact with his family or a legal representative and, aside from the interrogation sessions, was not permitted to leave his cell.<sup>114</sup>

While the Law on the Execution of Criminal Judgements provides for solitary confinement for inmates "violating prisons regulations or committing an illegal act", the grounds for imposing solitary confinement are widened significantly by Circular 37. The Circular provides for "separate detention", which in practice means solitary confinement, for inmates who "show signs or activities of making contact and colluding with other inmates or outsiders in order to carry out opposing activities or attempting to escape from the prison", as well as for "inmates with relentless opposing activities or inmates requiring isolation for feasible education or re-education".<sup>115</sup>

Amnesty International interviewed three male former prisoners of conscience who experienced lengthy periods in solitary confinement in Nam Hà Prison, Hà Nam province as punishment for protesting the conditions in the prison and the treatment of their fellow prisoners. For example, Phạm Văn Trội who spent six months and seven days in solitary confinement for complaining about fumes from a nearby brick kiln

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<sup>112</sup> Amnesty International interview with Vi Đức Hòì, December 2015.

<sup>113</sup> See also the case of Dar outlined in detailed in Chapter 5.

<sup>114</sup> Amnesty International interview with Chau Hen, November 2015.

<sup>115</sup> Circular 37, Section 12(7). During periods of "separate detention", other disciplinary measures including "restrictions to contacts with relatives, sending and receiving letters, and receiving gifts" may be imposed at the discretion of "supervisors at prisons and detention camps".



entering the cell he shared with 40 other prisoners of conscience, explained the conditions he endured as follows:

*In solitary confinement, it was very brutal. The cell was around six square metres and was made of concrete. There was a bucket for a toilet and no water. I was allowed out of the cell twice a day, for around three to five minutes at a time. In that time, I had to empty the bucket and then take my food into the cell. This all had to happen within the three to five minutes.*<sup>116</sup>

According to Phạm Văn Trội, it is common for people to die as a result of the conditions of solitary confinement. He told Amnesty International that the thought that he slept where others had died haunted him.<sup>117</sup>

Nguyễn Xuân Nghĩa was subjected to two separate periods in solitary confinement: for three months and 10 weeks respectively. Nghĩa was punished for openly questioning a television report shown in the prison which concerned government attempts to alleviate traffic in Viet Nam and, on the other occasion, for protesting the use of untreated human excrement as a fertilizer for the growing of food for inmates. He told Amnesty International that he remained in his cell throughout the day and night except for a 15 minute window when he was permitted out to empty the bucket he used for a toilet and to collect his ration. During this time he walked 28 steps: the entirety of his exercise every day.<sup>118</sup>

A prisoner in an adjoining cell told Nghĩa that another prisoner had committed suicide in solitary confinement shortly before Nghĩa's arrival in that wing of the prison. Nghĩa said that at times he himself wished for death and reasoned that by killing himself he could at least garner media attention to the dire situations of prisoners of conscience in Viet Nam.

Vi Đức Hồi, who had previously endured eight months in solitary confinement during pre-trial detention as outlined above, was subjected to a second unbroken stint of nine months in solitary confinement in Nam Hà Prison in punishment for going on hunger strike. Contrary to the international standards, Hồi told Amnesty International that there is no formal procedure where solitary confinement is concerned, rather it is imposed at the discretion of the prison authorities as and when they see fit. During this period of solitary confinement, Hồi wrote a number of complaint letters to the prison authorities, none of which received a reply.<sup>119</sup>

All the cases outlined above exceed the 10 day maximum for "confinement to a disciplinary room" outlined in the Law on the Execution of Criminal Judgements, as well as the limit for isolation contained in the new Law on Enforcement of Custody and Detention. In interview with Amnesty International, Phạm Văn Trội explained that solitary confinement is, in practice, meted out in periods of three months. Trội's own solitary confinement lasted six months and seven days. After the first three months, he was asked to retract his complaints about the fumes from the brick kiln and to confess to the initial criminal charges against him. He refused, and was given a further three months. When this was finished he once again refused overtures from the authorities to retract his protests and confess his alleged crimes. He was assigned a further three months in solitary confinement but this was cut short when he was subjected to a punitive transfer to a different facility.<sup>120</sup>

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<sup>116</sup> Amnesty International interview with Phạm Văn Trội, December 2016.

<sup>117</sup> *Ibid.*

<sup>118</sup> Amnesty International interview with Nguyễn Xuân Nghĩa, December 2016.

<sup>119</sup> Amnesty International interview with Vi Đức Hồi, December 2015.

<sup>120</sup> Amnesty International interview with Phạm Văn Trội, December 2016.

The experience described by Trội appears to have its basis in Section 12 of Circular 37 which provides for “separate detention” in periods of three and six months, which can be extended at the discretion of “Supervisors at prisons and detention camps”. Điếu Cày explained to Amnesty International that Circular 37 is used to deprive inmates of rights which are guaranteed to them under laws such as the Criminal Procedure Code. In his words:

*In Vietnam, laws provide only a general legal framework. It's the decrees, circulars, and other implementing regulations that determine how officials actually implement the laws in practice. Often it is these implementing regulations that strip away the rights of Vietnamese citizens, while violating not only Vietnam's constitution and laws, but [also] international covenants to which Vietnam is a signatory.<sup>121</sup>*

These cases appear to establish that Circular 37 is relied upon in practice to impose prolonged periods of solitary confinement which go beyond those provided for in the Law on the Execution of Criminal Judgements and which violate the prohibition on torture and other ill-treatment.

Another practice described to Amnesty International by a number of the interviewees is the detention of prisoners of conscience in cells with “antennae”. This practice does not involve physical isolation *per se* but prisoners of conscience who are subjected to the practice are kept in cramped cells with individuals who are rewarded by the prison authorities for intimidation and hostility, and thus denied meaningful human contact. Being detained under constant threat of imminent violence, with no chance of recourse or respite can also inflict severe mental suffering.<sup>122</sup>

In the most extreme case recounted to Amnesty International, Mai Thị Dung, a Hòa Hảo Buddhist, endured two and a half years in which she shared cramped cells within the solitary confinement wings of two prisons, in An Giang and Vĩnh Long provinces, with a series of prisoners she believed were either “antennae” or undercover prison staff. In An Giang, Dung was locked in a room which she described as containing a toilet and just about enough space for two persons to be able to lie down and sleep in. In both prisons, her cell was behind two or three locked doors with no open windows or ventilation shafts resulting in such bad ventilation that it was difficult to breathe. This appears to have been by design, as on one occasion the prison authorities in Vĩnh Long presented her with a document for her to sign which guaranteed her conditions of detention in which she could move and breathe easily in exchange for a confession. She declined.

Throughout this period, Mai Thị Dung shared her cell with a series of different women, all of whom wore casual clothes rather than the prison uniforms. Dung does not know if these women were “antennae”, fellow prisoners working with the authorities or staff from the prison or the Ministry of Public Security. Whoever they were, Dung says that each woman could only bear the conditions inside the cell for a period of days, after which she would leave, only to be replaced by another. For two and a half years, Dung was interrogated for nine to 10 hours a day, seven days a week. When she was returned to her cell in the evenings, her cellmate continued the questioning, asking her about her activism.<sup>123</sup>

The severity of Mai Thị Dung's treatment and its prolonged duration appear to be linked with the severity of the crime the authorities wanted her to confess to. Following her arrest in August 2005 she was sentenced to five years' imprisonment under Article 245 (disturbing public order) for her role in a peaceful protest the same month for religious freedom. While imprisoned at An Giang Prison, she was prosecuted again, initially on murder charges, for her role in a 2001 protest, in which a fellow Hòa Hảo Buddhist named Nguyễn Thị

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<sup>121</sup> Amnesty International interview with Điếu Cày, April 2015.

<sup>122</sup> As described in Chapter 5, “antennae” detained alongside prisoners of conscience have also engaged in physical violence.

<sup>123</sup> Amnesty International interview with Mai Thị Dung, December 2015.

Tuy died after self-immolating. In September 2007, she was sentenced to an additional six years imprisonment under Article 245 for “causing public disorder”. Dung says that throughout her 10 year period in prison, before and after her two separate convictions, authorities exerted pressure on her and other Hòa Hảo Buddhist prisoners of conscience to take responsibility for Tuy’s death.

Two and a half years of incommunicado detention, prolonged interrogations, appalling prison conditions, including denial of any exercise in the open air, confinement to a small cell and poor air quality, all for the purpose of extracting a “confession,” in all likelihood meet the key criteria of torture under the UNCAT definition.

# 5. “DON’T TALK BACK OR THEY WILL KILL YOU” – THE INFLICTION OF PAIN AND SUFFERING

**“What I learned was that the more you answered, the more you talked, the more beatings you got. If you are ignorant you might talk too much and have to endure more beatings. It’s better if you talk less. Many prisoners die during torture by the police. Other prisoners told me to endure the beatings saying ‘don’t talk back or they will kill you.’”**

Khmer Krom, former prisoner of conscience, Chau Hen<sup>124</sup>

Amnesty International’s research documented a number of cases involving physical violence that constituted torture or other cruel, inhuman or degrading treatment or punishment. The violence largely took place during the pre-trial period although in some cases it took place after conviction. Violence documented by Amnesty International included sustained beatings that took place over a period of months as well as cases involving isolated acts of violence. Perpetrators included police and prison officials, as well as “antennae”. The cases involving regular beatings of prisoners of conscience by police or prison officers over periods of months that were documented by Amnesty International all involved members of ethnic minority groups.

Lu, an ethnic minority Montagnard from Đắk Lắk province in the Central Highlands, described experiencing near daily torture sessions that lasted for a period of around four months.<sup>125</sup> His ordeal began on arrival at

<sup>124</sup> Amnesty International interview with Chau Hen, November 2015.

<sup>125</sup> Members of ethnic and religious minority groups are commonly arrested for exercising their religious and political beliefs, and the use of torture and other ill-treatment against these individuals during the interrogation period and beyond has been documented by a number of human rights groups. See, “Vietnam: Torture of Political and Religious Prisoners”, *Campaign to Abolish Torture in Vietnam*, 16 January 2014, available at <http://www.stoptorture-vn.org/torture-report.html>; UN Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, Addendum: Mission to Viet Nam (21 to 31 July 2014), 30 January 2015, UN Doc. A/HRC/28/66/Add.2,

Buôn Ma Thuột City prison where he was taken after his arrest. Police officers attacked him as he got out of their vehicle to enter the prison, beating him unconscious. When he woke, aching all over his body from the beating, he found himself in a prison cell with two dogs chained outside his cell. He was left in this cell for four days without food. A filthy cistern inside the cell provided his drinking water and he slept on the floor with no mat, mosquito net or blanket. Lu (pseudonym) described being taken to interrogation the next morning:

*The police opened the door to take me to interrogation. As soon as I stepped out, one of them powerfully struck my head from behind, making me fall down. Then they stomped on my body. The police told me that I must fully confess everything, if not I would die without my wife ever knowing.*

After this attack, he was brought into an interrogation room, where he refused to answer any questions. He was punched in the face, head and chest; kicked and boxed on the ears until he lost consciousness. After spending four days in his cell without anything to eat, Lu asked for food. The police prepared a bowl of rice which was first given to one of the dogs. He was allowed to eat whatever the dog left behind. For five days, he was tortured by police using various techniques. On one occasion, pens were placed between his fingers and his hands were twisted around, causing excruciating pain. On another, the legs of a table were placed on his toes and police put all their body weight on the table resulting in unbearable pain and causing his toes to bleed.

He was then transferred to the provincial police detention centre in Buôn Ma Thuột where his ordeal continued. On the first day, he was kicked to the floor by a police officer, then an officer stamped on his face and held a gun to his head. He does not remember precisely how long his ordeal went on for or how long each session lasted as he invariably lost consciousness but he was tortured on an almost daily basis for a period of around four months. When his interrogators began electrocuting him and told him that his entire family, including his wife and child, would be arrested if he did not confess, he finally relented and agreed to plead guilty to the charges against him.

Chau Hen, a Khmer Krom land rights activist from An Giang, also underwent months of torture at the hands of police. After being arrested in December 2010, Hen was held in solitary confinement in a dark cell for four months. Hen's isolation was broken by beatings every three or four days. Hen told Amnesty International that during these interrogation sessions, torture instruments were laid out on a table, including electric shock devices and weapons, such as truncheons. Heng described his beatings to Amnesty International:

*During interrogation they often beat me unconscious – they would hit me with their hands, slap me on my face, grab me by the neck and choke me, and pick me up and smash me against the wall. One time they punched me in the centre of my chest. I lost consciousness and there was blood all over my body.*<sup>126</sup>

Dar (pseudonym), another minority Montagnard, was beaten on countless occasions during a period of 10 months when he was held in pre-trial detention in Đắk Lắk provincial prison.<sup>127</sup> Throughout this period, Dar was held in solitary confinement in complete darkness and total silence and permitted only to wear underwear in a cell he estimates was no bigger than four square metres. For a period of two months, Dar was taken from his cell every day, interrogated and beaten. Dar says that police beat him with sticks and rubber tubes, punched him and kicked him. On one occasion he was shocked with electricity four times

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available at [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_66\\_Add.2\\_E.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_66_Add.2_E.doc); "On the Margins: Rights Abuses of Ethnic Khmer in Vietnam's Mekong Delta", *Human Rights Watch*, January 2009, available at <https://www.hrw.org/report/2009/01/21/margins/rights-abuses-ethnic-khmer-vietnams-mekong-delta>.

<sup>126</sup> Amnesty International interview with Chau Hen, November 2015.

<sup>127</sup> Aside from a single visit from his sister three months into his detention which was cut short by the authorities when she encouraged Dar to have faith in God, Dar was held incommunicado throughout this 10 month period.

until he lost consciousness. On five separate occasions, Dar says his legs were burnt by an officer who lit a piece of paper and trailed it along the length of his legs. On three other occasions, he was made to stand with his legs apart and arms held above his head for a period of eight hours. Every time he moved or lowered his arms, he was beaten. In Dar's words, "if my hands moved, they hit my hands. If my legs moved, they hit my legs". On another occasion, Dar was hung by the arms from the ceiling for 15 minutes while police men beat him. Dar told Amnesty International that he lost consciousness and woke up lying on the floor after a bucket of water was thrown on him.

On several occasions, Dar was taunted throughout the torture by police officers who asked him whether his God would come to save him. In addition to the beatings that took place at the interrogation sessions, Dar was beaten approximately 10 times in his solitary confinement cell in complete darkness with the result that he couldn't tell how many people were attacking him.

In other cases, Amnesty International documented individual acts involving the intentional infliction of severe pain and suffering by state officials for purposes such as punishment or extracting a confession, and which was often severe, thus constituting torture.

Đỗ Thị Minh Hạnh, a female prisoner of conscience from Hồ Chí Minh City, told Amnesty International that during her arrest she was restrained by four or five police while another male officer punched her in the face. On the same occasion, as Hạnh was being dragged into an interrogation room in the local district police station, she received a flurry of punches to the neck and mouth, which caused her to bleed. Once inside the room, police cuffed her hands, wrapped her feet around the legs of the chair she was placed in and cuffed her ankles together. For three to four hours, Hạnh was kept in this position as police interrogated and insulted her, including accusing her of having an affair with a fellow rights' activist.<sup>128</sup>

Amnesty International has documented a number of cases of violence, intimidation and humiliation by prisoners known or believed to be "antennae". Both the definition of torture and the provision for other cruel, inhuman or degrading treatment or punishment cover instances where the immediate perpetrators are not officials but rather the acts are "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".<sup>129</sup> This means that instances such as those described here fall squarely within the responsibility of the government of Viet Nam and violate its obligation to prevent torture and other ill-treatment

Paulus Lê Văn Sơn, a male former prisoner of conscience, described being assaulted while in pre-trial detention in B14 Detention Centre in Ha Noi by a cellmate who openly boasted that he had agreed with the prison authorities that he would try to get information about Lê Sơn in exchange for favourable treatment. Lê Sơn told Amnesty International that he stopped speaking to the cellmate who grew increasingly angry over a period of days. One night as Lê Sơn was praying with his eyes closed, the cellmate kicked him in the face and punched him, causing him to bleed.<sup>130</sup> There were further acts of violence committed against Lê Sơn by his cellmates in Hoả Lò Prison, Ha Noi. For a period of four months, Lê Sơn was detained in a cell with four others, who had been convicted on drugs and robbery charges. These men later told Lê Sơn that they had been put in the cell with him by the prison authorities who instructed them to mistreat him. Lê Sơn told Amnesty International that on his first day in this cell, his four cellmates made him squat on one leg as they kicked and punched him. The beating lasted 30 minutes. Over a period of five months in a cell with these four men, Lê Sơn was beaten four or five times. He was eventually moved to another cell after going on hunger strike to protest being held in that cell.<sup>131</sup>

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<sup>128</sup> Amnesty International interview with Đỗ Thị Minh Hạnh, December 2015.

<sup>129</sup> See UNCAT, Articles 1 and 16.

<sup>130</sup> Amnesty International interview with Paulus Lê Văn Sơn, November 2015.

<sup>131</sup> *Ibid.*

Hồ Thị Bích Khương, an activist from north central Viet Nam, shared a cell with two prisoners who she estimates beat her on seven occasions over a period of two to three months. On one of these occasions, a prison officer joined the two prisoners in beating Khương. On a separate occasion, after being moved to a different prison, Khương was attacked by four other prisoners, as staff looked on without intervening.<sup>132</sup>

Threats of violence by “antennae” are also common. Lê Quốc Quân, who was detained in a cell with around 50 other prisoners, says that he was routinely threatened by cellmates. He explained that in prisons in Viet Nam sharpened toothbrush handles are used as “shanks” or “shivs”. On one occasion, during a period when he was refusing to confess to the charges against him, a fellow prisoner in his cell threatened to gouge his eyes out using such an instrument. Quân believes that the prisoner was working on the instruction of the prison authorities.<sup>133</sup>

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<sup>132</sup> Amnesty International interview with Hồ Thị Bích Khương, March 2015.

<sup>133</sup> Amnesty International interview with Lê Quốc Quân, November 2015.

# 6. “ONLY THOSE WHO ADMIT THEIR CRIMES GET MEDICAL TREATMENT” — THE RIGHT TO HEALTH AND THE DENIAL OF MEDICAL TREATMENT

**“The prison authorities told me that I had to admit my crimes before they would take me to the hospital. When I was about to die, when I couldn’t speak any longer, that is when they took me to the hospital. Even then, they cuffed my wrist and legs and I couldn’t move”.**

Mai Thị Dung, Hòa Hảo Buddhist and former prisoner of conscience<sup>134</sup>

The men and women who were interviewed for this report told Amnesty International they went to jail fit and robust, or in some cases with minor medical complaints, and emerged with broken bodies and failing health. Many of them now have long lasting medical problems. Their testimonies reveal how Vietnamese prison authorities withheld medical treatment and assistance in a calculated effort to apply further pressure on individuals to admit their wrongdoing and confess to the charges against them, or simply as a means to punish them for their alleged crimes against the regime.

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<sup>134</sup> Amnesty International interview with Mai Thị Dung, December 2015.



The denial of medical treatment by prison authorities amounts to cruel, inhuman or degrading treatment. Where such denial is intentional and purposeful and results in severe pain or suffering, whether physical or mental, it amounts to torture as defined in Article 1(1) of the UNCAT. It should be noted that while denying treatment is arguably an omission, the UN Special Rapporteur on torture has explained that the term “act”, as it is included in the definition of torture in CAT Article 1(1), “is not to be understood in any way as to exclude omissions”.<sup>135</sup>

Viet Nam is a state party to the International Covenant on Economic, Social and Cultural Rights which guarantees everyone, including individuals in custody, the right to the highest attainable standard of physical and mental health.<sup>136</sup> International prison standards require that people in custody receive health care comparable to that available to people in the outside community and must have access to the health services available in the country without discrimination, including on the grounds of their legal situation or status.<sup>137</sup> Vietnamese law pertaining to prisons also guarantees those deprived of their liberty access to medical care. For example, the Law on Execution of Criminal Judgements provides for the transfer of a prisoner to a hospital where they are suffering from a condition or injury which is beyond the treatment capacity of health facilities within the detention centre or prison where they are being held.<sup>138</sup>

In the cases of those interviewed by Amnesty International, these standards were roundly ignored. Tạ Phong Tần, who was in her early 40's when she was arrested, told Amnesty International that at the time she went to prison she suffered from high blood pressure but otherwise had a clean bill of health.<sup>139</sup> In just under two years in prison, she developed a broad range of medical problems including arteritis, an inflammation in her throat, and a heart problem. She told Amnesty International that the only medicine she ever received were remedies for colds and, if she couldn't survive her medical conditions herself, she would have been left to die.

Lu (pseudonym), whose harrowing experiences are outlined above in Chapter 5 told Amnesty International that upon his release from prison he was diagnosed with the following medical problems: cerebral circulatory disorder; shoulder and neck inflammation; degenerative spinal column; skewed vertebral column; steatosis/liver disease; parasitic blood infection; sinus infection; and sore throat. Since his release from prison, Lu has suffered periods of incapacitating back pain and severe headaches.

Chau Hen, the Khmer Krom land rights activist, told Amnesty International that during four months' incommunicado detention at Tri Ton District Detention Centre prior to his trial, he was not only beaten unconscious numerous times during interrogation sessions, but also injected with unknown drugs on at least two occasions that caused memory loss and left him unconscious for long periods of time and unable to speak or think clearly. His wife, who was not allowed to see him until two days before his trial, said in an interview with *Radio Free Asia* that he was unable to speak or keep his eyes open during her visit. At his trial on March 31, 2011, he was barely conscious. He was unable to stand or speak and had to be carried into the courtroom by four policemen. As Chau Hen told Amnesty International:

*On the day of my trial, they had to carry me in a stretcher to the vehicle that took me to the court, where four police officers carried me inside. I couldn't stand on my own, I was too weak and thin. For most of the trial I wasn't conscious, kept falling asleep. I was physically unable to speak at that time. When I opened my eyes I could see my*

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<sup>135</sup> Report of the UN Special Rapporteur on torture, UN Doc. A/HRC/13/39/Add.5, 5 February 2010, para. 31, available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5_en.pdf).

<sup>136</sup> Viet Nam ratified the International Covenant on Economic, Social and Cultural Rights on 24 September 1982. Article 12 provides as follows: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

<sup>137</sup> See for instance, Mandela Rules, Rule 24(1): “The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.”

<sup>138</sup> Article 48. See, also, Law on Enforcement of Custody and Detention, Article 30.

<sup>139</sup> Amnesty International interview with Tạ Phong Tần, January 2016.

*wife, but I could not speak. My hands were in handcuffs and my feet were shackled. The police had to hold me up when I was ordered to stand to listen to the judgement. It was like I was dead already. I didn't know myself.*<sup>140</sup>

Chau Hen told Amnesty International that later he became seriously ill with a high fever while imprisoned at An Giang prison. Prison officials didn't send him to the prison medical clinic until he was too weak to walk and his weight had dropped from 65 to 40 kilos.

*Four prisoners had to carry me to the clinic on a stretcher. I was unconscious. When I came to, the prison doctor – a police officer with the rank of two stars – asked me what was wrong with me. I opened my mouth to respond, but was unable to speak. When I couldn't answer, the doctor hit me in the mouth with a round piece of hard rubber. He knocked my teeth out, including a wisdom tooth. I lost so much blood I passed out again. Because they thought I was about to die, they decided to send me to a private hospital outside the prison. They changed me from the prison uniform to regular clothes. At the private hospital, even though I was barely conscious, police guarded me and they shackled my ankles to the bed with metal cuffs.*<sup>141</sup>

Other interviewees told Amnesty International that they received medical treatment for serious problems but only after filing a number of complaints with the prison authorities. In some instances the treatment was ineffective and may even have exacerbated the original problem.

Nguyễn Xuân Nghĩa, who is now in his 60's, says he spent months suffering from a nerve problem in his jaw which was so chronic that he was unable to eat, brush his teeth or wash his face. After months of complaints, he was eventually sent for treatment but as a result of a misdiagnosis, the procedure failed and his pain persisted. He was not sent back for further treatment but told by the warden of An Diem Prison to deal with the pain and seek treatment on his release. Earlier in his prison term, Nghĩa had suffered from external haemorrhoids for a period of two years, including eight months in which the problem caused anal leakage. Nghĩa said this problem also went untreated despite numerous pleas for medical assistance. Nghĩa said that the problem caused him such distress he eventually pulled down his trousers to show the doctor the haemorrhoids protruding from his anus. He was sent for treatment but prison officials intentionally embarrassed him by parading him around the hospital in handcuffs. Throughout the procedure, he was chain to the hospital bed despite being under anaesthetic.<sup>142</sup>

Cases like Nguyễn Xuân Nghĩa's which involve the *de facto* denial of access to pain relief causing severe pain and suffering, constitute torture or other cruel, inhuman or degrading treatment or punishment.<sup>143</sup>

Mai Thị Dung, a Hòa Hảo Buddhist former prisoner of conscience was similarly denied access to pain relief. While in Xuân Lộc prison, Dung spent over two years in the prison's "health clinic", a seven by three metre cell in which eight extremely ill prisoners lay side-by-side in 80cm wide sleeping spaces. Throughout this period, Dung lay incapacitated, unable to walk or leave the cell without the assistance of other prisoners. Dung says she was suffering from gallstones, an ailment she had since before she was sent to prison, and other complaints, but that her problems went untreated for over two years. She told Amnesty International that the authorities refused to send her for an operation, explaining that "only those who admitted crimes got medical treatment. If you don't admit, you don't get any treatment".<sup>144</sup> This indicates a coercive purpose behind the denial of medical care, which is clearly covered by the Article 1(1) of torture.

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<sup>140</sup> Amnesty International interview with Chau Hen, November 2015.

<sup>141</sup> *Ibid.*

<sup>142</sup> Amnesty International interview with Nguyễn Xuân Nghĩa, December 2016.

<sup>143</sup> See, Report of the Special Rapporteur on torture, UN Doc. A/HRC/10/44, 14 January 2009, para. 72, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.44AEV.pdf>.

<sup>144</sup> Amnesty International interview with Mai Thị Dung, December 2015. Amnesty International has documented cases involving prisoners of conscience who are behind bars today in which urgently needed medical treatment is being withheld for the explicit purpose of extracting a

Mai Thị Dung's experience strongly indicates that the denial of medical treatment to prisoners is not limited to prisoners of conscience. Throughout her ordeal, there were eight prisoners in total in the "health clinic" at any given time; Dung and seven other prisoners, all of whom were "regular" prisoners. Dung told Amnesty International that during this period, 11 fellow prisoners died from HIV/AIDS for want of medical treatment; four died in the cell itself and seven others died within days of being transferred to a local hospital. In Dung's words, her fellow prisoners "were treated worse than dogs, they didn't receive any care, any attention". Dung told Amnesty International that the door in the cell was left open but that the inmates were so weak that they couldn't walk outside. The prisoners urinated where they lay. When prisoners died in the cell, their bodies were left for up to three hours in the tightly packed cell. Their spaces were then immediately taken up by other prisoners suffering from HIV/AIDS.<sup>145</sup>

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confession. See, for example, "Viet Nam: Release Trần Thị Thủy", *Amnesty International*, Urgent Action, Index No. ASA 41/3052/2015, 11 December 2015. See also, "Viet Nam: Human Rights Defender Denied Medical Care: Bùi Thị Minh Hằng", *Amnesty International*, Urgent Action, Index No. ASA 41/3368/2016, 2 February 2016.

<sup>145</sup> Amnesty International interview with Mai Thị Dung, December 2015.

# 7. “A SEALED BOX WHERE YOU CAN BARELY BREATHE” – PUNITIVE PRISON TRANSFERS

**“We asked them to stop so we could use the bathroom and get some fresh air but they didn’t allow it, we had to urinate in the truck. While on the road, I threw up a lot. I almost passed out because it was exhausting and I was thirsty. The other prisoners too.”**

‘Lu’, an ethnic minority former prisoner of conscience, who endured a 36 hour, 1,400 km non-stop prison transfer

A central component of Viet Nam’s system of torture and ill-treatment of prisoners of conscience is the practice of transferring individuals between different detention centres and prisons throughout the period of their incarceration. The practice is brutal in its execution and often leaves prisoners hundreds of kilometres from their families and support networks, cut off from vital supplies of extra food, clothing and medication.

The practice is common in cases of prisoners of conscience who withstand pressure to “confess” to their alleged crimes, or those who engage in activism behind bars. In some cases documented by Amnesty International, the transfers took place immediately after the prisoner of conscience in question was alleged to have breached prison regulations. In other cases, transfers were effected without reference to a specific breach. The transfers are invariably unannounced and the individual is moved without being told where he/she is going and how long the journey is likely to take. The conditions of the transfers in the cases documented by Amnesty International were appalling and amounted to cruel, inhuman and degrading treatment. In none of the cases were the families of the individual informed of the transfer, either before or after it took place; instead they discovered only when they next visited the detention centre or prison where the individual was previously held.

Vietnamese law regulates the transfer of prisoners. Article 3(16) of the Law on the Execution of Criminal Judgements defines a “transfer” as the delivery of an individual to “a competent agency or person for assisting in investigation, prosecution and trial activities, medical examination and treatment or incarceration management for a certain period”. Article 35 provides for transfers on grounds of “education and reformation or medical examination and treatment or incarceration management” but does not explicitly provide for transfer as a measure of discipline. The new Law on Enforcement of Custody and Detention deals with the issue in less detail, merely outlining, in Article 21, that detention facilities have the responsibility to transfer people in custody where a decision has been made by an agency or body mandated to make such a determination.

Circular 37 of the Ministry of Public Security sheds further light on the practice of transferring prisoners, and the rationale underlying such transfers. Under Section 13, “supervisors” in prisons have the authority to transfer inmates between “sub-camps” in a given prison where those inmates “show signs or activities of colluding, forming cliques, showing localism, ganging up to oppose, attempting to sabotage/destroy or escape from prisons, refusing to work or study and for inmates who repeatedly violate prisons’ regulations and have been educated but show no progress in rehabilitation”.<sup>146</sup> Where prison supervisors deem it “necessary to split, separate and transfer inmates to another prison in order to ensure the prison’s order and safety and in response to technical requirements of incarceration”, they must report to “the Director of the Inmate Management Department, who will report to the General Director of the Police’s General Department for Criminal Judgement Execution and Judicial Assistance for a decision to transfer them to another prison”.<sup>147</sup>

All of the former prisoners of conscience interviewed for this report experienced prison transfers. Most were subjected to more than one. Whereas international standards on the treatment of prisoners require that prisoners are allocated, to the extent possible, to prisons close to their homes,<sup>148</sup> the transfers documented by Amnesty International often left prisoners hundreds and even thousands of kilometres from home.

Where prison transfers are concerned, the case of *Điểu Cày* stands out. During his six and a half years in prison, *Điểu Cày* was transferred 20 times, to 11 different detention centres and prisons. *Điểu Cày*’s high profile may go some way to explain the high number of prison transfers he experienced throughout his sentence. He himself viewed the transfers as a punishment for his intransigence and refusal to cooperate with the prison authorities:

*From my experience, when I first arrived in prison, different levels of security will ask you to “work” with them. When none of them can effectively “work” with you and produce results, the warden is unhappy. They know that if they let this happen they will lose their power over the prisoners.*<sup>149</sup>

This is a conclusion that other interviewees share. Nguyễn Xuân Nghĩa, who served time in four facilities during his six years’ imprisonment stated that the transfers were a punishment for his resisting “rehabilitation”.<sup>150</sup> Mai Thị Dung, the Hòa Hảo Buddhist, told Amnesty International that she was transferred the length of Viet Nam, bringing her over a thousand kilometres from her home, two days after she started a hunger strike to protest prison authorities’ withholding her medical care.<sup>151</sup>

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<sup>146</sup> Sub-camps within prisons (often designed K-1, K-2, etc.) can hold up to 1,000 prisoners each and may be located as much as three kilometres apart from each other.

<sup>147</sup> Circular 37, Section 13.

<sup>148</sup> Mandela Rules, Rule 59; and UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN doc. A/RES/43/173, 9 December 1988, Principle 20.

<sup>149</sup> Amnesty International interview with *Điểu Cày*, April 2015.

<sup>150</sup> Amnesty International interview with Nguyễn Xuân Nghĩa, December 2016.

<sup>151</sup> Amnesty International interview with Mai Thị Dung, December 2015.

Phạm Văn Trội, a male interviewee was transferred after spending six months in solitary confinement as punishment for protesting conditions in the Security Section of Nam Hà Prison in Hà Nam province. He explained to Amnesty International that when he continued to refuse to abandon his advocacy, prison authorities transferred him to Prison 6 in Nghệ An province, which he said was for “troublesome” prisoners who cannot be “re-educated”. Phạm Văn Trội’s health had deteriorated whilst he was in solitary confinement and he believes the order to move him was not made by the prison warden but at the national level of the prison authority.<sup>152</sup>

Điểu Cày believes that in his case, prison officials were also motivated by a desire to prevent him from gathering information about abuses in specific prisons and getting that information published online:

*[The prison authorities] also knew that I was monitoring what they did – the abuse of prison labour, sending people to solitary, etc. For these reasons they would eventually decide it was best to transfer me elsewhere.*

*None of the individuals interviewed by Amnesty International were warned in advance of transfers; the journeys often began in the middle of the night with the individual woken in his/her cell and brought to a vehicle, usually a windowless prison van, and transported hundreds of kilometres or more without being told where he/she is going.*<sup>153</sup>

In a particularly brutal instance, Jarai former prisoner of conscience Lu (pseudonym) described a 1,400km journey from a prison in the Central Highlands to a facility in the north together with seven other ethnic minority prisoners in a vehicle he described as a “windowless box”. The eight men were shackled into a windowless van for a journey that took one day and two nights. They were fed once during the journey – a rice soup that was almost inedible – and were given no water for a whole day. The men were not allowed out and shared a small bucket to urinate in. Lu told Amnesty International he vomited throughout the journey and was on the verge of losing consciousness due to thirst and exhaustion.

In Mai Thị Dung’s first transfer, a journey of 10 hours beginning at 3am, she was transported in complete darkness in the back of a windowless prison van. She was handcuffed to a fellow prisoner for the duration of the journey, and given no food or water. She described searching her belongings in the darkness to find a bag to be sick into and vomiting for the duration of the journey.<sup>154</sup>

Mai Thị Dung’s second transfer took her from the southern tip of Viet Nam to Ha Noi, in the north of the country; a journey that took two days and one night to complete. The transfer took place at a time when Dung was two days into a hunger strike in protest at the failure of the prison authorities to provide her needed medical care for gallstones and other ailments. On this journey, Dung was not handcuffed because, as she explained, she was so weak there was no need to restrain her. She was tricked into believing she was being brought to hospital. On discovering she was being transferred to another facility she asked for a message to be sent informing her family. The prison authorities refused.<sup>155</sup>

The transfers further the isolation of the prisoners, by breaking the relationships they had established with fellow inmates and often increasing the geographical distance from their families. Điểu Cày’s last transfer, to Prison 6 in Nghe An province, put more than 1,400 kilometres between him and his family in Hồ Chí Minh City. Mai Thị Dung told Amnesty International that her family had to take a 62 hour bus journey of 1,600 kilometres to visit her. Tạ Phong Tần, ended up nearly 2,000 kilometres from home in Thanh Hóa prison just south of Ha Noi.<sup>156</sup>

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<sup>152</sup> Amnesty International interview with Phạm Văn Trội, December 2015.

<sup>153</sup> Amnesty International interview with Điểu Cày, April 2015.

<sup>154</sup> Amnesty International interview with Mai Thị Dung, December 2015.

<sup>155</sup> *Ibid.*

<sup>156</sup> Amnesty International interview with Tạ Phong Tần, January 2016.

# 8. VIET NAM'S CURRENT PRISONERS OF CONSCIENCE

This Report was written on the basis of interviews conducted with former prisoners of conscience; individuals who are no longer deprived of their liberty. But the torture and other ill-treatment they described to Amnesty International continue in the cases of those who are behind bars today. This Chapter provides information about current prisoners of conscience who are experiencing the types of abuses described above. At time of writing, June 2016, there are at least 84 prisoners of conscience in Viet Nam. They include bloggers, labour and land rights activists, political activists, ethnic and religious minorities, and advocates for human rights and social justice who have either been convicted after unfair trials or are held in pre-trial detention, solely for peacefully exercising their human rights.

## PRE-TRIAL DETENTION

Four peaceful activists are currently known to be in pre-trial detention. All are held incommunicado such that it is impossible to know their conditions of detention and treatment.

Human rights lawyer and former prisoner of conscience **Nguyễn Văn Đài**, and his Brotherhood for Democracy colleague **Lê Thu Hà** were arrested on 16 December 2015. They are both charged under Article 88 of the 1999 Penal Code and have been held incommunicado since then, with their families and lawyers denied access to them.<sup>157</sup> They are believed to be held in B14 Detention Centre, Ha Noi. Activists who tried to visit them a few days after their arrests were denied access, and Đài's wife has complained that her efforts to pass on warm clothing and supplies for him were obstructed. She has also been unable to give him a Bible and says that she does not know whether he currently needs medicine for his Hepatitis B and whether he is receiving treatment.

**Lê Thanh Tùng**, a former prisoner of conscience, journalist and member of the pro-democracy group Bloc 8406, was arrested around 14 or 15 December 2015 in Gia Lai province. His house was searched by police in December 2015, who removed personal items. He was released in June 2015, six months before

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<sup>157</sup> "Đài is a symbol for generations who fight for human rights", interview with Vũ Minh Khánh, wife of Nguyễn Văn Đài, *Radio Free Asia*, 18 April 2016, available at <http://www.rfa.org/english/news/vietnam/interview-dai-is-a-symbol-04182016170022.html>.

completing a four year prison term imposed in August 2012 under Article 88. He is reported to have been moved to Thái Bình province, but his family have not been informed of his whereabouts.

**Trần Anh Kim** is a former prisoner of conscience, army officer and writer. He was arrested in September 2015 for investigation under Article 79 of the 1999 Penal Code. It is believed to be in connection with a group that he was about to launch named “Raising the flag of democracy” (Lực Lượng Quốc Dân Dựng Cờ Dân Chủ). Kim, a supporter of Bloc 8406, was previously sentenced to five and a half years’ imprisonment with three years’ house arrest on release in December 2009 for his peaceful activities protesting against injustice and government corruption; he was released in January 2015 and re-arrested eight months later. Following his arrest, he was initially believed held in Thái Bình province, but there are unconfirmed reports he has been moved to B14 prison in Ha Noi.

## POST-CONVICTION IMPRISONMENT

Convicted prisoners of conscience usually have greater access to family visitation than those in pre-trial detention, however accessing information about their treatment remains difficult.

**Bùi Thị Minh Hằng**, is a prominent land rights activist who is also known for participating in demonstrations against China’s controversial territorial claims in the South China Sea<sup>158</sup> and related policies of the Vietnamese government. She is serving a three year sentence under Article 245 of the Penal Code for creating “serious obstruction to traffic”, and is being denied medical treatment. She was arrested on 11 February 2014 on her way to visit human rights lawyer Nguyễn Bắc Truyển. Hằng was held incommunicado until the end of March 2014 when she was finally allowed to meet a lawyer and member of her family. During that time she embarked on a hunger strike in protest. She was held in Đồng Tháp prison until her trial on 26 August 2014 when she was transferred to Gia Trung prison in Gia Lai province, some 1,000 km from her family. Prison authorities are known to have withheld medical treatment from her for a range of medical problems she has developed including a painful stomach ulcer, frequent severe headaches and occasional blackouts.<sup>159</sup> She is due for release in 2017.

**Đặng Xuân Diệu**, a Catholic, is an engineer, blogger and social activist, who was arrested in July 2011, and sentenced in January 2013 to 13 years’ imprisonment with five years’ house arrest on release under Article 79. He was accused of connections to an overseas based group campaigning for democracy in Viet Nam. According to the account of a prisoner released in 2014 who was previously held in an adjoining cell to Diệu in Prison No. 5, Thanh Hóa province, Diệu had variously been held in solitary confinement for prolonged periods, beaten by prison guards, shackled in a cell with a prisoner who beat him, forced to drink unclean water, denied water for washing, a blanket and mosquito net and lived in unsanitary conditions with no toilet in the cell. He reported that Diệu had gone on several hunger strikes in protest at his treatment and was subsequently moved to Xuyên Mộc, in Bà Rịa-Vũng Tàu province in the south. He is not due for release until 2024.

**Đoàn Huy Chương**, a former prisoner of conscience, and **Nguyễn Hoàng Quốc Hùng** are labour organizers and members of the independent United Workers-Farmers Organization arrested in February 2010. They have both stated that they were beaten during pre-trial detention in order to make them “confess” to the charges against them. In October 2010 they were sentenced to seven and nine years’ imprisonment respectively under Article 89 for “disrupting security”. They had handed out advice leaflets at a shoe factory in Trà Vinh where the workers were protesting their working conditions. Chương is detained at Z30A prison,

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<sup>158</sup> The South China Sea is known in Viet Nam as the East Sea.

<sup>159</sup> “Human Rights Defender Denied Medical Care”, *Amnesty International*, Urgent Action, Index No. ASA 41/3368/2016, 2 February 2016, available at <https://www.amnesty.org/en/documents/asa41/3368/2016/en/>.



Xuân Lộc in Đồng Nai province; Hùng is in Xuyên Mộc prison where he is said to have been put in solitary confinement for protesting the installation of a camera in his cell. In March 2016, he took part in a 13-day hunger strike with four other prisoners of conscience in protest at treatment and conditions in Xuyên Mộc.<sup>160</sup>

**Siu Wiu** is a Montagnard Christian activist from the Central Highlands and a leader of a demonstration in Gia Lai province in April 2008 that called for religious freedom and release of Montagnard prisoners of conscience. In January 2009, he was sentenced to 10 years in prison under Penal code Article 89, disrupting security.<sup>161</sup> While imprisoned at Nam Hà Prison he spent six months in solitary confinement before being transferred to Phú Sơn 4 Prison in Tây Nguyên province, even further away from his family in Gia Lai. During pre-trial detention, police tortured him for more than two months during interrogation sessions. Among the torture tactics they employed was to hang him upside down and beat him with wooden batons.

**Venerable Thach Thuol** is a Khmer Krom Buddhist monk from Sóc Trăng province. In March 2013 local authorities and Buddhist officials ordered Thuol and two other Khmer Krom monks to defrock or face imprisonment, alleging that the three were spreading “fabricated information” abroad about rights violations in Vietnam, through interviews with foreign media and contact with the Khmer Krom Federation, a US-based advocacy group.<sup>162</sup> On 18 May 2013, police arrested, detained and tortured one of Thuol’s fellow monks in Sóc Trăng. That same day, more than 100 police surrounded Thuol’s temple in an effort to arrest and defrock him. After making an impassioned video appeal that was posted online, in which he expressed fears that he too would be tortured, he attempted to flee Vietnam. On 20 May 2013 police arrested him at the border with Cambodia. During pre-trial detention, police beat Thuol during interrogation sessions. He continued to assert his innocence at his trial in September 2013. He was sentenced to six years imprisonment under Article 91, “fleeing abroad to oppose the people’s administration”, and is believed to be in Xuân Lộc Prison in Đồng Nai Province.

**Trần Huỳnh Duy Thức**, entrepreneur and blogger, was arrested in May 2009. During his trial, he said that he was tortured in detention to force him to confess. He was initially accused of “theft of telephone wires” before being charged under Article 88 for “conducting propaganda” against the state. However, he was tried on 20 January 2010 under Article 79 and sentenced to 16 years’ imprisonment with five years’ house arrest on release. According to witnesses, the judges deliberated for only 15 minutes before returning with the judgment, which took 45 minutes to read, indicating it had been prepared in advance of the hearing. After the trial he was transferred to Xuân Lộc prison. In June 2013 he was moved to Xuyên Mộc prison following a protest at harsh treatment by criminal prisoners. His family were not informed of the transfer until they arrived at Xuân Lộc to visit him. In March 2016, he took part in the hunger strike described above together with Nguyễn Hoàng Quốc Hùng and three others.<sup>163</sup> He has since been moved again, this time to Prison 6 in Nghệ An province which is around 1,400km from the family home in Hồ Chí Minh City. He is not due for release until 2025.

**Trần Thị Thúy** is a Hòa Hảo Buddhist and land rights activist arrested in August 2010 who is serving an eight year sentence after being convicted under Article 79. She and six others were accused of having joined or been associated with an overseas based pro-democracy group. Since being detained, Thúy has been denied medical treatment for a tumour on her uterus on the grounds that she hasn’t “confessed” her crimes. A prison officer told her to admit her crimes or “die in prison”. She has difficulty walking, needing a crutch or

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<sup>160</sup> “Vietnamese Political Prisoners End Hunger Strike After Authorities Relent”, *Radio Free Asia*, 25 March 2016, available at <http://www.rfa.org/english/news/vietnam/vietnamese-political-prisoners-end-hunger-strike-after-authorities-relent-03252016143455.html>.

<sup>161</sup> “HRW Submission to EU on Bilateral Dialogue with Vietnam”, *Human Rights Watch*, 13 December 2015, available at <https://www.hrw.org/news/2015/12/13/hrw-submission-eu-bilateral-dialogue-vietnam>.

<sup>162</sup> See for example, “Khmer Krom: Appeals For Fair Trial Of Arrest Monks”, Khmer Krom Federation, 23 September 2013, available at <http://unpo.org/article/16409>; and “Annual Report 2015 – Tier 1 [Countries of Particular Concern]”, *United States Commission on International Religious Freedom*, 1 May 2015, available at <http://www.uscirf.gov/sites/default/files/Vietnam%202015.pdf>.

<sup>163</sup> “Vietnamese Political Prisoners End Hunger Strike After Authorities Relent”, *Radio Free Asia*, 25 March 2016.

help. She also has high blood pressure for which she takes medication. Thúy is in severe physical pain and has told her family that she has felt on the verge of death at several points in recent months. She is currently detained in An Phước Prison, Bình Dương province, which is 900 km, or three days travel from her family. Thúy is due for release in 2018.

## CONCLUSION AND RECOMMENDATIONS

There remains an immense gulf between Viet Nam's public, legal commitment to ending torture and other cruel, inhuman or degrading treatment or punishment, and the reality in the country's detention centres and prisons. The ratification of UNCAT is a welcome development but Viet Nam has already missed vital opportunities to bring the country closer to realising its obligations under the Convention: including through the amendments to the Penal Code and Criminal Procedure Code late last year, and the passage of the Law on Enforcement of Custody and Detention.

### **TO BRING ABOUT AN END TO THE ABUSES OUTLINED IN THE REPORT AND TO MAKE VIET NAM COMPLIANT WITH ITS OBLIGATIONS UNDER UNCAT, THE ICCPR AND OTHER INTERNATIONAL TREATIES, AS WELL AS OTHER STANDARDS, AMNESTY INTERNATIONAL MAKES THE FOLLOWING RECOMMENDATIONS TO THE AUTHORITIES OF VIET NAM:**

- End arrests, prosecutions and convictions of men and women for their beliefs and peaceful advocacy for human rights, religious freedom, multi-party democracy and workers' rights, and immediately release all prisoners of conscience currently behind bars;
- Respect and facilitate the rights of freedom of association, peaceful assembly and expression as guaranteed by the ICCPR, including by bringing into effect the necessary legal measures to ensure the creation of formal independent civil society groups;
- Following the recent change in senior government positions, publicly reiterate Viet Nam's commitment to ending torture and other ill-treatment;
- Amend domestic laws, namely the Amended Penal Code, Amended Criminal Procedure Code and Law on Enforcement of Custody and Detention, to comply with the UNCAT;
- Revise or replace Circular 37 of the Ministry of Public Security (2011) to ensure prison regulations uphold and facilitate the rights of people in detention or imprisonment and comply with the international standards on the treatment of detainees and prisoners, including the Mandela Rules;
- Publish and make publicly available all regulations pertaining to detention centres and prisons;
- Ensure fair trial rights and procedural safeguards as set out in the ICCPR to all arrested individuals;
- Ensure that no statements extracted under torture or other ill-treatment are relied upon as evidence in any proceedings, except against suspect perpetrators as evidence that the statement was made;
- End enforced disappearances of detainees and ensure accurate information about arrests and detainees' whereabouts is made available immediately to family, friends, legal counsel and courts;
- Ensure all prisoners have access to family, friends, lawyers of choice, adequate medical care, and independent courts during custody, detention and imprisonment, and end the practice of incommunicado detention;

- Provide access to independent monitoring bodies to all detention centres and prisons, and to all persons deprived of liberty;
- End the practice of prolonged solitary confinement and ensure that all disciplinary measures conform to international law and standards. Solitary confinement should only be used in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority;
- End reliance on Circular 37 of the Ministry of Public Security as a means to facilitate the discriminatory treatment of prisoners of conscience;
- Investigate all complaints and reports of torture and other ill-treatment promptly, impartially, independently and effectively, suspending all officials suspected of committing these acts and ensuring protection from reprisals for complainants, witnesses and others at risk;
- Prosecute all those against whom sufficient, admissible evidence is gathered of their responsibility for torture or other acts of ill-treatment regardless of rank or official status and the time that has elapsed since the commission of the crime;
- Take measures to end abusive practices by “antennae” prisoners and ensure violence by other prisoners is investigated and, where sufficient admissible evidence exists, prosecuted;
- End the practice of punitive transfers of all detainees and ensure that prisoners are allocated, to the extent possible, to prisons close to their homes. All transfers that do take place should be necessary, and carried out in conditions consistent with the rights of those involved;
- Ensure the provision of health care to all persons deprived of their liberty of the same standard as is available in the community, including prompt access to medical attention in urgent cases and access to specialized treatment and surgery specialized institutions or hospitals where necessary;
- Provide effective training to all officials involved in custody, interrogation or medical care of prisoners outlining that torture and other acts of ill-treatment are criminal acts;
- Translate the Mandela Rules into Vietnamese and disseminate to all detention centres and prisons throughout the country, and provide training on international minimum standards on the treatment of prisoners to all staff at detention centres and prisons;
- Provide reparations to victims of torture and other ill-treatment and their dependents in accordance with Article 14 of the UNCAT and international standards more generally, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- Ratify and implement the first Optional Protocol to UNCAT, including by establishing professional, independent and well-resourced National Preventive Mechanisms in accordance with the Protocol;
- Establish other mechanisms to ensure accountability for human rights violations, including an independent National Human Rights Institute that complies with the provisions of the Principles relating to the Status of National Institutions (The Paris Principles) adopted by UN General Assembly resolution 48/134 of 20 December .

**AMNESTY INTERNATIONAL ALSO CALLS ON THE INTERNATIONAL COMMUNITY TO TAKE STEPS TO ENSURE THAT VIET NAM UPHOLDS ITS OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS TREATIES TO WHICH IT IS A STATE PARTY:**

- Publicly call on the Vietnamese authorities to end arrests, prosecutions and convictions of men and women for their beliefs and peaceful advocacy for human rights, religious freedom, multi-party democracy and workers' rights, and for the immediate and unconditional release of all prisoners of conscience;
- Urge the Vietnamese authorities to uphold and facilitate the rights to freedom of association, peaceful assembly and expression as guaranteed by the ICCPR, including by bringing into effect the necessary legal measures to ensure the creation of formal independent civil society groups;
- Call on the Vietnamese authorities to take immediate legislative, administrative, judicial and other measures to bring the country into compliance with its obligations under UNCAT;
- Give positive consideration to requests by Vietnamese authorities for support and technical assistance in these endeavours.

**AMNESTY INTERNATIONAL  
IS A GLOBAL MOVEMENT  
FOR HUMAN RIGHTS.  
WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

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# PRISONS WITHIN PRISONS

## TORTURE AND ILL-TREATMENT OF PRISONERS OF CONSCIENCE IN VIET NAM

“Life in prison is hard. I fell into despair. I was in this situation because I was trying to be a good citizen, to help people out according to the law [...] But I was arrested and put in prison. I felt like I was in a dark tunnel with no way out.” Phạm Thị Lộc is a former prisoner of conscience – an individual who was detained for her beliefs or peaceful activism. Her story reflects those of so many of Viet Nam’s peaceful activists. Compelled by injustice in her own life and the lives of others in her community, she started to speak out and to advocate for change. She soon found herself in jail, caught up in a system designed to mete out retribution to those viewed as questioning the authority of the Vietnamese government.

Prisons Within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam documents treatment of prisoners of conscience which violates Viet Nam’s international human rights obligations, including the prohibition on torture. The violations documented in the report include enforced disappearances; prolonged periods of incommunicado detention and solitary confinement; the infliction of severe physical pain and suffering; the withholding of medical treatment; and punitive prison transfers. The report is written on the basis of interviews with men and women released in the past five years but also raises concerns relating to the treatment of some of the country’s current prisoners of conscience, which Amnesty International estimates to be 84 men and women.

INDEX: ASA 41/4187/20156

JULY 2016

LANGUAGE: ENGLISH

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