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VIET NAM

“RENOVATION” (DOI MOI), THE LAW AND HUMAN RIGHTS IN THE 1980s

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Summary

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A series of legal reforms and changes in government policy have provided a basis for greater protection of human rights in Viet Nam - although serious human rights concerns remain. This report outlines these continuing concerns and reviews new legislation and recent developments affecting human rights in Viet Nam.

A campaign the government calls "renovation", đổi mới, began in 1986. It has included reforms that the authorities say are intended to guarantee the legal rights of citizens and to protect human rights. New legislation provides for the development of an independent judiciary. New judicial procedures have introduced the principles of the presumption of innocence, the right not to be detained without a court order, the right to have a legal defence and the right to choose an independent lawyer. These developments are of particular significance for the protection of specific human rights - although they have yet to be fully observed in practice. The "renovation" policies have also resulted in the release of thousands of people held without charge or trial in "re-education" camps, although an unknown number of political prisoners, including prisoners of conscience, remain untried in custody.

In May 1989 an Amnesty International (AI) delegation visited Viet Nam at the invitation of the government to learn more about the "renovation" policies and the current human rights situation, and to discuss the organization's concerns with the government. The delegation met senior officials from the Ministry of the Interior, the Ministry of Justice and the Ministry of Foreign Affairs as well as members of the judiciary, the procuracy and the Vietnamese Lawyers' Association. The delegation was able to visit a "re-education" camp in Thuan Hai province, the Z30D camp, although requests to visit a number of other centres, in which prisoners of concern to AI were believed to be held, were not granted.

Officials repeatedly emphasized the government's determination to implement the "renovation" policy in all fields and stressed the importance the government attaches to the rule of law. They cited a number of improvements and pointed specifically to the promulgation of laws governing judicial procedures, the abolition of provisions for detention without trial, the government's commitment to the prevention of all forms of torture and ill-treatment, steps taken to ensure that those responsible for

such abuses are prosecuted and increased freedom of the press in reporting abuses of power by local authorities. During the meetings the authorities also acknowledged that there had been problems in implementing the new laws.

Among the issues of continuing concern to AI in Viet Nam are: the continued detention without charge or trial of political prisoners, including prisoners of conscience; the detention of prisoners of conscience and people who may be prisoners of conscience on broadly defined charges of having endangered national security; trials of political prisoners that fall far short of international standards; reports of torture and ill-treatment; and the use of the death penalty.

Those in untried detention include military officers and civil servants of the former Government of the Republic of Viet Nam in the south, who have been held in camps since 1975. Many were released under government amnesties in 1987 and 1988 but officials said that 130 remained in custody and told the AI delegation that it was the government's intention to release them.

Prisoners who are or who may be prisoners of conscience have been held without trial for many years or charged and tried for "crimes against national security". They include priests, monks and nuns, writers and artists, people believed to have been arrested for their ethnic Chinese origin, and people arrested for attempted "illegal departure".

Although the 1986 Criminal Code and the 1989 Criminal Procedure Code do not permit "re-education" without charge or trial, administrative regulations may remain in force that provide for certain alleged offenders - including possible prisoners of conscience - to be detained without charge or trial. Similarly, the very broad definitions of "crimes against national security" in the Criminal Code provide a basis for the prosecution of people solely for the peaceful exercise of their rights to freedom of expression and association. AI is concerned that the Vietnamese authorities have, in some, cases, invoked these provisions to imprison people whose peaceful religious or other activities are not acceptable to the government.

Failure to implement fully legislation revising the judicial process has jeopardized defendants' rights to a fair trial. Suspects held in police custody do not have early access to independent counsel and defendants are given inadequate time to prepare their defence. Individuals have been condemned in the official media before their trials have taken place, thereby prejudicing their right to presumption of innocence. Among prisoners of conscience convicted in unfair trials, have been Buddhist monks, Jesuit priests, Protestant pastors, writers and others believed to have been convicted solely because they were critical of government policies.

Central government authorities have acknowledged isolated incidents of torture, ill-treatment and deaths of prisoners held for investigation in police custody, prisons and in "re-education" camps. Reports of such cases suggest that these practices are still common and that measures to combat them are not yet adequate. Abusive treatment in "re-education" camps includes the use of solitary confinement in combination with beatings, the use of shackles or leg irons, and the reduction of food rations.

The death penalty remains in force for a wide range of crimes defined in the Criminal Code, including serious crimes "against national security". AI has received reports that at least 107 people have been sentenced to death since 1975, of whom at least 26 have been executed.

The information on which this report is based has been obtained from a wide range of sources, both official and unofficial, and on research carried out over a number of years. This includes interviews with former prisoners who left Viet Nam after being released, and with relatives of prisoners who now live outside Viet Nam. Other information has been obtained in the course of talks with Vietnamese authorities in May 1989 and from Vietnamese news media, including material from official legal and party journals on the continuing debate on the implementation of reforms.

The report urges the government to review aspects of the legal system which may give rise to contraventions of international human rights standards and recommends a number of practical measures which would serve to remedy abuses and to strengthen existing human rights safeguards.

This summarizes a 67-page document, Viet Nam: "Renovation" (đổi mới), the law and human rights in the 1980s ASA 41/01/90 issued by Amnesty International in February 1990. Anyone wanting further details or to take action on this issue should consult the full document.

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

VIET NAM
"RENOVATION" (DOI MOI), THE LAW AND HUMAN RIGHTS IN THE 1980s

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Appendix II: Drawings of "re-education" camps and Chi Hoa prison

1. Introduction

A series of legal reforms and changes in government policy have provided the basis for greater protection of human rights in Viet Nam - although serious human rights concerns remain.

This report outlines Amnesty International's continuing concerns in Viet Nam and reviews new legislation and policies that the government has announced as measures to reinforce the legal rights of citizens and to safeguard individual human rights. It assesses the progress and some of the problems found in the implementation of these safeguards and describes other current legislation and practices that contribute to human rights abuse, including the detention of prisoners of conscience.

The report incorporates the findings of an Amnesty International delegation that visited Viet Nam in May 1989 at the invitation of the government. It concludes by urging the government to effectively implement newly promulgated procedural guarantees that are essential for fair trials; to review aspects of the legal system which continue to give rise to contraventions of international standards; and recommends a number of practical measures which, if implemented, would serve to remedy existing abuses and to strengthen human rights safeguards.

1.1 Amnesty International's visit to Viet Nam in May 1989: "Renovation" and the legal system

In December 1986 the Sixth Party Congress of the Communist Party of Viet Nam (CPV) adopted a general policy of renewal or "renovation" (dổi mới). The implications of "renovation" have been wide-ranging and have changed the direction of government policy in a variety of fields. In the economic area "renovation" has meant movement away from a centrally planned economy and the development of a more market-oriented model. Politically, "renovation" has been followed by a number of developments: moves towards a greater separation of party and state, and more debate within the National Assembly (the Vietnamese parliament); the release of thousands of political prisoners under government amnesties in 1987 and 1988; the exposure of corrupt officials within the ranks of the party and in local government; and more publication in the media of reports about corrupt officials, and about instances of torture and ill-treatment by police officers.

In May 1989 an Amnesty International delegation visited Viet Nam to discuss Amnesty International's concerns and to learn more about these developments and the significance of recent changes for the protection of individual human rights. The authorities welcomed the delegation and expressed their desire for a continuing dialogue with Amnesty International. During the visit the delegation participated in a series of discussions with senior government officials from the Ministry of the Interior, the Ministry of Justice and the Ministry of Foreign Affairs. Meetings were also held with senior members of the judiciary, the procuracy and with members of the Vietnamese Lawyers' Association.

The authorities emphasized the government's determination to implement the "renovation" policy in all fields and stressed the importance the government now attaches to the rule of law. The authorities cited a number of improvements and pointed specifically to the promulgation of laws

governing judicial procedures; the adoption of the principle of the presumption of innocence as the basis for judicial investigation and prosecution; the abolition of legal provision for detention without trial; the government's commitment to the prevention of all forms of torture and ill-treatment, and the steps they have taken to ensure that those responsible for such abuses are prosecuted; increased freedom of the press and its role in reporting abuses of power by local authorities. During the meetings the authorities also acknowledged that there have been problems in implementing the new laws and stated that some of these difficulties were caused by a lack of resources, and a shortage of qualified jurists and lawyers.

1.2 Amnesty International's concerns in Viet Nam

Amnesty International's concerns in Viet Nam focus primarily on five major issues which are summarized as follows:

- The detention without charge or trial of people associated with the former Government of the Republic of (South) Viet Nam (RVN). After the end of the war in 1975 thousands of former civil servants and members of the armed forces were summoned by the new authorities for "re-education" and detained in camps throughout the country. Many were released under government amnesties in 1987 and 1988 but over 100 remain in untried detention.

- The detention without charge or trial of alleged opponents of the government in "re-education" camps. During and after 1975 the government also arrested a number of people for alleged anti-government activities. They have included members of the clergy, writers and intellectuals, people of ethnic Chinese origin, teachers, students, lawyers, parliamentarians, and people arrested for attempting to leave the country clandestinely. Some who remain in detention are prisoners of conscience and it is believed that others, about whom little is known, may also be prisoners of conscience detained for the peaceful expression of their political, religious or other beliefs.

- Some prisoners of conscience and possible prisoners of conscience were held for years in untried detention before being brought to court and convicted of participating in activities with an intent to "overthrow the people's government". Others were arrested and brought to trial in more recent years. In these cases it is believed that trial procedures did not conform to international standards for fair trial.

- Persistent reports of torture and ill-treatment of people in police custody or while in detention in "re-education" camps.

- The use of the death penalty in Viet Nam.

During the May 1989 visit Amnesty International's delegation raised all these issues of concern in meetings with the authorities. Members of the delegation asked the authorities for information about prisoners whose cases had been raised before by Amnesty International. The delegation was unable to obtain information about their current places of detention or the conditions under which they are held. In the case of prisoners who have been brought to trial the delegation was unable to obtain information about the evidence used to convict them, copies of the charges brought against them, or of trial verdicts. Nor was information about the numbers and

identities of political prisoners held in untried detention made available. The delegation was also unable to obtain statistics detailing death sentences and executions.

The delegation was able to visit one "re-education" camp in Thuan Hai province, the Z30D camp (also known as Thu Duc camp) in Ham Tan district and to meet a political prisoner held in untried detention there. Requests to visit a number of other prisons and "re-education" camps where prisoners of concern to Amnesty International are believed to be held, were not granted.

Amnesty International welcomed the steps taken to improve protection of human rights in the course of meetings with Vietnamese officials during the May visit, in subsequent discussions with Vietnamese diplomatic representatives at the United Nations and in the United Kingdom, as well as in its written communications with the government. However, Amnesty International continues to be seriously concerned about the areas outlined above, and by the fact that information relating to specific prisoner concerns has not been forthcoming.

The information on which this report is based has been obtained from a wide range of sources, both official and unofficial, and on research carried out over a number of years. Research has included interviews with former prisoners who left Viet Nam after being released, and with relatives of prisoners living abroad. Other information has been obtained from the international and Vietnamese media, including material from the ongoing debate on the implementation of reforms from official legal and party journals. An assessment of the totality of this information leads to the conclusion that, despite significant improvements in relation to human rights in recent years, violations of human rights continue to occur. Amnesty International urges the government to address these issues and to take steps to prevent their continued occurrence.

2. The legal background to Amnesty International's concerns in Viet Nam

2.1 Introduction

"Renovation" policy, sanctioned by the Sixth Party Congress in 1986, has influenced government policy, as well as the course of developments within the legal system and, has resulted in a series of reforms aimed at safeguarding individual human rights.

During discussions with members of the Amnesty International delegation which visited Viet Nam in May 1989, officials emphasized the government's determination to ensure that legal reforms brought about by "renovation" were fully and properly implemented. In particular, officials pointed to the promulgation of the Criminal Code in 1985 and the Criminal Procedure Code in 1989. The latter is especially significant for the protection of individual human rights. It affirms the principle of presumed innocence and sets out procedures governing the arrest and detention of suspects and the right for compensation in the case of illegal detention. Officials also emphasized the government's recognition of the need to strengthen the position of defence counsel and their role within the judicial process. They reiterated their determination to ensure that the regulations governing arrest and detention would be strictly observed and informed the delegation that in future lawyers would be allowed access to suspects in police custody for investigation.

The following sections briefly describe the constitution, the criminal codes and some of the new laws, as well as some of the problems that have arisen in their implementation. These problems have been recognized to some extent by government officials and by officials within the judiciary. Some of their commentaries are included in the discussion below. During the May 1989 visit, government officials also acknowledged to Amnesty International the existence of certain difficulties and stated that some of these were caused by a lack of resources and a shortage of qualified legal personnel.

2.2 The political background

The Democratic Republic of Viet Nam (DRV) was founded on 2 September 1945 by the resistance organization that had opposed the Japanese occupation and sought independence from France. Although proclaimed as the government of all of what is now Viet Nam, the DRV fought a war of independence with the French which ended in 1954 with the DRV assuming full control only over the north. The Geneva Agreements of 1954, which brought the hostilities to an end, resulted in the division of Viet Nam at the 17th parallel - a measure declared in the accords to have been "only provisional and not a political or territorial boundary". The DRV governed from Ha Noi - the capital of what became known as North Viet Nam - but remained dedicated to the reunification of Viet Nam. A State of Viet Nam was created south of the 17th parallel, with its capital Saigon (now Ho Chi Minh City), in what became commonly known as South Viet Nam; it was proclaimed the Republic of Viet Nam (RVN) on 26 October 1955.

The long war in Viet Nam ended with the collapse of the Government of the Republic of Viet Nam in April 1975. The country was formally reunified with the inauguration of the Socialist Republic of Viet Nam (SRV) on 2 July 1976.

2.3 The 1980 Constitution

A single legal system was not established until after the foundation of the Socialist Republic of Viet Nam (Công Hòa Xã Hồi Chu Nghia Việt Nam), on 2 July 1976. In December 1976 the Fourth Congress of the Communist Party of Viet Nam decided to replace the 1949 and 1959 Democratic Republic of Viet Nam (DRV) constitutions in order to "institutionalize the socialist right of the collective mastery of the working people" [Vu Dinh Hoe in Viet Nam Courier 12, 1982]. A draft of the new constitution was made public in 1979 and was formally adopted by the National Assembly on 18 December 1980.

In the Preamble to the 1980 constitution, the leading role of the Communist Party was explicitly enshrined for the first time:

"The Socialist Republic of Viet Nam needs a constitution institutionalizing the current line of the Communist Party of Viet Nam in the new stage, namely a constitution for the period of transition to socialism on a national scale".

Article 4 of the constitution describes the role of the Communist Party further:

"The Communist Party of Viet Nam, the vanguard and general staff of the Vietnamese working class armed with Marxism-Leninism, is the only force leading the state and society..."

In the chapter on "Basic Rights and Obligations of Citizens" the constitution guarantees equality of all citizens before the law (Article 55), freedom of speech, freedom of assembly and association (Article 67), the freedom to worship and to practise or not to practise a religion (Article 68), and the right to legal protection of citizens. All forms of coercion and torture are strictly prohibited (Article 69). It further defines the role and functions of the most important political and administrative institutions of the country at the central and provincial levels, as well as those of the judicial organizations.

In a review article on the constitution the official legal journal Luật Hoc considered the difference between the three constitutions. The article stated that "each constitution...is but the incarnation of the party line and policies in a specific historical period, satisfies the needs of that stage, and must be suitable for the latter" [Nguyen Dinh Loc in Luật Hoc 4, 1985].

2.4 The Criminal Code of 1986

The first Criminal Code (Bô Luật Hình Sự) of the Socialist Republic of Viet Nam was adopted by the National Assembly on 27 June 1985 and promulgated by the Council of State on 9 July 1985. It took effect on 1 January 1986. The Criminal Code had been drafted in two parts consisting of a "general" part and a second part dealing with "criminal offences". These were provisionally approved by the National Assembly in 1983 and 1984 following which the entire code was given wide publicity in the Vietnamese media.

Before the Criminal Code was promulgated the process of criminal justice in Viet Nam had been governed by separate provisions in the form of regulations (phap lệnh), decrees (nghị định), decisions (quyết định), or resolutions (nghị quyết). These were enacted either by the National

Assembly or the Council of Ministers. The provisions were often supplemented by circulars (thong tu) and directives (chi thi) issued by state administrative organs, the Supreme People's Court and the Supreme People's Organ of Control (Viên Kiểm Sat Nhân Dân Tối Cao).

Article 2 of the Criminal Code states that criminal responsibility can only be borne by a person who has committed an offence under the Criminal Code and rejects the principle of analogy. Article 7 states that any person accused of an offence can only be held responsible and punished for offences proscribed by laws in force at the time the offence was committed.

Within the code two main categories of crimes are distinguished: first, "serious crimes", such as crimes against national security, treason, espionage, murder, armed robbery. These may incur punishment of from five years to life imprisonment, or death. Second, "lesser crimes" for which the maximum punishment is less than five years imprisonment. "Lesser crimes" deemed not to pose a significant threat to society are made subject to "non-judicial", administrative, disciplinary measures such as "re-education without detention" (Article 24).

Article 73, entitled "Actions aimed at overthrowing the people's government", concerns some of the serious crimes against national security. It states that people establishing or joining organizations aimed at overthrowing the government will be sentenced to between five and 20 years' imprisonment or to death in very serious cases. The crime of "spreading propaganda against the socialist regime" is set out in Article 82. This provides for prison terms of between three and 20 years for "dissemination of propaganda against the socialist regime; the manufacture, storage or circulation of anti-socialist literature or cultural material deemed to "oppose the people's government". (For further information about prisoners of conscience and possible prisoners of conscience believed to have been tried and convicted under these articles see Chapter 4 of this document).

Fourteen offences relating to national security may incur the death penalty as a maximum punishment. Apart from these the Criminal Code contains a further 16 articles which allow for the death penalty for crimes deemed especially serious. These include murder, rape, armed robbery and "economic crimes" (see Chapter 9).

Although the Criminal Code is believed to have been widely publicized, its implementation has met with some obstacles. Several examples of these difficulties have been cited in the Vietnamese media. For instance, on 17 March 1986 the official newspaper, Nhân Dân, reviewed the initial implementation of the Criminal Code in Ho Chi Minh City:

"In parallel with educational and propaganda activities about the Criminal Code, Ho Chi Minh City conducted a thorough review of matters concerning the arrest of citizens and their detention, the conduct of re-education in detention and temporary detention camps and in re-education schools, and the execution of forced labour measures in the city and in the districts and precincts. Inspection groups uncovered many cases that had been arbitrarily handled without due process of law, or that had involved individuals whose temporary or legal detention periods had been exhausted..."

In an article in Nhân Dân on 26 February 1987 Le Sau, Chief Justice of the Ha Noi municipal court, emphasized the need for education and for adherence

to the law at all stages of the legal process:

"Currently some cadres, mainly those in the villages and sub-wards, know very little about the citizens' right to habeas corpus as stipulated by the constitution. Many chiefs and deputy chiefs of village public security organs utter verbal threats and issue arrest warrants at will...In the past few years public security officers and the Organ of Control in Ha Noi brought to trial...cases of illegal arrest and detention in which victims were tied up, beaten, forced to admit guilt and physically tortured...The practice still prevails alarmingly."

Another description of the difficulties faced in the implementation of the code was given by a Ministry of Justice official in Nhân Dân on 10 June 1988:

"The investigation, prosecution and trial work of the public security, control and court organs are, fundamentally, legally correct and have the confidence of the masses. In addition to the strict and just verdicts, in some localities there are still serious deficiencies and mistakes. According to reports of many local people's courts, in 1987 159 people were investigated, prosecuted and tried unjustly. People have been sentenced to 20 years of life in prison, or death for such serious crimes as murder, but when retried in the appeal phase the judge or review director has acquitted them because they were found innocent. Some of them had been in jail many years".

Press reports have also indicated that those responsible for the arrest and detention of criminal suspects have used procedures set out in a number of laws and regulations issued by the Government of the Democratic Republic of Viet Nam. In theory, these procedures should have been superseded by those set out in the new Criminal Code. On 4 December 1986 the Ho Chi Minh City newspaper, Saigon Giai Phong, published an article which made it clear that a number of laws, orders and decrees were still being used to arrest and detain suspects. These included Order No 02/SL-76, issued by the Provisional Revolutionary Government before the foundation of the Socialist Republic of Viet Nam in 1976, and other orders such as Order No 02-SLT of 18 June 1957, which had been issued by the Government of the Democratic Republic of Viet Nam. More recently, supplementary circulars and regulations have been issued to accompany the Criminal Code. Circular No 04/TT-BNV (C16), issued by the Ministry of the Interior on 28 April 1986, is an example of this. The circular provides guidelines on conducting investigations, making arrests and interrogating suspects.

2.5 The Criminal Procedure Code of 1989

In mid-July 1988 Nhân Dân published the Criminal Procedure Code (Bô Luật Tô Tung Hình Sự). An editorial in Nhân Dân on 6 April 1988 explained the need for such a code, stating that in many localities people had been arrested and detained without good reason. Some people were reported to have been arrested without proper authorization from the People's Organ of Control, or to have been arrested before a careful investigation had taken place. The report also noted that the process of investigation was often slow and inaccurate so that the prosecution and trial were untimely and unjust.

The same article pointed out that this situation was in part a result of the fact that the conduct of criminal investigation, prosecution and trial has not been codified into a unified system of laws and procedures. The purpose of the Criminal Procedure Code, it said, was to define the procedures governing the investigation, prosecution and trial of those suspected of criminal offences.

The Criminal Procedure Code, adopted by the National Assembly on 28 June 1988, was promulgated on 1 January 1989 by the Council of State and took effect on that date.

The basic principles set out in Part I of the Code include the following: the right not to be arrested without proper authorization; the prohibition of all forms of coercion and corporal punishment of suspects; the affirmation of the presumption of innocence; the independence of judges and people's jurors; the right to compensation in cases of illegal detention.

In a series of articles published in Saigon Giai Phong in September 1988 after the promulgation of the Criminal Procedure Code, lawyer Nguyen Dang Trung explained some of the main features of the code. He stressed in particular the inclusion of the principle of the presumed innocence of suspects. He wrote:

"in reality, in the past years many defendants were not treated as such. There were cases in which they were beaten. Some legal workers even tortured them to extract forced statements in order to set up false records which would lead to prosecution and the wrongful sentencing of innocent people".

2.6 Supplementary laws and regulations

A number of supplementary laws were promulgated in 1989 to regulate the role and function of responsible state organs while the Criminal and Criminal Procedure Codes were being implemented. On 28 January 1989 the Council of State announced the "Regulations on the People's Police of Viet Nam". A draft of these had been published in Nhân Dân on 23 November 1988. On 4 April 1989 the Council of State passed new "Regulations on the Organization of Criminal Investigation".

Before the promulgation of the regulations a number of critical articles appeared in the Vietnamese media assessing "shortcomings and mistakes" in the People's Police and stressing the need to "renovate the operation of the People's Police". On 20 July 1988 Nguyen Tam Long, a Deputy Minister of the Interior, wrote in Nhân Dân:

"The administrative management measures that the people's police have adopted over the past years bear the heavy impact of administrative bureaucratism and are designed to "control" and "curb" the people rather than to protect their interests".

This was followed in December 1988 by an article by the Interior Minister, Mai Chi Tho, in the CPV theoretical journal, Tap Chi Công Sản, in which he said:

"The people's public security forces are large but are still not strong enough; bureaucratism and authoritarianism are rather prevalent; and the phenomena of negativism and degradation are worrisome. There have been some cases of unlawful arrest and detention. In some isolated cases, torture and coercion were used to extract confessions."

Article 7 authorizes the People's Police to arrest temporarily and take into custody anyone it decides to so detain, to "re-educate" and transform offenders in order to turn them into useful citizens of society, and to control and educate persons who it has been determined are to be placed in "re-education schools". In exercising its functions, the People's Police is to collaborate closely with the Public Security Force "in uncovering, stopping and promptly suppressing activities violating national security" (Article 8). The regulations uphold the role of People's Councils and people's committees in providing guidance to the People's Police with regard to the maintenance of social security and order and emphasize the role of the Viet Nam Fatherland Front in coordinating and motivating the public to abide by the law (Article 16).

2.7 The judiciary in Viet Nam

The role and function of judicial institutions in Viet Nam are defined in the 1980 Constitution. The most important institutions are the People's Courts and the People's Organ of Control. Article 127 of the Constitution defines the purpose of these institutions:

"The People's Court and the People's Organ of Control in the Socialist Republic of Viet Nam are, within their competence, obliged to protect the socialist legal system, the socialist system, the working people's right to collective mastery, and socialist property, and to ensure respect for the lives, property, freedom, honour, and dignity of citizens".

2.8 The role and function of People's Courts

According to the Constitution, the system of People's Courts extends from the central level of the Supreme People's Court, the highest judicial organ of Viet Nam, down to provincial, district and municipal people's courts. The people's courts, or local people's courts, are subordinate to the provincial people's courts at the district, precinct, city and municipal administrative levels. They serve as courts of first instance. Provincial and municipal people's courts are directly subordinate to the central government and the Supreme People's Court functions as the court of appeal. The Supreme People's Court also supervises the proceedings of local people's courts and is accountable to the National Assembly, or when not in session, to the Council of State. The local people's courts are accountable to People's Councils at the same administrative level.

Judges of the People's Courts preside over trials together with "people's assessors" (hoi tham nhân dân). The assessors have the same power in law as judges in delivering judgments (Article 130). Judgments are made by majority decision. Although nominally independent "during trials" (Article 131), both judges and people's assessors at all levels are elected under a system closely supervised by the CPV, the National Assembly and the Viet Nam Fatherland Front to ensure that they show "an increasingly enhanced professional level, apart from a firm political knowledge and brilliant socialist ethics" [Justice Minister Phan Hien in interview on Ha Noi Domestic Service, 25.12.85]. In March 1986 an article in Saigon Giai Phong stated that crash courses to train cadres to man the courts would within seven months enable them to grasp the legislation and qualify them to preside over trials, to pronounce judgments and to pass sentences. Other press reports have noted that in practice people's assessors are often not adequately trained. For example in May 1987 Saigon Giai Phong stated that "The number of judicial cadres...who have graduated from middle schools and legal colleges can be counted on one's fingers".

The duties, organization and operation of people's courts are defined in the "Law on the Organization of People's Courts" adopted by the Seventh National Assembly on 3 July 1981, and promulgated by the Council of State on 13 July 1981.

The law defines in very general terms the function of people's courts at all levels; stipulates that proceedings in the courts are open to the public "unless under specific circumstances when people's courts deem it necessary to hold closed-door hearings" (Article 8); guarantees defendants the "right to plead their case or to seek assistance from lawyers or

pleaders in defence of their case" (Article 9); recognizes the right to appeal verdicts handed down by courts of first instance (Article 11); and grants a prisoner convicted and sentenced to death the right to seek clemency from the Council of State (Article 13).

Articles 21 and 27, on the duties and powers of the Supreme People's Court and so-called 'Specialized Courts', however, stipulate that both are empowered to "render preliminary and, at the same time [our emphasis], final judgment in particularly serious and complicated cases", thus setting aside the right of appeal.

Problems in the application of laws have been described on several occasions. The judicial journal, Luật Hoc, published the following account of the review of the court sector in 1985 in its first issue of 1986:

"The most important problems involve the line to be followed in trials of crimes against national security. Some courts have placed excessive emphasis on the political requirements of the locality, as a result of which the death penalty has been unnecessarily imposed in some cases ... As regards murder trials, there was also a failure in some cases to examine all the details of a case ... and emphasis was only placed upon the consequence, i.e. the death of a person. As a result, the defendant was incorrectly given the death penalty

More recently the presiding judge of Ho Chi Minh City's Municipal People's Court, in commenting on the work of the judicial sector of the city for the second half of 1988, was quoted as stating in the youth magazine, Tuổi Tre, of 2 August 1988:

"The intervention of the central government in the functions of public security agencies, the organ of control, and the courts is too deep and specific, even [to the extent] of directly conducting trials, and supervision is specific to an abnormal degree whether a crime has been committed or not, no matter what the nature of the crime or the level of the court . . ."

2.9 The role and function of the People's Organ of Control

The People's Organ of Control (Viên Kiểm sát nhân dân), or procuracy, operates in tandem with the hierarchical system of People's Courts. The People's Organ of Control extends from the central administrative level down to local chapters in the provinces, districts, precincts and municipalities. The Supreme People's Organ of Control has authority over all other People's Organs of Control, and is headed by a Procurator-General (viên truồng). Its functions are defined in Article 138 of the Constitution:

"The Supreme People's Organ of Control of the Socialist Republic of Viet Nam shall control the observance of the law by the ministries and other bodies under the authority of the Council of Ministers, local organs of power, social organizations, people's armed forces units, state employees, and all citizens, exercise the right of public prosecution, and ensure the strict and uniform observance of law."

The Procurator-General's term in office corresponds to that of the National Assembly (Article 139), and he is "responsible and accountable" to the National Assembly, or when not in session to the Council of State (Article 141).

Unlike the local People's Courts, the local People's Organs of Control are not accountable to local People's Councils, but come under the "unified leadership" of the Procurator-General who also appoints and removes from office local chief procurators and deputy chief procurators (Article 140).

The duties, organization and operation of the People's Organs of Control are defined in the "Law on the Organization of People's Organs of Control" adopted by the Seventh National Assembly on 4 July 1981. Article 1 reiterates the definition set out in Article 138 of the Constitution (quoted above).

Article 3 specifies that the Supreme People's Organ of Control is to control the "investigative work of public security organs and other investigating organs"; control the "administration of justice by the people's courts"; and control "imprisonment, detention and re-education". The control function of "investigation work" is further specified in Article 10 of the law to include the initiation of criminal proceedings, the ratification of warrants of arrest, "temporary detention", the extension of temporary detention, release and "temporary release"; the decision to prosecute or drop charges against a suspect or to suspend the investigation; investigation of criminal responsibility in cases where investigators committed an offence and to request the replacement of investigators who have violated the law during investigation.

Similarly, Article 19 specifies the control function of the Supreme People's Organ of Control over imprisonment, detention and "re-education" to include "regular and irregular on-the-spot inspections of the sites of imprisonment, detention and re-education"; to "receive and resolve complaints and denunciations from persons and directly obtain their statements"; to "decide on the release of persons who are subjected to imprisonment, detention and re-education without valid reasons and at variance with the law"; and to investigate the criminal responsibility in cases where officials in charge of imprisonment, detention and re-education committed an offence".

Appointments and dismissals of officials at all levels of the People's Organ of Control except for the Supreme People's Organ of Control are made by the Procurator-General (Article 25) on the basis of citizens' "loyalty to the fatherland and socialism" and if they are "found to be qualified and politically and legally capable" (Article 26).

Little is known about the Supreme People's Organ of Control's inspection work in prisons and "re-education" camps, although reports are regularly submitted to the National Assembly without being made public. Tran Le, the Procurator General of the Supreme People's Organ of Control just prior to the Communist Party of Viet Nam's 6th Party Congress summarized his assessment of the problems faced by his department in an article that appeared in the September 1986 issue of the Party's theoretical journal Tap Chi Công San:

"An abnormal situation currently exists ... that must be quickly corrected: many laws that have been promulgated are

not being strictly observed and some are not even observed at all. Many cadres and party members are violating the law and, in particular, cadres are abusing their public positions to commit acts that violate the law but are not being harshly prosecuted. If determined efforts are not made to immediately correct this situation, our State will have laws but [in effect] will not have laws and, as a result, be unable to manage society in accordance with the law."

He went on to observe that in recent years the Supreme People's Organ of Control had "brought to light and reported to the various party committee echelons many cases of cadres and party members violating the law", criticizing the practice of "party committees and state agencies [having] detained party members in order to take disciplinary action against them internally which, in essence amounts to protecting persons of position and authority who violate the law".

The Procurator-General in the same article stressed that "while it is difficult to draft and promulgate laws and regulations, it is even more difficult to organize the correct implementation of these laws and regulations ...".

Following the promulgation of the Criminal Code in 1985 and the Criminal Procedure Code in 1988, Amnesty International understands that, during its December 1988 session the National Assembly discussed amendments to the law on the organization of the People's Courts and the People's Organ of Control, "in order to make these legal documents consistent with the present situation". The outcome of this discussion, however, is unknown to Amnesty International.

2.10 The role and function of the Lawyers' Association

Article 133 of the 1980 Constitution states that "a jurists' organization may be formed to give legal assistance to defendants and other persons concerned". The first Vietnamese jurists' association was founded in 1955 in the north under the Democratic Republic of Viet Nam. After reunification it established branches in the southern part of Viet Nam. On 18 December 1987 the Council of State promulgated a new regulation - Regulation No. 2a-LCT/HDNN8 on the "Organization of Lawyers".

Article 2 of the new regulations sets out the objective of organizing lawyers' associations:

"A lawyers' association actively assists in protecting the socialist legal system, and strengthening economic and social management in accordance with the law; protects the legal rights and interests of citizens and organizations; assists in the objective handling of cases in accordance with the law; assists in achieving the equitable rights of every citizen before the law and in achieving socialist democracy; and teaches citizens to obey the constitution and the law and to respect the rules of socialist life".

Lawyers' associations, established in the provinces and municipalities, are said to be "directly subordinate to the central government and equivalent administrative units", and are said to be "guided and controlled" by the Ministry of Justice. The function of the Viet Nam

Fatherland Front committees, at the same administrative level as the lawyers' associations, is to "supervise" their activities in coordination with People's Councils and People's Committees. Members of lawyers' associations have to be citizens of Viet Nam, be of "good qualities and ethics", and be graduates of a school of law or possess equivalent legal standards (Article 4 of the regulations). Newly admitted members must undergo a "probationary period" of six months to two years, and a "control period" prior to being recognized as a lawyer (Article 12 of the regulations). Lawyers are required to have "equality with other elements before a court", have the right to meet privately with an accused and interested parties, and have the right to "participate in [cross-] examination and debate at the court session (Article 14 of the regulations).

2.11 Provisions for legal defence

Private legal counsel was abolished by the Democratic Republic of Viet Nam in the north and after 1975 in the southern part of Viet Nam as well. The Association of Jurists and a system of court-appointed counsel effectively replaced the advocate system of former governments. Under this system legal assistance is provided by court-appointed "socialist pleaders" (biên hô viên xa hoi chu nghia) whose training is believed to be rudimentary in many cases. The role of the "socialist pleader", when acting for a defendant, is believed to consist of the following: acknowledging the case for the prosecution; explaining the charges to the defendant; pleading guilty on his or her behalf; and asking the court for leniency of judgment.

During its visit to Viet Nam in May 1989, the Amnesty International delegation was informed that with the promulgation of the new regulations on the organization of lawyers, the system of "socialist pleaders" would be phased out. Only lawyers (luật sư) admitted to the Association of Jurists would be able to act for the defence. Government officials also stressed that defence lawyers would have a much greater part to play in the process of criminal investigation. Most importantly, they stated that lawyers would have access to individuals detained in custody for investigation. In the past defence counsel or "people's pleaders" were reported to have been refused access to defendants until after the investigation process had been completed. It was not made clear, however, when these changes are to be implemented. Nor has the new function of the lawyers been fully clarified. The role of lawyers had been defined as "assisting in the protection of the socialist legal system" under the guidance of the Ministry of Justice, and it is not known what steps might be taken to ensure that the two roles do not come into conflict in the future.

3. Religious and cultural activities in Viet Nam: Government policy and practice

3.1 Introduction

Since 1976 the Vietnamese Government has made a series of policy statements which have set out the government's attitude towards religious and cultural activities. In relation to religion, generally, it has been said that citizens are free both to express and practice their religious beliefs, although the official statements have also warned against the use of religion for "anti-government activities". Freedom of expression in the literary sphere has been consistently subject to stringent restrictions. Since 1976 many publications have been banned and both writers and journalists have been warned against writing anti-government propaganda and "reactionary, decadent material".

The government has also taken steps to bring religious and cultural activities within the sphere of state and party control through the establishment of representational or "mass" organizations. The most important of these is the umbrella organization, the Viet Nam Fatherland Front. The role of the Viet Nam Fatherland Front is defined in Article 9 of the 1980 Constitution, which states that "the Front promotes the traditions of national unity...and educates and motivates the people...to emulate one another in building socialism and defending the country".

Members of religious institutions, writers and other intellectuals have over the years actively resisted incorporation into representational organizations. Many are believed to have been critical of government policies and to have peacefully expressed their opinions through writings and other activities. Resistance to joining government-sponsored organizations may in itself have been a way of protesting about the government's attempt to control independent activities of this kind. Individuals who have refused to submit to government control of religious or literary expression have in some cases been accused of "counter-revolutionary" activities and imprisoned in prisons or "re-education" camps. Others have been placed under house arrest or confined to their native villages.

The following sections provide general information about government policies and actions, about religious and literary activity in Viet Nam, and about people who have been arrested and detained for the expression of opinions or beliefs, or for their religious or cultural activities. Some of the individual cases will also be discussed in more detail in Chapters 4 and 5.

3.2 Government policy and religion

Of Viet Nam's 65 million people up to 80 percent are believed to be practising Buddhists or nominal followers of the religion. The majority are followers of the "northern school" or Mahayana Buddhism, although in southern Viet Nam the "southern school", or Theravada Buddhism, is also practised. Approximately four million Vietnamese (about seven per cent of the population) are thought to be Roman Catholics. A much smaller Protestant church claims between 200,000 to 300,000 followers. A number of indigenous religions have developed this century, principally in southern Viet Nam, and these have attracted a significant number of followers. Most prominent are the Cao Dai and the Hoa Hao. Each is estimated to have

upwards of one million followers. In the southern delta region there is a small Muslim community consisting mainly of ethnic Cham.

Official estimates of the numbers of religious believers are much lower. An article in the February/March 1987 edition of the Ha Noi journal, Tap Chi Giao Duc Ly Luan, claimed on the basis of "recent data from the Committee on Religion" that the sum total of religious believers in the SRV was no more than 14 million or approximately 25 percent of the country's population. Of this figure, the journal stated, six million were Buddhists, four million were Catholics, and the remainder Protestant, Cao Dai and Hoa Hao.

Following reunification in 1976 the new government defined the policies that were to govern religious practice in the Socialist Republic of Viet Nam. An article in the official CPV journal, Tap Chi Cong San, of June 1977 set out the CPV's three-point policy relating to religious activities, namely

- "- to respect both the right to freedom of religion and the right to atheism;
- to educate and motivate both the masses and religious groups to implement political tasks set forth by the party; and
- to help free the churches from imperialist shackles, and return them to the people."

In its 4th Party Congress in December 1976, the CPV said it would "resolutely oppose all imperialist plots to capitalize on religion", and that it was determined to "stamp out all distorting propaganda allegations of the imperialists and reactionaries hiding behind religion". This statement was followed in November 1977 by the promulgation of Resolution 297, issued by the Council of Ministers on the "Policy regarding religions in Viet Nam". This subordinated all religious activities to the party and state by means of a comprehensive set of rules including restrictions on religious services, religious teachings, and the holding of religious gatherings and retreats. The policy gave the state the right to select clergymen and local government agencies the right to confiscate church properties.

Article 68 of the 1980 Constitution of Viet Nam declares that citizens "enjoy freedom of worship, and may or may not practise a religion", subject to the proviso that "no one may misuse religions to violate state laws and policies".

In April 1985, on the occasion of the 10th anniversary of the end of the war, Dang Thanh Chon, a presidium member of the Viet Nam Fatherland Front, and chief of the Department of Religion in the Prime Minister's Office, summed up the state's policy towards religion in the Ha Noi newspaper Dai Doan Ket:

"guaranteeing freedom of belief and freedom of non belief to all citizens;

allowing normal faith activities of all religions to be carried out according to the constitution and the laws of Viet Nam;

closely uniting compatriots following a religion within the Vietnamese national community in building socialism successfully and defending the socialist fatherland vigorously; and

struggling to eliminate plots and manoeuverings of imperialists and reactionaries misusing religion to divide and undermine the Vietnamese people's revolutionary undertaking ..."

A CPV cadre, Nguyen Quoc Pham, described the official policy towards the major religions in the country in an article in the February/March 1987 edition of Tap Chi Ciao Duc Ly Luan:

"For Catholicism, our party and state advocate education and reform of church organizations [that] attract followers, dividing the ranks of authorities and the hierarchy, and unifying the church organization in the country. We respect the people's freedom of belief and disbelief, and at the same time sternly punish under the law those individuals who take advantage of religion to oppose the revolution.

For Buddhism, we have also reformed organizations and unified the Buddhist organizations throughout the entire country, abolished reactionary Buddhist organizations (such as the An Quang sect), and directed Buddhism into the national orbit, and concentration on religious work.

For Protestantism, we are advocating the quick resolution of reactionary political problems in their organizations, restricting contact with American Protestant organizations, tracking down and bringing to trial under the law reactionaries in the Protestant organization in the Central Highlands who...have opposed the revolution since liberation."

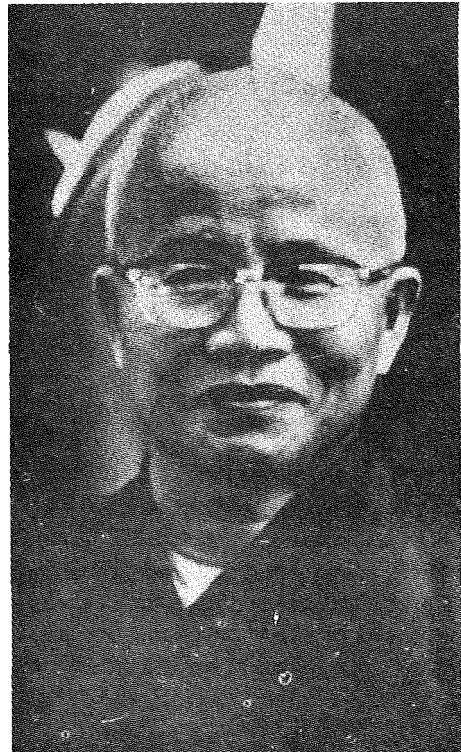
3.3 The Buddhist Church: arrests of Buddhist monks and nuns

After 1976 relations between the Unified Buddhist Church (UBC) and the new authorities gradually worsened. The UBC had been formed in 1964 by 11 Buddhist congregations from southern Viet Nam. The An Quang congregation, a prominent group within the UBC, had become increasingly militant during the 1960s. Throughout this period many An Quang clergy had been imprisoned and tortured for peaceful opposition to the government, demonstrations against the war and the presence of US troops in the country, and for their denunciation of human rights violations committed by the RVN Government.

On 6 April 1977, public security forces raided the An Quang pagoda in Ho Chi Minh City and arrested two of its leading monks, Thich Quang Do and Thich Huyen Quang, together with five other monks. They were detained until December 1978 when they were brought to trial on charges of "working against the revolution, sabotaging the people's solidarity bloc, counter-revolutionary propaganda and exploiting religion to undermine security and order". Thich Quang Do was acquitted and Thich Huyen Quang received a suspended sentence. Both continued to confront the authorities over alleged persecution, human rights violations, and state control over Buddhist institutions.



Thich Quang Do



Thich Huyen Quang

In November 1981 the Viet Nam Buddhist Church (VBC) was established and became the only Buddhist organization to receive official recognition. This was part of an attempt to unify Vietnamese Buddhists under the patronage of the Viet Nam Fatherland Front. Thich Quang Do and Thich Huyen Quang were arrested again in February 1982. They were subsequently banished to their native villages in central Viet Nam and their presence in Ho Chi Minh City was stated by the local authorities to be "too dangerous for the safety and well-being of the people". The two monks were still under house arrest in their native villages at the end of 1989. Amnesty International has adopted both as prisoners of conscience.

Throughout 1982 and 1983 the government-controlled media carried reports on "reactionaries disguised as priests" and in April 1984 the authorities raided the two most prominent Buddhist institutions in Ho Chi Minh City. They arrested 12 Buddhist monks and nuns, among whom were two of Viet Nam's best known Buddhist scholars, Thich Tue Sy and Thich Tri Sieu. All were held in administrative detention until they were brought to trial in Ho Chi Minh City in September 1988 (see Chapter 4 for details of the trial).

At the end of 1989 several of the monks and nuns sentenced to long prison terms had been released, but Amnesty International is concerned about the continued detention in "re-education" camps of Thich Tue Sy and Thich Tri Sieu, as well as the monks Thich Duc Nhuan and Thich Nguyen Giac, and the Buddhist lay helper (Ms) Nguyen Thi Nghia.

3.4 Arrests of Roman Catholic priests

By 1975 some 400 Roman Catholic priests had fled abroad from southern Viet Nam, as well as approximately 56,000 Roman Catholic Vietnamese believers (Viet Nam Courier, November 1977). Nearly all the Roman Catholic military chaplains who stayed behind were subsequently summoned for "re-education", along with thousands of former military and civilian officials from the RVN (see Chapter 5). According to some reports, in Ho Chi Minh City alone over 100 priests were sent for "re-education", and 36 foreign priests were expelled. Most of the social and educational institutions of the Roman Catholic church were confiscated and hundreds of priests and lay-people were reported to have been "discovered and dealt with". They were said by the authorities to have "fomented unrest and organized schemes to sow disorder in the hope of overthrowing the revolutionary administration". Many of these priests are believed to have been held in "re-education" without trial for long periods, in many cases for well over ten years. The majority are believed to have been released under amnesties declared in 1987 and 1988.

One of the Roman Catholics arrested in this way was Monsignor Nguyen Van Thuan, the bishop of Nha Trang. In May 1975 he had been appointed coadjutore con successione (successor elect) to the Archbishop of Ho Chi Minh City. Mgr Thuan, a nephew of former RVN President Ngo Dinh Diem, was arrested in August 1975 and detained without charge or trial in various "re-education" camps until 1978. In 1978 he was put under house arrest in different locations in and around Ha Noi where he remained until his release in November 1988.

In late 1980 and early 1981 the authorities closed the Dac-Lo (Alexandre de Rhodes) Centre of the Society of Jesus and arrested nine of the country's leading Jesuit priests. These included Jesuit Superior Father Joseph Nguyen Cong Doan. All were accused of "plotting to overthrow the government and dissemination of counter-revolutionary propaganda" and held in untried detention.

In February 1983 the Chairman of the Ho Chi Minh City People's Committee, Mai Chi Tho (currently Minister of the Interior), announced that investigations into their activities had been concluded and that they would be tried. In April the Vietnamese armed forces daily, Quân Dội Nhân Dân, published a series of articles denouncing the priests as "reactionaries disguised as priests, counter-revolutionaries and henchmen of the US imperialists and the Beijing expansionist clique in their war of aggression against Viet Nam".

Eight priests and five lay people were eventually brought to trial in Ho Chi Minh City from 29 to 30 June 1983. Four of the priests were sentenced to between three years' and life imprisonment. Fathers Le Thanh Que and Nguyen Cong Doan received 15 and 12 year terms of imprisonment respectively. At the end of 1989 all but these two were believed to have been released. Joseph Nguyen Cong Doan and Joseph Le Thanh Que are currently believed to be held in "re-education" camp Z30A in Xuan Loc district, Dong Nai province. Amnesty International has adopted both as prisoners of conscience and believes they were tried and convicted because of the non-violent expression of their religious beliefs in a religious journal called Dao Nhap The (Religion Incarnate), which was produced at the Dac Lo Centre.

Mgr Nguyen Kim Dien, the Archbishop of Hué, was also placed under house arrest after he had publicly criticized the authorities for not adhering to the stated policy of religious freedom. He had protested in particular against the establishment of the Committee for Solidarity of Patriotic Vietnamese Catholics. The Committee was formed in 1983 under the patronage of the Viet Nam Fatherland Front; the Archbishop feared it might lead to the creation of a separate church. He had suspended a priest in his diocese for joining the committee. In late 1985 Archbishop Dien publicly protested at the arrest of two nuns who had delivered correspondence from him to the Archbishop of Ho Chi Minh City. The nuns were subsequently accused of "engaging in espionage". They are believed to have been held without charge or trial for nearly three years. In March 1988 the nuns were released but at the end of 1989 their freedom of movement and association was reportedly still restricted. After his protest, contact between the Archbishop and his diocese became increasingly difficult and the restrictions imposed upon him were reported to have become more stringent. Archbishop Nguyen Kim Dien, whom Amnesty International considered a prisoner of conscience, remained under house arrest until his sudden death on 8 June 1988.

3.5 Arrest and detention of Protestants

Most of the small Protestant community in Viet Nam is situated in the south and in the central highlands of Viet Nam. American missionaries from Evangelical churches had been working since 1911 on the founding of the Tin Lanh (good news) church and expanded their activities throughout the 1960s. In 1975 the Evangelical Church in Viet Nam claimed to have some 200,000 members, of whom some 70,000 were "Montagnards" from among the ethnic minorities in the central highlands.

Following the end of the war in 1975 all foreign Protestant missionaries were expelled from the country. Protestant military chaplains were sent for extended periods of "re-education" without trial, the church's colleges in Nha Trang, Dalat and Ban Me Thuot were confiscated and most "Montagnard" churches were closed, along with schools, orphanages and medical clinics run by the Evangelical Church until 1975. Most Protestant military chaplains are believed to have been released from "re-education" in recent years. Reports indicate that some protestants arrested after 1975, including Pastors Ho Hieu Ha Nguyen Huu Cuong, and Tran Xuan Tu, are still in detention, as well as a number of "Montagnard" pastors, but information about this latter group is scarce.

Some Protestants appear to have been arrested and detained because of their reluctance to submit to control by the much smaller Protestants' Association in the northern part of Viet Nam. This was founded in 1955 and is a component member of the Viet Nam Fatherland Front. No unified Protestant Church has thus far been established in Viet Nam, although pressures on the Evangelical Church to join the unified Protestant Church have increased over the years.

In 1983 this reluctance to submit to the authority of a unified church is reported to have led to the closure of the An Dong and Tran Cao Van evangelical churches in Ho Chi Minh City, and the arrest of pastors Ho Hieu Ha and Nguyen Huu Cuong and other members of the church. All were tried and convicted by the Ho Chi Minh City People's Court in August 1987 on charges which included "carrying out propaganda against the revolution". In May 1989 the Amnesty International delegation visiting Viet Nam was informed by government officials that the two had been released. Subsequent reports,

however, indicate that they were still in detention at the end of 1989 (for details of the trial see Chapter 4).

3.6 Restriction of literary freedom and arrests of writers and intellectuals

Under the Government of the Democratic Republic of Viet Nam there was a brief period of literary freedom during the 1950s. In the wake of publicly acknowledged excesses during the land reforms of 1953 to 1956, the Lao Dong (Workers) Party liberalized some of its policies, particularly in the cultural sphere. From this resulted a campaign known as "Let a Hundred Flowers Bloom". On 15 September 1956 the party authorized the publication of several unrestricted journals. The most prominent of these was Nhân Văn (Humanism), in which the DRV's best known writers, representing a broad spectrum of political opinion, exposed and criticized corruption and nepotism in the party and government, the lack of freedom in society and the excesses of land reform.

In 1958 all publications from the "Hundred Flowers" campaign were suspended, and from January to June several hundred intellectuals were sent for short periods of imprisonment ("re-education"). Others were tried and convicted of "counter-revolutionary" activities and sentenced to long prison terms. Most were banned from publishing their works. In 1988 at least 20 writers from the "Hundred Flowers" campaign were reported to remain banned or restricted and at least one prisoner of conscience is believed to remain in "re-education" (see Nguyen Chi Thien's case in chapter 5).

Soon after the end of hostilities in 1975 the transitional Provisional Revolutionary Government called on writers, journalists and artists in the southern part of Viet Nam to register with a newly established cultural association and to provide detailed histories of their activities until 1975. In tandem with these measures publications were initially suspended, and literary works - both Vietnamese and foreign - were classified in accordance with censorship categories. This resulted in a ban on the complete works of 56 southern Vietnamese writers, as well as many other foreign books.

Between 2 and 28 April 1976 public security forces in Ho Chi Minh City arrested and detained some 60 leading southern Vietnamese intellectuals. About half were released after several months' interrogation in Ho Chi Minh City. The remainder were sent, without trial, for "re-education". The majority of these were sent to a camp in Gia Trung in the central highland province of Gia Lai-Kontum. To Amnesty International's knowledge, the majority were released over a period of years. Several were, however, rearrested in the early 1980s, and some were subsequently tried for alleged criminal offences and sentenced to long prison terms (see Chapter 4).

Since 1976 the authorities have conducted periodic campaigns, especially in the southern part of the country, against "decadent culture", and have frequently announced the confiscation of illegally imported books, films, cassettes and magazines. Articles have appeared frequently in the Vietnamese press warning the population against reactionary cultural material. In 1980 the state publishing house Su That (Truth) in Ha Noi published a book entitled The Commandos of the Cultural War in the South, in which it identified and accused ten former southern Vietnamese writers of being "psychological warfare cadres of the USA".

In September 1983 the official army daily, Quân Đội Nhân Dân, carried a prominent article entitled "Behind the parcels sent to Viet Nam", in which it identified exiled artists and former writers still in Viet Nam as "agents of the US Central Intelligence Agency" and claimed to have discovered a plot to destabilize the revolution by sending money and goods into the country. The article was a prelude to the arrest in May 1984 of a number of writers and intellectuals including prisoners of conscience Doan Quoc Sy and Hoang Hai Thuy. They were held in untried detention until 1988 when they were charged and convicted of disseminating "counter-revolutionary propaganda" under provisions of the 1986 Criminal Code (see Chapter 4).

After the 6th Party Congress of the CPV in December 1986 and the launching of Viet Nam's "renovation" (dôi moi) program, the CPV's newly elected Secretary-General Nguyen Van Linh spearheaded renewed openness through a series of newspaper columns he wrote from May 1987 onwards under his initials, N.V.L., headlined, "Things that must be done immediately". At a meeting of writers, artists and cultural activists in Ha Noi in October 1987, the Secretary-General conceded that the Party had neglected creative and intellectual endeavour in the past, and had been "undemocratic, despotic and overbearing".

On 28 October 1987 the Ho Chi Minh City daily, Saigon Giai Phong, quoted one of the participants of the meeting who described his criticism of the CPV's control in the literary sphere in a "frank and to the point" report:

"In past years, literature and arts has failed to fully act out its role because of restrictions. In recent years, the leadership provided for literature and arts have, on many occasions, been too rudimentary. Machetes and axes--tools for clearing forests--have been used to trim the branches and kill the worms in a garden of exquisite flowers.... Journalists, writers and movie makers are regularly reminded to do this and not to do that. They are tied down by a sort of taboo..., and occasionally, a case would make the headline: a certain press article, book, or motion picture is condemned for its "revisionist", "anti-party", "instigating" ... tendencies. A court sentence usually has its time limit, and the convict can go free after serving his sentence. But a court sentence involving literature and arts will forever hang above the head of the condemned--a life sentence that may harm even his offspring and their children..."

Since the 6th Party Congress a "renovation" of the press in Viet Nam has taken place resulting in a number of articles by correspondents openly critical of bureaucracy, corruption, economic mismanagement, and following up complaints received from the public. These have included reports on investigations into unlawful arrest and detention, torture and ill-treatment of suspects by public security forces and death in custody. Le Dien, writing an article in the Ha Noi newspaper Dai Doan Ket on 18 June 1988, had this to say about the resulting pressures the press faced in the wake of such open reporting:

"Two years ago, we of the press started making innovations along 6th Party Congress lines of going to the people as a source, and began the struggle against open shortcomings, where they can be located. [Since then] five or six general

editors were forced into early retirement or resignation. Many correspondents were threatened with "jungle law", were secretly arrested, and were beaten up ..."

A similar experience was related in an interview with a foreign journalist published in April 1989 by Nguyen Manh Tuan, a best-selling author from Ha Noi who since 1975 has been living in Ho Chi Minh City. There he wrote a number of novels critical of what he terms "negative phenomena" prevalent in the country since reunification in 1976. Some of his works are still banned in certain provinces and at regional party meetings in Ho Chi Minh City he has asserted that "some leaders said I was a counter-revolutionary and should be put on trial and executed". While investigating a scandal concerning a state enterprise in Dong Nai province he said he had discovered that the provincial party secretary, in collusion with others, had "perverted justice by imprisoning three innocent men to further their own ambitions". After nearly two years of pursuing the case, sending articles to every major newspaper in Viet Nam (none of which "dared to publish it"), he reportedly said to his interviewer: "I don't feel quite safe. I can't sleep well or eat well sometimes. But I feel pity for the victims". In an article about the case he observed:

"The party always says that a human being is the most precious thing. But both law and human beings were tortured extremely cruelly."

At a meeting in Ho Chi Minh City in February 1989 Secretary General Nguyen Van Linh urged newspaper editors to tone down their criticism of the government and party, and warned against reflecting "the tendency of a bourgeois democracy".

4. Political Trials in 1987 and 1988: Prisoners of concern to Amnesty International

Following the introduction of the Criminal Code in 1986 the government initiated a series of trials of people accused of offences against national security. The majority were known to have been detained in untried detention in "re-education" camps or prisons for several years before being brought to trial. A few were arrested, tried and convicted after 1986.

The prisoners detained without trial are believed to have been subsequently charged, tried and convicted of "anti-government" activities under provisions of the new Criminal Code. In these cases the defendants appear to have faced charges brought retroactively in contravention of the Criminal Code itself. Article 7 of the code stipulates that criminal offenders can only be charged under laws in effect at the time the offence was committed. Those arrested after 1986 were also convicted of "anti-government" activities.

In most of the cases known to Amnesty International the accused are reported to have been charged and convicted under Article 73, which sets out the penalties for people convicted of establishing or joining an organization aimed at overthrowing the people's government. In at least one other case the defendants were convicted under Article 82 which sets out the punishment for "spreading propaganda against the socialist regime". Information about the evidence providing the basis for conviction in all these cases is scarce. Amnesty International is concerned that provisions of the Criminal Code have been invoked to convict and imprison people for legitimate religious, literary or human rights activities.

Few details of these trials are available but reports indicate that trial procedures did not conform to international standards of fair trial in any of the cases where prisoners of concern to Amnesty International were brought before the courts. Defendants are reported to have been denied the right to legal counsel of their choice and, in some cases, to have been informed of the trial only hours or days before it was due to begin. The Amnesty International delegation which visited Viet Nam in May 1989 submitted summaries of these cases to government officials and asked for documentation relating to the trials, such as the indictments, details of the evidence produced before the court and copies of the judgments delivered. This information had not been made available by the Vietnamese authorities by December 1989.

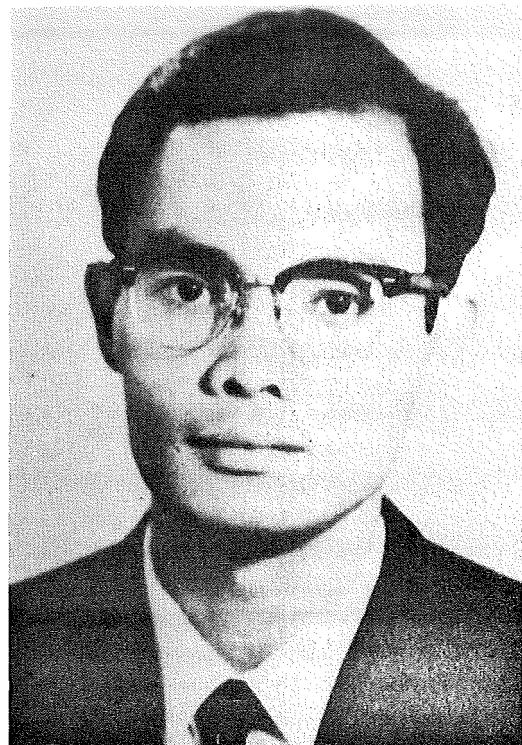
The following sections summarize the case histories of a number of prisoners tried during 1987 and 1988:

4.1 The trial of members of the Evangelical Church

Pastors Ho Hieu Ha and Nguyen Huu Cuong were tried together with two other members of the Evangelical Church, Le Thien Dung and Nguyen Van Tuoi, at the People's Court in Ho Chi Minh City on 27 August 1987. They were accused of carrying out "propaganda against the revolution", assisting Vietnamese citizens to leave the country illegally and receiving money from abroad. The trial lasted one day and all four defendants were convicted. Both pastors received eight year sentences and their co-defendants received five and four year sentences. These sentences were all reported to have been upheld by the Supreme People's Court in Ho Chi Minh City which rejected appeals lodged by the four prisoners.

All four defendants had been held in untried detention since their arrests in 1983. Nguyen Huu Cuong had returned to Viet Nam in 1972 after training as a pastor in the USA. He founded the An Dong Evangelical Church in Ho Chi Minh City in 1975 and was arrested when it was forcibly closed by the authorities in June 1983. Pastor Ho Hieu Ha had been arrested in December 1983 when the authorities closed down the small but influential Tran Cao Van Church, which Pastor Ho Hieu Ha led.

Pastor Nguyen Huu Cuong



Despite confirmation of their sentences by the Supreme People's Court in May 1988, Le Thien Dung and Nguyen Van Tuoi have both been released. The situation of Nguyen Huu Cuong and Ho Hieu Ha, however, is less clear. In May 1989 officials informed Amnesty International's delegates that they had been released, but subsequent reports suggest that they are still held in Chi Hoa Prison in Ho Chi Minh City. *

4.2 Trial of members of the Roman Catholic Church

Twenty three members of the Roman Catholic Church were brought to trial before the People's Court in Ho Chi Minh City in October 1987. The principal accused were a priest, Father Dominic Tran Dinh Thu, and a monk, Brother Paul Nguyen Chau Dat.

Father Tran Dinh Thu, the 83-year-old founder and Superior General of the Catholic Vietnamese Dong Kong Congregation, or Congregation of the Mother Co-redemptrix, was arrested on 2 July a few weeks after security forces raided the headquarters of his congregation in the Thu Duc district, near Ho Chi Minh City, in May 1987. At the time of the raid, according to the official Vietnamese media, the security forces claimed to have discovered "many illegal residents and many reactionary documents together with a huge amount of illegal stored grain", and confiscated a pistol and some ammunition.

*In January 1990 Amnesty International learned that Pastors Nguyen Huu Cuong and Ho Hieu Ha were released from detention on 4 January 1990.

At the trial, which lasted four days, Father Tran Dinh Thu and his co-defendants were charged with "propaganda against the socialist system, sabotage, disturbance of public security and terrorism". All were convicted: Father Tran Dinh Thu and Brother Nguyen Chau Dat were sentenced to life imprisonment and the other defendants were jailed for terms ranging between 4 and 20 years.



Father Dominic Tran Dinh Thu at his trial in October 1987
The People's Court, Ho Chi Minh City

Few details of the trial proceedings are available. One official media report stated that all the defendants had pleaded guilty "in the face of undeniable evidence and testimonies". Another indicated that Father Tran Dinh Thu had "because of his stubborn nature, refused to talk when interrogated by the adjudicative panel".

The official media effectively predicted the conviction of the defendants several months before their trial in a series of articles in Saigon Giai Phong, a daily newspaper published in Ho Chi Minh City. These articles, which appeared in June and July 1987, claimed that members of Father Tran Dinh Thu's Congregation comprised a "reactionary group engaged in counter-revolutionary activities" who acted as "counter-revolutionaries under the cover of religion". Father Tran Dinh Thu was described as having been "actively engaged in counter-revolutionary activities" since shortly after his ordination as a priest 50 years before, in 1937. He and others were said to have been detained for "re-education" from 1975 to 1977, following which, the newspaper claimed, Father Tran Dinh Thu had engaged in the "clandestine training of anti-communist forces disguised as priests and clergymen" and to have conducted 84 such "training courses".

Before his arrest on 2 July 1987, Father Tran Dinh Thu submitted a detailed written statement to the authorities describing what had occurred in May 1987 when his congregation's headquarters were raided by the security forces. On 16 May, he said, public security officials had arrived

to inspect the premises bearing an administrative Censure Order. At the end of the inspection, they confiscated about 20 tons of rice which the congregation had stored for use over the next three months, in the face of strenuous protests from members of the congregation. Next morning, local security officials broadcast over the public address system that the congregation possessed many anti-government documents and was intent on sabotaging national security. There were then further protests and one public security officer was stabbed and wounded. On 20 May, the monastery was occupied by security forces and those present were arrested. In his statement, Father Tran Dinh Thu denied the accusations levelled against the congregation by local officials and said that no anti-government documents or propaganda material had been found during the 16 May inspection: prayer books, French language tape recordings and letters from relatives abroad were all that had been found. He went on to deny that there was any intention to damage national security, and to urge the withdrawal of security forces from the congregation's headquarters. He also urged the authorities to release those arrested and to respect the right to freedom to practise one's religion.

In September 1988 the life sentences imposed on Father Tran Dinh Thu and Brother Nguyen Chau Dat were reportedly reduced to 20 year terms. After this they are said to have been moved from Chi Hoa Prison to a "re-education" camp in Dong Nai province.

4.3 The Writers' Trial

Six people were brought to trial in April 1988 before the People's Court in Ho Chi Minh City. They included four writers - Doan Quoc Sy, Hoang Hai Thuy, Khuat Duy Trac and Tran Ngoc Tu - and two women, poetess Nguyen thi Phuoc Ly, and Nguyen Thi Nhan, a postal worker. All six were accused of "carrying out counter-revolutionary propaganda with intent to overthrow the government" and receiving money from abroad to enable them to send samizdat literature out of the country. They were convicted after a trial before a judge and two assessors which lasted less than a day. The prosecutor read out the charges, on which the accused were each asked to comment, and the judge then read out sentences which took no account of what the defendants had said. Doan Quoc Sy was jailed for nine years, Hoang Hai Thuy received an eight-year sentence. Nguyen Thi Nhan and Nguyen Thi Phuoc Ly received six and five year terms respectively. Khuat Duy Trac and Tran Ngoc Tu were both sentenced to four years' imprisonment but released after the trial as time served in pre-trial detention was taken into account by the court.

Doan Quoc Sy, Hoang Hai Thuy and the others were arrested on 2 May 1984 when at least ten writers were detained. Several months before, in September 1983, the official daily of the Vietnamese army, Quân Doi Nhan Dân, had published an article in which exiled artists and former writers still in Viet Nam were described as "agents of the US Central Intelligence Agency". Doan Quoc Sy, a prolific and widely read novelist and essayist, has also been denounced in the official media as an "opportunist", a "reactionary artist" and a "psychological warfare cadre of the USA", and has been accused of "distorting the history of the resistance" and of maintaining "indirect and perfidious attacks against the Communist government". His writings, like those of many other writers, were banned by the new government after the end of the war in 1975 and he was detained for "re-education" from April 1976 until January 1980.

Hoang Hai Thuy had also been detained for "re-education" for two years from November 1977. A writer and translator, he continued after his release in 1977 to write for overseas publications. He too has been accused by the official media of anti-government propaganda and receiving money from abroad.

The writer Doan Quoc Sy
before his arrest
in 1984



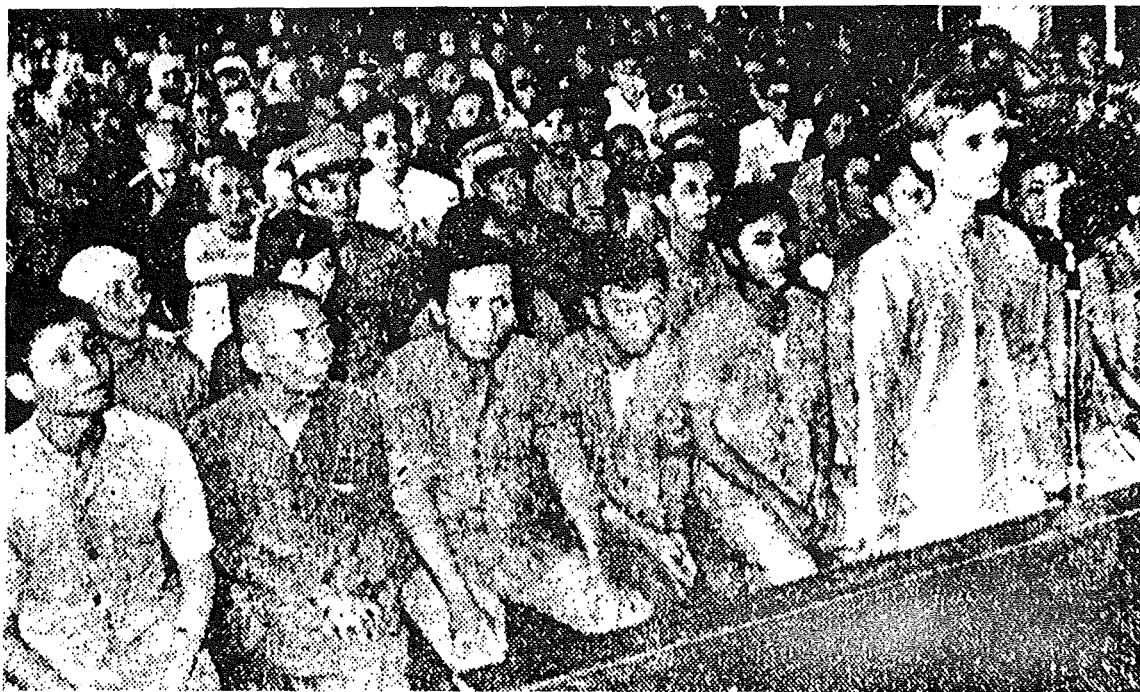
Two other writers among those arrested on 2 May 1984, Nguyen Hoat and Duong Hung Cuong, died in custody in 1986 and 1987 respectively. The circumstances of their deaths are not known but according to some sources, Duong Hung Cuong's died after he had spent one year in solitary confinement.

Doan Quoc Sy and Hoang Hai Thuy reportedly had their sentences reduced in November 1988 by the Supreme People's Court in Ho Chi Minh City, the former to eight years and the latter to six years. They are currently held at Camp Z30A, a "re-education" camp in the Xuan Loc district of Dong Nai province, to the northeast of Ho Chi Minh City.

4.4 The Buddhists' Trial

Thich Tue Sy (secular name Pham Van Thuong) and Thich Tri Sieu (secular name Le Manh That), two leading Buddhist scholars, were tried in September 1988 together with 19 others at the People's Court in Ho Chi Minh City. All 21 defendants were charged under Article 73 of the Criminal Code with having engaged in "activities aimed at overthrowing the people's government". The trial was conducted before a judge and two assessors, and lasted three days. The judge read out the accusations against each defendant and the prosecutor then presented the evidence compiled against each of them, and urged the court to pass death sentences on Thich Tue Sy and Thich Tri Sieu as they had shown no repentance. According to the newspaper, Saigon Giai Phong, both monks had "obstinately refused to confess their crimes".

The trial was widely publicized in the official media. The two monks were described as "reactionaries under the cloak of Buddhism", who had formed two "counter-revolutionary organizations", the "Viet Nam National Front for human rights" and the "Free Viet Nam Force", in order to "sow doubt and division among the people". They were alleged to have established secret bases in southern Viet Nam for the creation of an armed force; to have purchased weapons, ammunition and military equipment; to have "used pagodas as places of operations, fought against the revolution, and [to have] attracted a number of thoughtless monks, nuns and laity into their counter-revolutionary organization, turning pagodas into meeting places and using the facilities of the pagoda to print reactionary documents".



Thich Tue Sy (standing) and other Buddhists at the September 1988 trial, the People's Court, Ho Chi Minh City

All 21 defendants were convicted. Thich Tue Sy and Thich Tri Sieu were both sentenced to death for "particularly dangerous crimes against national security". Their sentences were subsequently commuted to 20 years' imprisonment by the Supreme People's Court in November 1988. The 19 other defendants were sentenced to prison terms ranging from four and a half years to life.

Before being brought to trial, Thich Tue Sy and Thich Tri Sieu are believed to have been held incommunicado for more than four years at Phang Dang Luu Prison in Ho Chi Minh City. They were arrested in April 1984 together with at least ten other monks and nuns from the Gia Lam and Vanh Hanh pagodas in Ho Chi Minh City.

Thich Tue Sy and Thich Tri Sieu had both been closely associated with Thich Tri Thu, the President of the Viet Nam Buddhist Congregation, founded in 1971, which is the only Buddhist organization to have government recognition. Thich Tri Thu is reported to have become ill and died suddenly on the day of their arrest in 1984.

Thich Tue Sy, a former university professor, was detained from June

1978 to February 1980, apparently because he had spent a night at a household in which he was not registered. He and Thich Tri Sieu, also a former university professor educated in the USA, were reportedly compiling a Vietnamese Buddhist Encyclopaedia at the time of their arrest.



Thich Tue Sy and Thich Tri Sieu in 1984

In early 1989 Thich Tue Sy and Thich Tri Sieu, and some of the Buddhists with them, were reported to have been transferred from prison in Ho Chi Minh City to "re-education" camp Z30A, in Xuan Loc district, Dong Nai province. Conditions were reported to be less harsh in the camp and inmates were said to be able to receive frequent visits from relatives who could take food parcels to them. In December 1989 reports received by Amnesty International indicated that Thich Tue Sy had been transferred to a camp in Xuan Phuoc, Tuy Hoa district, Phu Khanh province. To reach the camp requires a four-and-a-half hour bus journey from Ho Chi Minh City, followed by a ten-mile walk during which two creeks must be crossed. Thich Tue Sy is reported to suffer from malnutrition and it is believed that if unable to receive regular food parcels - because the camp is so inaccessible - he may become dangerously ill.

4.5 The Trial of Tran Vong Quoc and Tran Tu Thanh

Brothers Tran Vong Quoc, Tran Tu Thanh and Tran Tu Huyen, were arrested in 1984. Two of them are reported to have been held without trial until 1988. The third, Tran Tu Huyen was released in 1987. Tran Van Tuyen, father of the three, was a well-known human rights lawyer and opposition leader in the south before 1975. Tran Van Tuyen was himself the victim of harassment by the RVN government before 1975 for his defence of political prisoners and his open support for a negotiated end to the Viet Nam war. Tran Van Tuyen died in 1976 while in detention for "re-education".

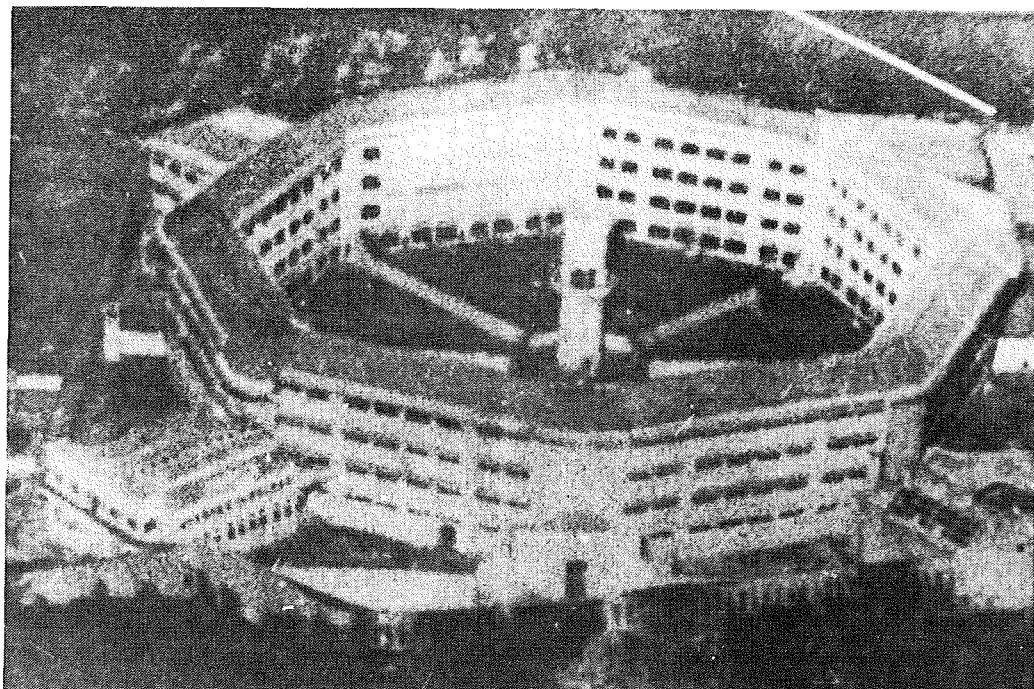
The brothers were brought to trial at the People's Court at Ho Chi Minh City on 31 December 1988. Tran Vong Quoc was charged with "anti-government activities" which were reported to have included collecting

information about "reactionary activists" tried and executed for their crimes; intending to pass information to human rights organizations abroad in order to discredit the Government of Viet Nam; corresponding with anti-government elements overseas and inducing others to participate in anti-government activities. Tran Tu Thanh was reported to have been found guilty of collaborating with his brother and failing to report his activities to the authorities; collecting information about the remains of US soldiers missing in action and intending to pass this information on to the US authorities; and writing a report on conditions in "re-education" camps with the intention of sending it to overseas human rights organizations. Tran Vong Quoc and Tran Tu Thanh are reported to have been sentenced to 12 and five years' imprisonment respectively. The third brother, Tran Tu Huyen, was released in January 1987 but was reported to have been sentenced to three years' probation for failing to report the activities of his brothers to the authorities.

According to reports the brothers and their relatives received only one day's notification of their trial, which itself lasted for no more than a day. They are believed to have been refused legal representation at the trial.

The brothers were arrested at their homes in Ho Chi Minh City on 16 December 1984 by members of the city's public security bureau. They were taken to a place of detention unknown to their families who remained without knowledge of their whereabouts until mid-1986. After this they are believed to have been detained in Chi Hoa Prison in Ho Chi Minh City. The brothers are believed to have been held in extremely harsh conditions and, among other things, Tran Tu Thanh and Tran Vong Quoc were reported to have been held in total darkness for three years before the trial. Their health is believed to have seriously deteriorated, and they are believed to have been denied access to medical treatment.

Recent information received by Amnesty International indicates that Tran Tu Thanh was released on 5 September 1989 and that he is now on probation. Tran Vong Quoc is reported to have been transferred from Chi Hoa Prison to a "re-education" camp in Ham Tan, Thuan Hai province.



Chi Hoa Prison, Ho Chi Minh City

5. Detention without trial in "re-education" camps

5.1 The legal basis for "re-education" without trial

Legislation providing for detention without trial for the purpose of political "re-education" in Viet Nam was originally set out in Resolution 49/NQ/TVQH, and was passed by the National Assembly of the Democratic Republic in 1961. Detention for "re-education" was described as a process of education and reform which would combine manual labour with political education. The resolution allowed for an initial period of three years' detention for "re-education" which was renewable indefinitely. No provision was made for offenders to be brought to trial.

After the end of the war in May 1976 the transitional Provisional Revolutionary Government issued Regulation 02/CS/76 which limited the period of detention to a maximum of three years. After this, it was stated, prisoners found to have "reformed" would be released while "die-hard agents of the former regime" would be brought to trial and sentenced if found guilty of "crimes against the people". However, after July 1976 the government of the Socialist Republic adopted the DRV policy on "re-education" and the retroactive application of Resolution 49 became the basis for the long-term detention without trial of large numbers of people in "re-education" camps.

Many others who were detained in "re-education" camps after 1975 are believed to have been arrested under provisions set out separately in PRG Decree Nos. 02/SL/76 and 03/SL/76 which authorized the detention of suspects pending investigation, or under separate provisions governing the arrest, punishment and detention of "obstinate counter-revolutionary elements".

The Vietnamese Criminal Code, which came into force in January 1986, contains no provision for detention without trial for "re-education", thus marking a significant step forward in the protection of human rights at the judicial level. However, on 4 July 1987 the newspaper Saigon Giai Phong published the text of "Temporary Regulations on Re-education and Forced Labour". The regulation states that administrative organs may give orders to detain offenders for a term of "concentrated re-education through forced labour" for between six and 24 months without trial. The people who may be detained under these measures were reported to include:

"past or present counter-revolutionary elements who are still stubborn and refuse to be re-educated despite the lenient policy and repeated re-education efforts by the government".

To date there have been no reports of prisoners being detained under these regulations, and in principle they would appear to have been superseded by the stipulation set out in Article 10 of the 1988 Criminal Procedure Code (see Chapter 3) which states that: "No one may be considered guilty or forced to undergo punishment without a court judgment that has taken legal effect." This stipulation appears to render all detention without trial illegal.

With the introduction of the Criminal Code and the Criminal Procedure Code the legal basis for detention without trial for "re-education" appears to have been abolished. At the same time the Vietnamese authorities have themselves acknowledged the difficulties involved in the initial

implementation of both codes, and articles in the official media have drawn attention, for example, to "cases that had been arbitrarily handled without due process of law, or that had involved individuals whose temporary or legal detention periods had been exhausted" (Nhân Dân 10 June 1986). In December 1986 the same paper reported that people were still being arrested and detained under the provisions set out by decrees issued by the government of the DRV. It is not known whether the implementation of the codes has now been fully achieved in practice, nor is the exact current legal status of the various decrees and regulations described above fully clear.

Information from various sources (see below) suggests that both prisoners of conscience and political prisoners are still held in untried detention, but it has not been possible to establish whether such detentions are sanctioned by administrative decrees existing alongside the Criminal Code.

5.2 "Re-education" without trial: Civilian and military officials in the former Government of the Republic of Viet Nam (RVN)

After the end of the war in 1975 thousands of former military and civilian officers in the RVN Government were summoned by the transitional Provisional Revolutionary Government to register for "re-education". Thousands of former soldiers, non-commissioned officers and junior civilian functionaries of the RVN were required by the new government to attend "on-the-spot political courses" of three days' duration. Following completion of the course those participating were generally permitted to return to their homes.

Within the next two months military officers, senior political figures and high-ranking civil servants were summoned to register at barracks, local high schools and other designated registration points for an indeterminate period of "re-education" in "centres". They were told to bring 10 to 30 days' provisions, according to their grade, and this was generally assumed to represent the amount of time to be spent in "re-education". After they had spent a period of a few days at the "centres", however, at least 40,000 prisoners were officially acknowledged to have been transferred to "re-education" camps throughout the country. In the camps they were required to undertake manual labour, attend classes in political education and participate in self-criticism sessions. These 40,000 prisoners were said by the government to have included "29,000 puppet military personnel, 7,000 civilian officials, 3,000 policemen and security officials, and 900 members of reactionary parties and organizations".

In December 1979, more than four years after the majority had registered for "re-education", the Vietnamese authorities told members of an Amnesty International delegation then visiting the country that some 26,000 people detained in 1975 were still undergoing "re-education".

5.3 Amnesties for political prisoners detained without trial in "re-education" camps

Since 1980 the authorities have released large numbers of detainees held in "re-education" camps under a series of amnesties announced by the Council of State. Those eligible for release under the amnesties have included

specific categories of prisoners such as the elderly, the handicapped, and those who have "sincerely repented and resolutely reformed themselves". Such amnesties are usually proclaimed twice annually on the occasions of the Vietnamese (lunar) New Year Celebrations (Têt) in February, and the National Day celebrations in September. Announcements of amnesties have tended to be general and until 1987 the government did not make available information about the number and names of those released, in line with the official view that the location and number of "re-education" camps should be kept secret in the interest of national security.

The process of releasing political prisoners held in "re-education" camps appears to have been accelerated greatly after the 6th Party Congress of the CPV in December 1986. In September 1987 the Vietnamese media published information about the number of those released on the occasion of the 42nd National Day celebrations and some details of who they were. On 13 September, for example, the Viet Nam News Agency announced that some 2,474 prisoners were released from "re-education" camps among whom were 480 former military and civilian government personnel who had been detained since 1975 (including 18 central administrative officials, 248 field officers and 117 junior officers). A further announcement on 16 September named two former government ministers, nine former generals and an ex-colonel among those released. On 17 September another statement revealed that the 480 released prisoners also included some Buddhist and Catholic chaplains who had served in the armed forces of the former Republic of Viet Nam governments.

On 21 January 1988 Nguyen Van Linh, the Secretary General of the CPV, announced at a media seminar in Ho Chi Minh City prior to the lunar new year celebrations that the Communist Party had made a decision to release all remaining prisoners in "re-education" camps, without disclosing details of the number of prisoners still held.

This statement was followed by an announcement on 11 February 1988 by the Vice-Minister of Information that the government had decided to release a further 3,820 prisoners from "re-education", including 1,014 former military officers and civilian officials of the former Republic of Viet Nam held since 1975 to mark the lunar new year. He added that of those being freed, one prisoner was a former government minister, 11 were former army generals, several prisoners had been senators and parliamentarians, 82 were former military and intelligence officers, and 35 were former Buddhist, Catholic and Protestant army chaplains. With this latest amnesty he declared that "only 159 officials of the former regime continue to be held in re-education and that they would gradually be released "depending on their repentance".

In September 1988 a smaller amnesty was granted to mark the country's 43rd National Day in which, according to a Vietnamese Foreign Ministry spokesperson, some 1,978 prisoners were released from "re-education" camps, including 30 former military officers and civilian officials held since 1975.

Taken together, the three amnesties announced within a period of 12 months from September 1987 to September 1988, resulted in the officially reported release from "re-education" of nearly 8,300 prisoners, 1,524 of whom had been held since 1975 on account of their real or imputed political sympathies for, or the positions they had held in, the former Republic of Viet Nam governments.

Amnesty International's delegation was told in May 1989 that no more than 128 political prisoners from the RVN, and detained in 1975, were still in "re-education". When the delegation visited the "Thu Duc" "re-education" camp (K1, Z30D) in Ham Tan, Thuan Hai province, it was informed that all the 128 prisoners detained in 1975 were currently held there. The delegation was also informed by the camp commander that he had recommended the release of all 128 prisoners.

Amnesty International is encouraged by the reform of the laws providing for detention without trial and welcomes the recent amnesties. It remains concerned, however, by the fact that information about those still in detention, and those who have been released, has not been made publicly available by the government. Amnesty International has received information from unofficial sources about approximately 400 people associated with the Government of the RVN who were summoned for "re-education" in 1975, whose current circumstances are still unknown, and who may be still in detention. These include a former diplomat, Truong Kim Cang; Le Xuan Diem, a former major and musician in the RVN army orchestra; and Nguyen Van Hao, a pharmacist and former 1st lieutenant in the RVN army medical corps. Likewise, recent official statements that all imprisoned former military chaplains in the armed forces of the RVN were released under the amnesties cannot be confirmed until the whereabouts of the priests Tran Ba Loc, Nguyen Khac Nghi and Nguyen Thanh Sanh have been made known by the Vietnamese authorities.

5.4 Detention without trial: A continuing concern

Since 1975 the government has also invoked legislation providing for detention without trial to detain in "re-education" camps a substantial number of people who had no connection with the war or the policies of the governments of the RVN. These have included writers and artists, members of religious congregations, professionals critical of government policies and Vietnamese citizens believed to have been arrested because of ethnic Chinese origin. Many of these prisoners have been held in detention without charge or trial for years, after decisions were taken by People's Committees at the municipal or district levels, and it appears that no judicial procedures were followed in their cases.

On the basis of available information Amnesty International is not able to make an accurate assessment of the number of people currently detained without charge or trial in "re-education" camps. The government has asserted that no more than 130 former civilian and military personnel from the RVN are still in "re-education" camps. No recent government statements have referred to the number of political prisoners in "re-education" camps who have had no connection with RVN governments. During the May 1989 visit the Amnesty International delegation was unable to obtain statistics on the number of camps still in operation, or about the number of political detainees held without charge or trial within them.

According to government announcements a total of 8,300 prisoners were released under the 1987 and 1988 amnesties. Some 1,500 of these were stated to have been former government officials, but no details about the other 6,800 released prisoners were made public, nor were their alleged offences defined. It is believed that some of these prisoners may have been prisoners of conscience.

Recent information received from former prisoners suggests that a number of camps - for example camps Z30A and Z30D in Dong Nai and Thuan Hai provinces - still hold several thousand prisoners, many of whom are said to be classified as "political" prisoners and held without charge or trial. Others may have been tried and sentenced to periods in "re-education" camps on political charges.

Some of the prisoners arrested after 1975 and still held in untried detention are prisoners of conscience, among them Nguyen Chi Thien and To Huy Co, whose cases are described below:

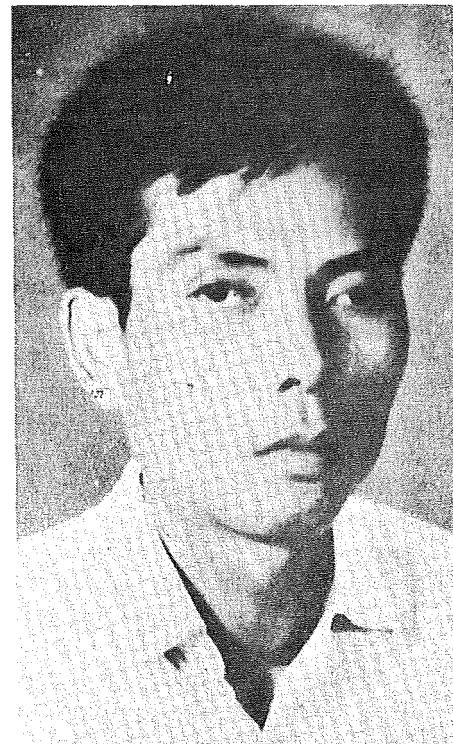
Nguyen Chi Thien: A writer and a poet, he has spent more than half his life in detention. Nguyen Chi Thien was born in Ha Noi in June 1932 and graduated from the Ha Noi Faculty of Letters.

He was first arrested in the DRV in 1958 after he and some friends tried to publish a literary magazine in Hai Phong during the "100 Flowers" campaign. He was sentenced in court to two years' hard labour in a "re-education" camp. After being released in early 1961 he was rearrested in November that year and is believed to have been detained without charge or trial under Resolution 49. He was released in September 1964. He was again arrested in October 1965 and sent to a "re-education" camp, where he remained until late June 1978. After being released he returned to Hai Phong where he continued to write poetry and taught English and French to private students.

As the years passed Nguyen Chi Thien's poetry became more critical of the political establishment and he was arrested again on 2 April 1979 after he had passed a manuscript of his poems, and a letter asking for them to be published, to a foreign diplomat in Ha Noi. This manuscript was published abroad in 1984 under the title Flowers from Hell. Nguyen Chi Thien is believed to have remained in detention since then. His current place of detention is not known, although it is believed he may be in Hoa Lo prison in Ha Noi. He is reported to be seriously ill.

In May 1988 the Vietnamese authorities apparently acknowledged for the first time that Nguyen Chi Thien was in detention, and stated that he was awaiting trial. In May 1989 the Amnesty International delegation raised his case with the authorities, but was not given permission to meet him, or any information about his current circumstances.

To Huy Co: He was born in 1941 in Ha Noi and is believed to have graduated in chemistry from Ha Noi University in 1965 but to have been



Nguyen Chi Thien

refused a teaching post because of his opposition to political control over academic matters. In 1969 he is reported to have written a letter to the then Prime Minister, Pham Van Dong, in which he urged an end to the war and criticized the economic policies of the DRV government. He was subsequently arrested and is believed to have been held under Resolution 49, for alleged "counter-revolutionary offences".

He was detained in a series of "re-education" camps until he was released in 1976. Although under restrictions, he and other intellectuals founded a "free literature movement" called Van chuong Tu Do, which circulated manuscript copies of unpublished works and translations of banned literature. To Huy Co was rearrested in 1982. It is not known whether he was formally charged but he is reported to have been accused of "writing documents against the revolution". His current place of detention is not known.

In addition, Amnesty International has received information about many prisoners who are believed to have been summoned for "re-education" in 1975, or arrested in the aftermath of reunification, and to have remained in detention without trial since then because of their religious beliefs, ethnic origin, or alleged opposition to the government. Official information about these cases has never been made available nor the grounds for their detention established, but it is believed some may be prisoners of conscience. Some of these prisoners may have been released under the amnesties of 1987 and 1988, but in the absence of information about individual prisoners, or official statements that they have been released, there is concern that they may still be in detention.

The following are examples of some possible prisoners of conscience:

Ly Nghiep Phu: He was born on 13 December 1939. His family is of ethnic Chinese origin and came from the northern part of Viet Nam. Some time after 1954 the family moved to Phnum Penh where Ly Nghiep Phu worked as an accountant in his father-in-law's company. After 1975 the family moved to Ho Chi Minh City and Ly Nghiep Phu began teaching English and French to Cambodian refugees wishing to emigrate. On 9 June 1978 he was arrested at his home in Ho Chi Minh City and reportedly accused of having established links with the Chinese embassy in Ha Noi for the purposes of subversion, although he was not formally charged. He is reported to have been held without charge or trial since then. His current place of detention is said to be a camp in Binh Long, Song Be province.

Nguyen Dinh Luong: He was born in 1918 in the central Vietnamese province of Quang Nam. After leaving secondary school he pursued a teaching career and also became actively involved in politics when he joined the Việt Nam Quoc Dân Dang (VNQDD), the Nationalist Party of Viet Nam, one of a number nationalist parties opposed to French rule. After the overthrow of the Diem government in 1963, the VNQDD emerged to participate in electoral politics. It was banned by the Provisional Revolutionary Government in 1975.

By 1975 Nguyen Dinh Luong had become Secretary General of the VNQDD and it is believed that he may have been summoned for "re-education" in May 1975 because of his political activities. He is believed to have been detained without charge or trial since then at 25A TD63, Nam Ha camp, Ha Nam Ninh province.

Tran Trung Du: He was born in August 1924 in Hai Duong in northern

Viet Nam. In his youth he had been a member of the VNQDD. Before April 1975 he was a bookseller. After the change of government his bookshop was closed down by the authorities. He was summoned for "re-education" in June 1975 and is believed to have been detained without trial since then. In 1975 Tran Trung Du broke his leg while working in Long Thanh prison and he is believed never to have fully recovered from this injury. He is currently believed to be detained in either 25ATD/63 Nam Ha camp in Ha Nam Ninh province, or to have been transferred to a camp in Ham Tan, Thuan Hai province.

Tue Nguyen: He was born around 1925 in Quang Nam province. Prior to his arrest he is believed to have worked for the United Nations Economic Social and Cultural Organization (UNESCO). He registered for "re-education" in 1975 and is believed to have been detained without charge or trial since then in a camp in Quang Nam.

Nguyen Khac Chinh: He was born in 1922 and was a lawyer and member of the Vietnamese Lawyers' Association until his arrest in December 1975. He is believed to have been detained without charge or trial since then. Currently, he is reported to be in a camp in Phu Khanh province. He is reported to suffer from stomach ailments and to be weak because of age.

Truong Tuy Ba: Aged 61, she was born in Sa Dec, southern Viet Nam. Her husband died in 1956 and she was left with seven children to support. She set up a pawn shop in Saigon (Ho Chi Minh City) and later bought a brick and tile company. In 1970 the factory closed because of the war. After 1975 Truong Tuy Ba and one of her sons applied for permission to emigrate but were unable to obtain exit visas. In 1977 a relative was informed that Truong Tuy Ba had been arrested and detained in Chi Hoa prison in Ho Chi Minh City. The reasons for Truong Tuy Ba's detention are unclear although it is believed she may have been arrested because of business connections with United States companies, or for attempting to leave the country. Her current place of detention is unknown.



Truong Tuy Ba

Father Stephen Co Tan Hung: He is aged about 60, a priest and medical doctor. At the time of his arrest he was director of the Jesuit novitiate in the Thu Duc district on the outskirts of Ho Chi Minh City. Father Co Tan Hung is reported to have been arrested for the first time on 22 February 1984 and to have been released in December 1984. He was reportedly rearrested in March 1985 and is believed to have been detained without trial since then at a "re-education" camp in Can Tho in Hau Giang province.

These prisoners are believed to have been detained without charge or trial in "re-education" camps for many years. Until they have been

released, or - if already released - information about their circumstances made available, there will be concern that the practice of detention without trial in Viet Nam has not been entirely abolished and, more seriously, that it may be being used to detain prisoners of conscience and others whose opinions or activities are deemed to be a threat to the government.

6. Clandestine departures

Since the late 1970s there have been reports of people being arrested and detained in "re-education" camps and prisons for attempting to leave Viet Nam clandestinely. However, information about people arrested for attempting to leave is generally scarce. Detainees may be held incommunicado for considerable periods of investigation in district or provincial prisons along the Vietnamese coast, after which they are released, sent for "re-education" without trial, or charged and tried with a "criminal offence" under provisions set out in the 1986 Criminal Code. Some of these may be prisoners of conscience arrested while trying to leave Viet Nam on account of government restrictions on their rights to freedom of conscience and expression and because procedures for legal migration were not available to them.

The clandestine exodus of thousands of Vietnamese "boat people" after the reunification of the country in 1976 began in earnest at the end of 1978 and in early 1979. At first, the majority were ethnic Chinese (Hoa Kiêu) from the south. They left Viet Nam clandestinely by boat in an attempt to reach the shores of neighbouring southeast Asian countries. During the same period a large number of ethnic Chinese resident in northern Viet Nam were granted permanent asylum in the People's Republic of China. Since then, however, the exodus has continued with varying intensity and in the 1980s has consisted primarily of ethnic Vietnamese nationals attempting to cross the South China Sea to reach Hong Kong, the Philippines, Indonesia, Malaysia or Thailand. Some aim for temporary asylum before permanent resettlement in third countries where many hope to be reunited with their families.

In mid-1979 the United Nations High Commissioner for Refugees established an "Orderly Departure Program" (ODP) in agreement with the Vietnamese authorities. Under the terms of the program Vietnamese citizens wishing to leave may apply for exit visas from the Vietnamese authorities so long as they have already obtained entry visas for their desired destination. By the end of 1988 more than 150,000 Vietnamese citizens had left from Ho Chi Minh City under the ODP. However, during 1988 alone more than 48,000 "boat people" were registered as new asylum seekers throughout Southeast Asia. The ODP has been unable to stem the flow of Vietnamese people seeking to leave Viet Nam clandestinely, and they continue to arrive on southeast Asian shores in large numbers.

Under the heading "Crimes Against National Security" Viet Nam's Criminal Code stipulates in Articles 85, 88 and 89 that fleeing, or attempting to flee, to a foreign country is a criminal offence punishable by law. The relevant articles are cited below:

The punishment for any person who flees to a foreign country or remains abroad...with the intention of opposing the people's government shall be imprisonment for a term of three to 12 years.

The punishment for any person who organizes, forces, or incites others to commit such a crime shall be imprisonment for a term of five to 15 years.

The punishment for this crime in especially serious cases shall be imprisonment for a term of 12 to 20 years or life."

The punishment for any person who organizes or forces others to flee to a foreign country or remain abroad in a foreign country without authorization but whose actions are not among those set forth under article 85 shall be imprisonment for a term of three to 12 years.

The punishment for those who commit the offence repeatedly or whose actions result in grave consequences shall be imprisonment for a term of 10 to 20 years."

The punishment for any person who illegally exits from or enters [Viet Nam] or who illegally stays abroad shall be a warning, re-education without detention for a period of up to one year, or imprisonment for a term of three months to two years."

An attempt to leave Viet Nam clandestinely may be considered to be an "especially dangerous crime against national security" and an offence under Article 85 of the Criminal Code if it is deemed to have been undertaken "with the intention of opposing the people's government".

A number of prisoners are believed to have been arrested for attempted "illegal departure" after 1975 but before the Criminal Code came into force in 1986. The legislation under which these prisoners are held is not known, although some appear to have been charged, tried and convicted of "counter-revolutionary activities". The following are examples of two such cases:

Nguyen Hung Son: He was born on 5 September 1953 in Ho Chi Minh City, then Saigon. A student, he was conscripted into the armed forces of the RVN. After 1975 he is believed to have been unemployed until detained for "re-education" in a camp in Nha Trang in 1978. He is reported to have escaped from the camp in early 1979 and to have been arrested while attempting to leave the country with four other former soldiers. Although the date of the trial is unknown Nguyen Hung Son is believed to have been charged, tried and convicted of "opposing the revolution". He is currently believed to be held in a camp in Nam Ha, Ha Nam Ninh province: recent information indicates that he is suffering from severe ill health.

Con That Sang: He was born in Huê in central Viet Nam. He attended the medical faculty of Huê University and qualified as a medical doctor. Before 1975 he was a captain in the medical corps of the armed forces of the RVN. In 1977 he was arrested while trying to leave the country by boat. He was sentenced to three years "re-education" in Tien Lanh camp in Quang Nam province. In 1980 Con That Sang is reported to have been brought to trial inside the camp and accused of "counter-revolutionary" activities. The charges against him are believed to have included passing information heard on BBC World Service and Voice of America radio broadcasts to other detainees in the camp. He is reported to have been sentenced to 13 years' imprisonment. Con That Sang is believed to be suffering from a gastric ulcer and to be in poor health.

Some prisoners are believed to have been tried for offences under Article 88 of the 1986 code and accused of organizing escape attempts, or inducing others to escape. Such prisoners may be sentenced to long prison terms or terms of hard labour in "re-education" camps. In these cases information about the trials, and the evidence providing the basis for

conviction, are not made public. The following are examples of such cases:

Father Dominic Ngo Quang Tuyen: He was born in July 1948. Before 1975 he was a practising Roman Catholic priest who also worked as a truck driver in an area about ten kilometres away from Ho Chi Minh City. He is believed to have been arrested in October 1982. He was reportedly tried at a people's court in June 1986 and sentenced to 13 years' imprisonment for "organizing illegal departures" plus a further 12 years for "inciting corruption among party cadres". The sentence was subsequently reported to have been reduced to 18 years on grounds of "clemency". Details of the evidence used to convict Father Dominic have never been made publicly available. He is believed to be detained in a camp or prison in Xuan Loc, Dong Nai province.

Tran Thi Tri: A Roman Catholic nun, she was brought to trial in November 1987 along with two Roman Catholic clergymen. They were charged with "taking advantage of religion to make arrangements for people to flee the country". The case was described in the official media as "a violation of national security in which the defendants were charged with organizing illegal departures, holding discussions on these activities and making meticulous preparations for a long period of time." Tran Thi Tri was sentenced to five years' imprisonment and the two priests to four years and 18 months suspended imprisonment respectively. Tran Thi Tri's place of detention is unknown.

Others detained for attempting to leave Viet Nam are believed to have been charged either under Article 89, or held in detention without charge or trial in "re-education" camps under administrative orders issued by People's Committees, which allow for periods of "concentrated re-education through compulsory labour" of offenders for a period from six months to two years. Many of those arrested in this way are reported to have been released after several weeks in detention. Some, however, are believed to be held in detention for much longer periods of time. Amnesty International has information about a number of people arrested after 1986 while trying to leave the country clandestinely. Among these are Nguyen Duc Duong, a former lieutenant colonel who was in a "re-education" camp from 1975 until 1984 and rearrested in late 1987; a priest, Nguyen The Hoat, arrested in 1986; and a housewife and fisherwoman, Nguyen Thi Phan, arrested in 1986 and detained without trial in Phan Dang Luu prison in Ho Chi Minh City. The current circumstances of a further 40 people known to Amnesty International, the majority of whom were arrested between 1978 and 1983, are unknown. These include Nguyen Phu Hai, a 17-year-old schoolboy at the time of his arrest in 1979 and believed still in detention in early 1989.

Recent press reports have indicated that official attempts to prevent clandestine departures have intensified during 1989. One report quoted Vietnamese officials as saying that these measures have included shootings and executions, and that two people were executed during the first six months of 1989. Officials were also reported to have said that between January and June 1989 413 people were convicted of "illegal departure" and sentenced to terms of imprisonment, some for twelve years.

The right to leave one's country is guaranteed in both the Universal Declaration of Human Rights (Article 13) and the International Covenant on Civil and Political Rights (Article 12), the latter of which was ratified by Viet Nam in September 1982. Under Article 12 of the ICCPR, the right to leave one's country "shall not be subject to any restrictions except those

which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant". On the basis of available information it appears that many people are detained, sometimes without trial, after trying to leave the country clandestinely. Information about trials of people accused of organizing "illegal departures", or of "illegal departure" itself, has not been made public.

7. Conditions in "re-education" camps and the treatment of prisoners

During its May 1989 visit to Viet Nam the Amnesty International delegation was able to visit only one of the "re-education" camps where prisoners of concern to the organization are held. With one exception, the delegation was thus unable to meet any of these prisoners. The authorities did arrange for the delegation to meet two former officers of the Army of the Republic of Viet Nam. They had been released from "re-education" in September 1987 and February 1988 respectively.

On the basis of information received during the May 1989 visit, and through interviews with ex-prisoners who have left Viet Nam as "boat people", Amnesty International has obtained some information about the location and organization of "re-education" camps, the numbers of people detained in them, about the conditions of detention, and about the treatment of prisoners in these camps.

7.1 Number and location of "re-education" camps

Reports indicate that in each of Viet Nam's 40 provinces there is at least one main "re-education" camp divided into several subcamps. The camps are usually referred to by coded numbers - for example Z30A, Z30D, 25 ATD 63/NH, 52 ATD 63/HT etc - plus the code for each subcamp - for example, K1, K2, K3 etc. Other camps, administered by the central rather than provincial authorities, also exist. Regular transfers from one camp to another were reported, making it difficult to obtain reliable, up to date information about the number of camps in operation, or to assess the number of prisoners held within them. It appears that some camp consolidation has taken place in the last decade and that many political prisoners (including the majority of those detained for their connection with the Republic of Viet Nam who are still held), have been transferred to a camp in the south.

7.2 Physical description of a "re-education" camp

In general, subcamps are reported to be located around an administrative complex for camp personnel. Subcamps are said to have the capacity to hold up to some 1000 prisoners.

Prisoners are generally accommodated in large concrete barracks with corrugated iron roofs. Each block is divided into two large rooms which can accommodate between 50 and 100 prisoners depending on size. Prisoners sleep in bunks, the upper one made of wood and the lower one consisting of a raised concrete platform. Each room has several barred windows and one door that is locked by the guards at night.

Apart from the barracks the camps generally also contain a centrally-placed meeting hall where "re-education" sessions are held, a small infirmary, and a special "discipline house" (nha ky luat) where prisoners may be held temporarily in solitary confinement for even minor infringements of camp rules. Camps may also contain a small library with a selection of books approved by the authorities. Some camps are reported to have established a small store where prisoners can buy listed amounts of such "luxury items" as coffee, tea, cigarettes or supplementary food through a system of coupons handed out in exchange for money brought by relatives.

A system of compulsory labour combined with "re-education" sessions for prisoners is reported to exist in all camps, but conditions are said to vary according to the location of the camp and whether or not it is administered by the armed forces or the Ministry of the Interior. Other variations are reported to depend on the personality of the camp superintendents. Bribery and corruption of camp officials are reported to occur on a large scale, and to provide the means for families to obtain special concessions for their imprisoned relatives.

7.3 The regime of compulsory labour

The performance of compulsory labour is reported to be an integral part of the life of all prisoners confined in "re-education" camps. The type of labour is said to depend on the location of the camp, but in all cases to include strenuous manual labour in the fields surrounding the camps. Prisoners plant a variety of crops to contribute to their own basic food rations, while others may work in nearby forests cutting wood and processing it, either for internal camp use, or for external use in local state-owned factories. Some camps are reported to contain facilities for carpentry, metalwork etc. where prisoners with special skills are assigned to work.

The usual working week, as elsewhere in Viet Nam, is six days, for a minimum of eight hours per day, although several former prisoners have reported having to work longer hours if they failed to meet allocated daily quotas. In performing compulsory labour prisoners are usually grouped in work brigades of between 20 and 30 prisoners. Each group has a head, appointed from among the prisoners by the camp authorities, who is responsible for the satisfactory work of the group. Whenever the groups leave the camp to go to work they are guarded by armed camp personnel who supervise the work and prevent attempts to escape.

7.4 Diet in the camps

Food rations in "re-education" camps are reported to vary according to location, and the amount of food available is in part a function of the situation of general economic hardship which prevails throughout the country. In general rations are reported to consist of a mixture of rice, tapioca (manioc) and maize supplemented by meagre amounts of vegetables. Most vegetables are said to be grown by the prisoners themselves with the exception of rice which is brought from outside the camps. Former prisoners reported that they received animal protein or fish with their rations only very occasionally.

The monthly amount of staple food per prisoner appears to be 15kg per person although the actual quantity is reported to have often fallen short of this amount. Meals are reported to be provided three times a day, but only two of these are said to contain any rice. Breakfast and lunch are said often to consist of no more than several small pieces of cooked tapioca.

In Z30A, Xuan Loc, Dong Nai province, a former prisoner held from the end of 1978 until October 1987 reported that normal rations were 15kg of food per month. He said they consisted of a small bowl of cold rice at 5am, followed at midday by one large bowl of rice with some salt. At 5pm the prisoners were given another large bowl of rice with some salt. Once a week

they were given some vegetables, either watercress or spinach.

A medical doctor, who spent ten and a half years in several "re-education" camps, has estimated that the average daily calorific intake amounted to no more than 1,500 calories, and that the strenuous labour performed by prisoners required a daily intake of between 3,500 to 4,000 calories. Former prisoners have reported that many detainees suffered from chronic malnutrition and that the long-term effect of their poor diet was an increased susceptibility to illness.

Former prisoners have also reported that food rations for prisoners who were too weak or ill to work were sometimes reduced to 12kg of staple per month and that prisoners temporarily confined in the "disciplinary house" (see below) received rations reduced by one third or one half.

7.5 Medical provisions for prisoners

Most camps are reported to have a small, ill-equipped dispensary, but medical services are said to be very rudimentary and insufficient for the needs of the prisoner population. It is reported that no qualified doctors are available, but that prisoners who are qualified as doctors are sometimes allowed to treat other detainees. In many camps a nurse is said to have attended to prisoners' medical problems and in some serious cases prisoners are reported to have received medical treatment in nearby hospitals.

Other seriously ill prisoners are reported to have been released from detention and some are said to have died shortly afterwards. The deaths were attributed to the cumulative effects of exhaustion from hard physical labour, poor diet and harsh living conditions. Former prisoners said that inmates are obliged to work long hours performing strenuous manual labour. Hard labour, in combination with insufficient and poor quality food rations, is reported in many cases to lead to severe ill health. Many prisoners are said to have suffered from disorders such as pulmonary infections and bronchitis, stomach complaints, ulcers, dysentery, kidney infections, malaria and other disorders arising from malnutrition and vitamin deficiencies.

8. Reports of torture and ill-treatment of prisoners in police custody and in "re-education" camps

8.1 Introduction

Since 1975 there have been persistent reports of torture and cruel, inhuman or degrading treatment or punishment of prisoners held in investigative detention, in prisons, or while confined in "re-education" camps under administrative detention orders. Since 1986, and the beginning of the "renovation" campaign, the official Vietnamese media have increasingly reported cases of police torture of suspects, including deaths in custody as a result of police brutality. Official press reports have also referred to the prosecution and conviction of police officers for abusing criminal suspects.

Government officials acknowledged to the Amnesty International delegation which visited Viet Nam in May 1989 that torture and ill-treatment of prisoners occurs, but they said it did so only in isolated cases in which public security or police officers acted in violation of Vietnamese domestic laws prohibiting the use of torture. Information obtained both from the Vietnamese press and radio broadcasts, and from former prisoners suggests, however, that the legal safeguards against these abuses are not fully operational and that in many cases torture or ill-treatment is still a feature of the process of police investigation and a means of punishment in penal establishments and "re-education" camps.

8.2 Legal safeguards against torture or ill-treatment

The Vietnamese Constitution of 1980 prohibits the use of torture. Article 69 states in part:

"Citizens have the right to legal protection from physical violence... All forms of coercion and torture are strictly prohibited".

Although the Criminal Code, in force since 1986, contains no provision explicitly prohibiting torture or ill-treatment of prisoners, the newly promulgated Criminal Procedure Code, in force since 1989, states in Article 5 that:

"All forms of coercion and corporal punishment are strictly prohibited".

In an editorial discussion of the Criminal Procedure Code the Vietnamese daily, Nhân Dân, on 13 July 1988 reiterated that:

"The legal organs must respect the rights of citizens as stipulated by the Constitution and must strictly prohibit all intimidation, the use of force to extract testimony, torture and unlawful arrest and detention".

Similarly the January-March 1986 issue of the legal journal Luật Hoc, stated that the country's penalty system "reflects profound humanism" and that:

"There are no penalties that have the purpose of terrorizing, retaliating against, disgracing, physically maltreating or

trampling upon the dignity of a person".

Despite these and other official assurances by the Vietnamese authorities, Amnesty International is concerned that more needs to be done to eliminate all forms of torture and ill-treatment in the country's police establishments and penal institutions.

8.3 Reports of torture, ill-treatment and death in police custody

On 1 August 1987 Ha Noi Radio broadcast an account of a trial in the Hau Giang People's Court, in which public security personnel from the province's Vi Thanh district faced charges of having "unjustly arrested, tortured and detained nine innocent youths". The youths had reportedly been imprisoned for nearly two years on suspicion of involvement in three local robberies until the "real culprits were caught". The broadcast continued with details about the case:

"Following these robberies, while the culprits were still at large, the public security office of Vi Thanh district arrested Nguyen Van San, a blacklisted person who had been detained several times by the public security forces. District public security cadre Chien interrogated and roughed up San, forcing him to admit having taken part in the robberies. Chien then turned San over to Huong, head of the investigation unit, for further interrogation. Afraid of more beatings, San admitted that he and five of his acquaintances - Hung, Dong, Hieu, Chi and Tan - had committed the three robberies. On the basis of San's statement, the investigative cadres asked for advice from the district public security leadership and arrested the five young men. Four district public security agents - Chien, Sac, Hai and An - took turns at interrogating the suspects, using brutal acts to extract their testimonies, and locking them up in a cellar for several days and nights to force them to admit to participating in the robberies".

The four public security cadres were found guilty by the court and were sentenced to prison terms ranging from 18 months to four years upon "consideration [of] the seriousness of the crimes perpetrated...and the grave political consequences of the case".

Similarly, Ha Noi Radio on 9 August 1987 carried the following comments by the head of the public security unit of Phuc Tho district in Ha Noi:

"Hanoi Moi on 15 July reported that the Hanoi public security force had taken serious action against a number of officers and personnel who had violated state law and policy, including officers of Phuc Tho district who arrested, tortured and forced two innocent civilians to confess.

...In April 1987, our unit, although it had conducted insufficient investigation and used false testimony given by some persons, hastily issued a warrant of arrest for Le Tat Lien and Le Tat Cuong. ...The evidence was not sufficient to prove them guilty. During their detention, two security officers, namely Tien and Hanh, used torture to force

brothers Lien and Cuong to confess, thereby causing bad feelings among the people in the district and adjacent localities. We concluded that this was a very serious case of unjustly arresting and beating innocent people..."

The article reported that the two brothers were released and that the officers and personnel involved in the case were "seriously dealt with" by discharging the deputy head of the district public security unit and two other officers from their duties and expelling them from membership of the CPV, and taking disciplinary action against four others involved in the case.

In another case, the 5 October 1987 edition of Quân Đội Nhân Dân carried an article by the wife of a man who died in police custody, allegedly as a result of torture. In the article the woman, Tran Thi Ngon, alleged that police from Nam Thanh district of Hai Hung province, where she lived, had killed her husband on 9 June 1987. He had been arrested and taken from his home by police at 11pm on 6 June 1987 on suspicion of stealing a radio. At midday on 9 June she went to see her husband and took him some food. During the visit her husband told her that the police had beaten him during interrogation. When Tran Thi Ngon went to visit her husband again the following morning to take more food, she was told by others who had been held in the same cell with her husband that the previous night two policemen had brought him back to the cell, where he had collapsed. The police claimed that he had committed suicide by hanging himself.

Tran Thi Ngon pointed out that she was not allowed to witness the medical examination of her husband's body nor was she given the results of the post mortem examination. Two relatives who were allowed to collect the body reported to her that they saw no marks on his neck to indicate that he had died by hanging, but that there were black and blue marks all over his body and his hands were badly bruised.

The newly renamed legal journal, Nha Nuoc va Phap Luat, reported in its double issue 1 and 2 for 1988 on three cases reported earlier by Voice of Viet Nam Radio:

"The case of student Uc reported on 1 March 1988: A good mathematics student from Kim Thi district of Hai Hung province who had been suspected of burning hay belonging to the Secretary of the youth movement of Qui village. Uc was reportedly beaten so severely that he lost his memory and became mentally handicapped. After this incident another boy admitted his responsibility for the act of arson.

The case of Vy Van Thanh reported on 14 April 1988: A member of the Nung minority and a student from Hoang Su Phi district, Ha Tuyen province, who was arrested on suspicion of stealing four pairs of torch batteries. Following his arrest he was questioned and beaten by police officer Sin, as a result of which Ly Van Thanh used a knife to commit suicide in an apparent attempt to prove his innocence.

The case of Nguyen Van Thanh reported on 16 April 1988: A 13-year-old student from Vinh Phu, who was arrested and beaten to death on suspicion of stealing a few kilos of grain. The police officer responsible for his death is reported to have

then destroyed the evidence."

In the latter case, it reported that the police officer who had committed the crime was subsequently charged and tried. The provincial People's Court sentenced him to 15 years' imprisonment in December 1987 and the sentence was apparently upheld by the Supreme People's Court.

In another case, reported in September 1988 in the army newspaper, Quân Đội Nhân Dân, three policemen were reported to have been jailed for between four, six and ten years for torturing to death a man suspected of stealing a radio-cassette player. Forty-three-year-old Hoang Van Lam died in a police cell on 10 June 1988 after being beaten up over a five-day period. According to the newspaper report he had been kicked and kneed in the stomach until he collapsed. The three policemen were said to have tried to fake his suicide by hanging the body from the bars of a window, but a post mortem examination showed the victim had been beaten to death. In this case the article stated that the three policemen were given prison sentences of from four to ten years.

The February 1989 issue of the CPV theoretical journal, Tap Chi Cong San, reported the cases of Nguyen Manh Hoa, who had died in police custody in a prison in Nghe Tinh province in May 1981, and Nguyen Si Ly, who had been held in the same prison for "nearly 2,000 days", during which time he was tortured by public security officials. The author of the article described Nguyen Manh Hoa's case thus:

"In May 1988, I met Nguyen Thi Bich Loc. She was carrying a letter of protest and was crying with the pain of a mother who has lost her son...Her son, Nguyen Manh Hoa, a soldier who had served with the 10th Division of the 3rd Corps [of the armed forces] had died at the Nghe Tinh prison on 15 May 1981. For what crime? Who will bear responsibility for Hoa's death? Eight years have passed, but no one has taken responsibility. I listened to her and realized that the Nghi Kim prison in Nghe Tinh was "hell on earth". They used steel whips and other instruments of torture to torture the prisoners."

In the case of Nguyen Si Ly, described as an "innocent man who managed to return [from the Nghe Tinh prison] alive", he was reported to have said about the prison that "the law and the truth have not penetrated that place". Although thought to be innocent by the author of the article, Nguyen Si Ly was believed to have been held in custody without charge or trial for more than five years. Upon his release in July 1988, he spoke out and accused several public security officers in Yen Thanh district, Nghe Tinh province, who were responsible for handling his case, of "using many terrible methods" during interrogation, including beating him to force him to "confess" to the alleged crimes. The article stated further that since Ly had made these accusations, five months had passed and "still there haven't been any results".

The author of the article went on to question:

"From what I have learned, other such incidents have happened in Quang Ninh, Thanh Hoa, Quang Nam, Da Nang, Tay Ninh, Minh Hai and other places. Why have so many people been oppressed like this in so many places in the country?"

Summarizing his concerns about his findings, the author described the situation of suspects held in police custody as follows:

"...People have been arrested and put in chains just because they have been suspected of committing a crime. In both the cities and rural areas, it is common for people to be arrested and beaten, and this is done quite arbitrarily.

"Once a person has been arrested, he is presumed guilty, and his crime must be revealed regardless of the price. This seems to be the modus operandi of many of those responsible for enforcing the laws. In the south as well as the north, many of those responsible for upholding the laws have tortured people themselves or ordered others to torture prisoners. They have tortured those arrested (including both criminals and suspects) and openly violated socialist law.

"An entire generation has done this. And this continues even today."

During its visit in May 1989, the Amnesty International delegation was told that regular inspections of prisons, detention centres and camps are carried out by the Ministry of the Interior. There are also visits by inspectors of the People's Procuracy, which has formal responsibility for ensuring that laws are observed by all security officers entrusted with the detention of individuals. The regulations governing these procedures are set out in the Law on the Organization of the People's Organs of Control adopted by the National Assembly in its first session on 4 July 1981, and in the 1989 Criminal Procedure Code. Amnesty International was also told that all detainees are informed of their right to complain and that families and friends often write to the People's Procuracy with complaints, which are then investigated.

Reports of investigations are not publicly available. The delegation was unable to obtain any information about how many complaints have been made within any specific period of time, about the number of investigations resulting from these complaints, or about their outcome. Nor was it able to obtain information about the procedures followed to ensure that detainees feel secure enough to cooperate with the investigating body.

Prisoners held in police custody for investigation are particularly vulnerable to torture or ill-treatment if they are refused access to lawyers, doctors, or family members. One of the essential safeguards against these abuses is legislation stipulating that access must be granted. The Amnesty International delegation was informed that provision for early access to suspects will be specified by new regulations on the organization of lawyers and that these will be promulgated in the near future. It was acknowledged that in practice defendants do not yet have early access to lawyers.

Criminal proceedings are not always initiated against those alleged to be responsible for torture and ill-treatment of suspects held in police custody, although failure to proceed may be criticized in the press. An article in Nhân Dân on 22 June 1988 described how a lieutenant in the public security bureau in Ha Nam Ninh province

"....injured a man so severely that he had to have an operation to remove his spleen. This was because he was suspected of possibly having stolen a bicycle from the director of a company. The episode occurred at the end of 1987 and still hasn't come before the courts...."

With regard to the compensation of victims of torture or ill-treatment in custody, Article 24 of the Criminal Procedure Code states that:

"organs that have unjustly accused or punished people must restore their honour and interests and compensate the injured party....".

Amnesty International is aware of just one case in which the media reported that compensation was awarded to torture victims, even when public security officers have been found guilty of torturing suspects in custody. On 17 September 1988 an article in Saigon Giai Phong stated that Nguyen Van Nhien, sentenced to 12 years in prison for killing his wife's 13-year-old brother, To, was officially offered apologies and compensation for losses by representatives of the law enforcement organs of Hau Giang Province and Vi Thanh District on 7 August 1988. He had been sentenced by the People's Court of Hau Giang province on the basis of his testimony that he had killed the boy, despite the fact that his confession was reportedly full of contradictions. Nguyen Van Nhien had already spent three years in jail when To was found alive and living in another district. It transpired that Nguyen Van Nhien had confessed because he had been beaten while in jail. This is the only case known to Amnesty International in which a victim of police brutality was reported to have been awarded compensation: it was apparently done on the basis of his having been falsely accused and wrongly punished, rather than on account of his torture.

Other press reports indicate an increased awareness by Vietnamese government officials that torture and ill-treatment of detainees by police officers occurs and that measures are required to check abuse. For example, in an article that appeared in Tap Chi Công San in December 1988 the Interior Minister Mai Chi Tho is quoted as saying:

"...The people's public security forces are large but are still not strong enough...There have been some cases of unlawful arrest and detention. In some isolated cases, torture and coercion were used to extract confessions..."

Officials also acknowledge - and criticize - the practice of some investigators who have used torture or ill-treatment in order to extract confessions. On 10 June 1988 an official in the Ministry of Justice, Nguyen Quoc Thuy, was quoted in Nhân Dân:

"...a number of cadres who do investigatory work...are subjective and superficial, as manifested in the initial investigation phase, arbitrary arrests, coached testimony, testimony obtained by trickery, forced testimony, and even beatings of the accused to obtain confessions that conform to the opinions of the cadres..."

8.4 Reports of torture and ill-treatment in "re-education" camps

Information compiled by Amnesty International through interviews with former inmates of "re-education" camps suggests that prisoners are commonly subjected to ill-treatment, in particular by being shackled while held in solitary confinement. During Amnesty International's visit to the Z30D "re-education" camp in May 1989, the camp superintendent acknowledged isolated instances in which camp guards used violence against inmates but said this was only to restore camp discipline or to put an end to fights among prisoners. He acknowledged that prisoners, who had breached camp discipline, were punished with solitary confinement and shackled for the duration of their punishment.

The following information is based on testimonies received from former detainees:

Each "re-education" camp was said to have a special "disciplinary house" reserved for the solitary confinement of prisoners as a means of punishment for infringements of camp rules. Former prisoners said that even trivial offences are punished by solitary confinement: some said that they had been confined in the "disciplinary house" for failing to fulfil their daily quotas or because they were said to have belittled the authority of the guards.

A former inmate who spent six years in Thanh Cam until his release in November 1987 alleged that prisoners caught trying to escape were held in the punishment block for six months and for one or two weeks for less serious offences. Shackles were routinely used.

One prisoner, who was released from K18 (Kim Son) camp in Nghia Binh province in December 1987, told Amnesty International that isolation cells in the punishment block were about 2.5m long, 1m wide and 2.5m high. Each contained a very small window, blocked up with cement blocks, so that light could only come through the cracks. Those held in the isolation cells were kept in shackles, which were removed for one hour twice a week, and some were beaten. Prisoners held in the punishment block were given one bowl of congee (rice gruel) per day and about one litre of water a day.

One woman inmate in K1, Z30D "Thu Duc" Camp from 1984 until September 1987 said that she was put in the punishment block twice, the first time for 40 days in November/December 1986, on the second occasion for 48 days in October/November 1987. The punishment block at the camp was surrounded by two thick brick walls. It contained 16 identical cells, each about 2.5m wide and 2.8m long. In each cell there were two beds made of cement and brick. She said, however, that political prisoners were always held on their own in the punishment block. Sometimes prisoners had both legs shackled. The cells were windowless and very dark. She had one leg shackled while in the punishment block.

Former prisoners also allege that their food rations were severely reduced causing them to suffer weight loss. Some prisoners were said to have been unable to walk unaided or to work when released from extended periods of solitary confinement in the punishment cells and to have become very thin and frail.

A former prisoner at Thanh Cam camp, Cam Thuy, in Thanh Hoa province from 1981 until 1987 told Amnesty International that prisoners working in the fields were given 15kg of food per month, while those not working

received only 12kg of food made up of potatoes or manioc or maize and rice. In the punishment block, prisoners received 9kg of food a month: one bowl of rice with some salt twice a day.

Former prisoners also reported routine beatings of inmates by camp guards, using wooden clubs, rubber hose or rifle butts. Camps where beatings are alleged to have occurred in this fashion include K18 camp in and Quyet Tien camp in Ha Tuyen. In the latter, prisoners were regularly beaten by guards with wooden sticks if work quotas were not fulfilled, according to an inmate held there between June 1987 and February 1988. He said prisoners were made to lie face down and then beaten with sticks all over their bodies, but not on their heads.

8.5 Deaths in custody

According to several former prisoners, on isolated occasions inmates who had tried to escape were shot dead by camp guards. Other deaths in custody were said to have been caused by the severity of the conditions in "re-education" and a lack of adequate medical treatment for camp inmates.

9. The use of the death penalty in Viet Nam

Amnesty International opposes the death penalty in all cases on the grounds that it is a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment, as proclaimed in Articles 3 and 5 of the Universal Declaration of Human Rights and Articles 6.1 and 7 of the International Covenant on Civil and Political Rights.

The death penalty has been in use in Viet Nam since the colonial era. It was retained first by the Democratic Republic of Viet Nam (DRV) in 1945, again applied in the DRV and the Republic of Viet Nam (RVN) following the partition of the country in 1954, again following the end of hostilities and reunification of the country in 1976, and once more by the newly constituted Socialist Republic of Viet Nam.

Decrees providing for the death penalty for offences considered a threat to the Democratic Republic of Viet Nam, were introduced from 1946 and were extended further in the following decades. Most, if not all, of these have now been incorporated into the new Criminal Code.

Chapter 1 of the Criminal Code, entitled Crimes Against National Security, provides for the death penalty as the maximum punishment for fifteen offences. Ten of these are described in Section A of Chapter 1 which details offences regarded as "especially dangerous crimes against national security". Offences punishable by death in Section A are:

- Treason (Article 72)
- Actions Aimed at Overthrowing the People's Government (Article 73)
- Espionage (Article 74)
- Violation of Territorial Security (Article 75)
- Rebellion (Article 76)
- Banditry (Article 77)
- Terrorism (Article 78)
- Sabotage of Socialist Material Bases or Technical Installations (Article 79)
- Resistance to Detention (Article 84)
- Crimes against a fraternal socialist state (Article 86)

Section B is entitled "Other Crimes Against National Security" for which the following offences may be punished by death:

- Hijacking (Article 87)
- Destruction of Establishments and Means Vital to National Security (Article 94)
- Illegal Manufacture, Storage, Use, Purchase, Sale or Appropriation of Military Weapons or Technical Equipment (Article 95)
- Illegal manufacture, storage, Use, Purchase, Sale or Appropriation of Explosives, Flammable Materials, Poisonous Substances, or Radioactive Materials (Article 96)
- Making, Storing, or Passing Counterfeit Money or Destroying Currency (Article 98)

Apart from offences against national security, the Criminal Code contains a further 16 articles, out of a total of 280, which allow for the imposition of the death penalty. Six of these are contained in Chapter Two of the Criminal Code, which covers crimes against the life, health, dignity, and honour of the person. They are:

- Intentional Homicide (Article 101)
- Rape (Article 112)
- Robbery of Socialist Property (Article 129)
- Illegal Appropriation of Socialist Property by Theft (Article 132)
- Illegal Appropriation of Socialist Property by Embezzlement (Article 132)
- Destruction or Intentional Damaging of Socialist Property (Article 138)

In Chapter Six entitled "Crimes against Citizens' Ownership of Property", two articles carry the death penalty as the maximum punishment:

- Robbery of a Citizen's Property (Article 151)
- Manufacture or Trade of Sham Goods (Article 167)

Chapter 11 relates to criminal responsibility of military personnel for failure to fulfill their duties and responsibilities, for which four offences provide for the death penalty:

- Insubordination (Article 250)
- Surrender to the Enemy (Article 256)
- Unwarranted Abandonment of Unit in a Combat Situation (Article 258)
- Destruction of Military Weapons or Technical Equipment (article 269)

Finally, Chapter 12, which covers crimes against peace and humanity, and war crimes, contains four articles under which the death penalty may be imposed, as follows:

- Undermining Peace and Provoking a War of Aggression (Article 277)
- Crimes Against Humanity (Article 278)
- War Crimes (Article 279)
- Recruitment of Mercenaries and Service as a Mercenary (Article 280)

Article 27 of the Criminal Code stipulates that the death penalty may not be imposed on people below the age of 16, and that executions of pregnant women or women raising a child under one year will be delayed.

Since 1975 Amnesty International has recorded 109 publicly acknowledged cases in which the death penalty has been imposed, although it believes the true figure is likely to be much higher. While no official statistics on the use and application of the death penalty have been made public since the reunification of the country, Justice Minister Phan Hien was reported in 1985 as saying "several dozen executions are carried out each year", mainly for violent crimes but sometimes for economic offences considered to constitute crimes against state security. He said the government saw a need to "set examples" in order to "educate the population".

The Criminal Procedure Code makes provision for people's courts at the district level (and equivalent military courts) to conduct "preliminary trials" in death penalty cases, except where the crime committed is "particularly endangering and violating national security". However, it appears that people's courts at the provincial level (and corresponding military courts) usually conduct such trials of first instance.

In cases where the maximum punishment is the death penalty the Criminal Procedure Code makes provision for a jurist to be appointed to

represent the defendant - known as the defender - in the event that the defendant does not do so himself. The defendant has, however, the right to ask for replacement of the defender chosen for him or to refuse to accept a defender. In trials of first instance involving the death penalty the two judges and three people's assessors preside over the court and judgment is passed by a majority verdict.

Once judgment is delivered, the court must provide copies of the judgment to the defendant, the People's Organ of Control and the defender within 15 days. The defendant then has the right to appeal, although the appeal is not automatic. If the defendant wishes to appeal he must do so by sending a petition to the court that conducted the trial of first instance or to the higher court of appeal within fifteen days from the day the judgment was announced. The person lodging the appeal must also make a direct presentation to the court that conducted the preliminary trial concerning the appeal and the court must make a report on that appeal. Once an appeal has been lodged execution of the sentence is frozen pending its resolution.

The Supreme People's Court conducts appellate hearings of judgments and decisions taken by People's Courts at the provincial level (while the appellate court of the Central Military Court does so for trials heard in military courts at the military region level). The Criminal Procedure Code provides that it must conduct appellate adjudication within no more than 60 days from the date the case file is received. Appellate court hearings are presided over by three judges and, at times, two additional people's assessors.

If the appellate court rejects the defendant's appeal against the death sentence, the court file is sent immediately to the Chief Justice of the Supreme People's Court, with a copy of the judgment being sent at the same time to the Chief Procurator. Within a period of two months from the date of receipt of the court judgment and file, the Chief Justice of the Supreme People's Court and the Chief Procurator must issue any decision protesting the appellate hearing's judgment.

Within a period of seven days from the time the judgment takes legal effect, the convicted person may submit an appeal for clemency to the Council of State. This is the last avenue of appeal, and if a request for commutation is rejected, the sentence will be carried out.

The presiding judge of the trial of first instance then issues a decision to enforce the death sentence and to form a "capital punishment enforcement board", in accordance with the Criminal Procedure Code, comprising representatives from the court, Organ of Control and the public security office. The "capital punishment enforcement board" must check the finger prints of the convicted person before enforcing the sentence. The convicted person must be allowed to read the decision enforcing the sentence, as well as the written consent of the Chief Justice of the Supreme People's Court and the Chief Procurator. If the convicted person has made an appeal for commutation of the death sentence, he must also be allowed to read a copy of the decision of the Council of State rejecting his appeal. Article 229, point 5 of the Criminal Procedure Code, states "under special circumstances, the capital punishment enforcement board will postpone the execution and submit a report to the Chief Justice of the People's Supreme Court", although it does not explain what constitutes "special circumstances". Execution is carried out by firing squad.

Of particular concern to Amnesty International are trials of cases described in Article 145 of the Criminal Code as being "....especially serious and complex...". These are heard by the Supreme People's Court, or the Central Military Court, which simultaneously conduct the preliminary and appellate hearing. The defendants in such cases are thus apparently denied the right to appeal to a higher court: instead, the only recourse available to them after judgment has been pronounced is to seek commutation from the Council of State.

Also of concern to Amnesty International is the provision contained in Article 27 of the Criminal Code which states that in "special cases specifically stipulated by law" the death penalty can be carried out immediately after the trial.

Either procedure would be in violation of ECOSOC Resolution 1984/50 adopted by the United Nations General Assembly on 14 December 1984 which states in part 6 that "Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction....". In addition, the International Covenant on Civil and Political Rights (ICCPR), to which the Socialist Republic of Viet Nam became a party in 1982, states in Article 14(5) that "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." The articles also contravene the UN General Assembly stipulation in Resolution 37/172, adopted on 15 December 1983 that "...no death sentence shall be carried out until the procedures of appeal and pardon have been terminated and, in any case, not until a reasonable time after the passing of the sentence by the court in the first instance".

The provisions of Article 27 of the Criminal Code appear to have been enforced, for example, in January 1985 when three people were executed within 20 days of their first hearing before the Supreme People's Court, which sentenced them (and two others whose sentences were subsequently commuted to life imprisonment) to death upon conviction for counter-revolutionary activities and espionage. It appears that there was no review by any other court of their conviction and sentence, which was upheld by the Council of State after it had dismissed their applications for clemency.

In a similar case, Nguyen Huu Gioc, ex-director of Dong Nai province's public security service, and another man, Vu Cao Thanh, were sentenced to death for organizing illegal departures by the Supreme People's Court which appeared simultaneously to sit as a court of first instance and appellate court in early November 1984. Nguyen Huu Gioc, reportedly one of the highest ranking officials to be sentenced to death in Viet Nam, and Vu Cao Thanh were executed on 18 November 1984 without having had the opportunity to appeal to a higher court. It is not clear whether or not they were able to seek commutation of their sentences from the Council of State.

Article 6(2) of the ICCPR states "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes...". Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in resolution 1984/50 on 25 May 1984, goes further to state that "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes, with lethal or other extremely grave consequences." However, an article in the January-March 1986 edition of the judicial journal, Luat Hoc, concerning

the conference to review the work of the court sector in 1985 made clear that this is not always the case in Viet Nam when it outlined some of the problems in the application of laws:

"The most important of these problems involves the line to be followed on the trial of crimes against national security. Some courts have placed excessive emphasis on the political requirements of the locality, as a result of which the death penalty has been unnecessarily imposed in some cases upon the heads of criminal organizations. For example, in a case involving the crime of "plotting to overthrow the administration," one group of criminals did nothing more to secretly organize a counter-revolutionary organization than make flags, adopt reactionary slogans and recruit persons for the organization. They had yet to engage in any specific acts of sabotage. Thus, it was inappropriate to impose the death penalty upon the leader.... As regards murder trials, there was also a failure in some cases to examine all the details of a case....and emphasis was only placed upon the consequence, namely, the death of a person. As a result the defendant was incorrectly given the death penalty."

Amnesty International unconditionally opposes the death penalty as it considers it to be the ultimate cruel, inhuman and degrading punishment and violates the right to life. Execution is irrevocable and can be inflicted on the innocent.

The possibility of miscarriage of justice was raised in an article by Nguyen Quoc Thuy of the Ministry of Justice in Nhan Dan on 10 June 1988. It was admitted that regarding the investigation, prosecution, and trial work of the public security, control, and court organs there were still "serious deficiencies and mistakes. According to reports of many local people's courts, in 1987 159 people were investigated, prosecuted, and tried unjustly. People have been sentenced to 20 years, life in prison, or death for such serious crimes as murder, but when retried in the appeal phase the judge or review director has acquitted them because they were found innocent. Some of them had been in jail many years."

In September 1988 Amnesty International was particularly concerned when two Buddhist monks, Thich Tue Sy and Thich Tri Sieu, were sentenced to death after a three-day trial. The two men, who have been adopted by Amnesty International as prisoners of conscience, were, sentenced to death for allegedly creating a "counter-revolutionary organization called the Vietnam Human Rights Front and later the Free Vietnam Force". They appear to have been sentenced, moreover, by the retroactive application of Article 73 of the Criminal Code, in force since 1986, for offences allegedly committed before they were arrested in 1984. Their sentences were commuted to 20 years' imprisonment by the Supreme People's Court on 15 November 1988.

10. Conclusions

This report has described a range of human rights concerns in Viet Nam. It has focussed on the detention without trial in "re-education" camps of former members of the armed forces and civil servants under the RVN Government; the detention without charge or trial, and the imprisonment after unfair trials of alleged opponents of the government, including prisoners of conscience; unfair trials of prisoners of conscience; reports of torture and ill-treatment in police custody, in prisons and "re-education" camps; and the use of the death penalty.

International human rights standards establish the rights of all citizens of all countries to hold and express their non-violent beliefs, and not to be subject to torture and arbitrary arrest and imprisonment. These fundamental human rights are enshrined in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948. They are further protected in the International Covenant on Civil and Political Rights (ICCPR) which came into force in 1976; and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984 and which came into force in June 1987. The Socialist Republic of Viet Nam acceded to the ICCPR on 24 September 1982. It has not yet ratified the Convention Against Torture.

Amnesty International has welcomed the steps taken by the Vietnamese Government in recent years to protect the rights of individual citizens and has expressed its hope that the process of "renovation" in the legal sphere will lead to a greater openness in the judicial process itself, including the publication of verdicts and sentences passed by the courts and the opening of trials to foreign observers.

The following sections summarize Amnesty International's continuing concerns about individual human rights in Viet Nam, pinpointing in particular the legal provisions, judicial procedures and official or unofficial practices which appear to violate international human rights standards. Where appropriate, Amnesty International urges the government to review legislation or to take practical measures to ensure that human rights do not continue to occur in practice.

i) Detention without trial in "re-education" camps: Military officers and civil servants in the Republic of Viet Nam

Amnesty International was pleased to note the announcement by the Secretary-General of the Communist Party, Nguyen Van Linh, in January 1988 that prisoners associated with former governments of the RVN were to be released from "re-education". During discussions with the delegation at the time of Amnesty International's May 1989 visit, government officials reaffirmed the government's intention to release these prisoners. Members of the delegation expressed Amnesty International's view that in most cases the prisoners would have been eligible for release even if they had been tried, convicted and sentenced.

The practice of long-term detention without charge or trial for "re-education" contravenes provisions laid down in the ICCPR. Amnesty International believes that if the government had evidence to substantiate its allegations against prisoners detained for "re-education" there were no justifiable grounds for not charging and trying them in a public hearing

before a competent and impartial judicial tribunal.

By not granting these individuals the right to a fair trial the authorities also contravened internationally accepted guarantees against arbitrary arrest, as defined in Article 9 of the ICCPR. This states in part that anyone arrested should be brought promptly before a judge or other officer authorized by law and is entitled to a fair trial. Article 9 also states that anyone deprived of liberty by arrest or detention is entitled to take his or her case to a court so that the court can decide on the legality of the detention. This principle is upheld by Article 10 of the Vietnamese Criminal Procedure Code which states that "no one may be considered guilty or forced to undergo punishment without a court judgment that has taken legal effect".

The Vietnamese Government has stated that the "130 prisoners" arrested in 1975 who remain in untried detention are "guilty of national treason" and continue to pose a "threat to national security". This position denies detainees the right to be presumed innocent until proved guilty as proclaimed in Article 11 of the Universal Declaration of Human Rights and Article 14 of the ICCPR, and affirmed by Article 10 of Viet Nam's Criminal Procedure Code cited in (i) above.

The legal basis for the detention without trial of prisoners associated with the RVN governments has not been fully clarified. Amnesty International believes such prisoners may be detained under Resolution 49-NQ/TVQH of 1961, or under other decrees or laws not in force in the Republic of Viet Nam before the end of the war. The retroactive application of legal provisions is a violation of Article 11 of the Universal Declaration of Human Rights and Article 15 of the ICCPR, which states in part:

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed."

This principle is also enshrined in Article 7 of Viet Nam's Criminal Code which states that people can only be held responsible and punished for offences proscribed by laws in force at the time the offence was committed.

ii) Detention without trial in "re-education" camps: Alleged opponents of the government

A number of people arrested during and after 1975 remain in detention after many years without charge or trial. These prisoners are believed to have had no connection with either the war or the policies of the Government of the Republic of Viet Nam. Some are prisoners of conscience detained for the peaceful expression of their political, religious or other beliefs.

Amnesty International is concerned that these prisoners may be held in detention in violation of two of the most fundamental rights of individuals, the rights to freedom of conscience and expression. These rights are set out in Articles 18 and 19 of the ICCPR which state that everyone shall have the right to "freedom of thought, conscience and religion", and that everyone shall have the right to freedom to "seek, receive and impart information and ideas of all kinds".

These principles are to some extent upheld by the Vietnamese Constitution. Article 68 guarantees the freedom to worship and to practise religion. Article 67 guarantees freedom of speech, the press and freedom of association. Both articles state that no one may "misuse" these freedoms to "violate the interests of the state". Amnesty International is concerned that the very general formulation of "anti-state" activity may allow for the curtailment of the legitimate exercise of these fundamental human rights.

In many cases the precise nature of the allegations against individual prisoners is not known, but it is believed that many have been accused of "anti-government" activities. Amnesty International believes that if there is evidence to substantiate the allegations against them these prisoners should be brought before a court and given a fair and public trial. As noted above, detention without trial is a denial of the right to be presumed innocent until proved guilty and the right not to be subject to arbitrary arrest and detention. All those held in "re-education" camps without trial are being held in contravention of international human rights agreements and in apparent contravention of principles enshrined in the Vietnamese legal provisions discussed in (i) above.

iii) The right to fair trial before a competent and independent court of law

Amnesty International has welcomed the new legislation governing judicial procedures. The presumption of innocence, the right not to be detained without a court judgment, the right of defendants to defend themselves and to choose an independent lawyer; and the laws guaranteeing the independence of the judiciary are of particular significance for the protection of individual human rights.

The organization continues to be concerned about the very broad definition of "crimes against national security" (defined in Articles 72 to 100 of the Criminal Code), and the possibility that individuals charged and tried under these articles may include prisoners of conscience detained for the peaceful exercise of their rights to freedom of expression and association. Amnesty International recognizes the right of governments to invoke special powers in times of public emergency or when faced with a situation of exceptional and actual danger which threatens the life of the nation. The terms of such restrictions, and the conditions under which they are permissible are, however, regulated and strictly limited by international law. A generalized reference to "national security" cannot be used to limit the rights to freedom of thought, conscience and religion.

Amnesty International is also concerned that the broad definition of "crimes against national security" in the Criminal Code makes no distinction between violent activities which pose a real and exceptional threat to the security of the state, and non-violent activities that do not threaten state security. The organization is concerned that the Vietnamese authorities have, in some cases, invoked these provisions to convict and detain people whose peaceful religious or other activities are not acceptable to the government.

With regard to trial procedures, Amnesty International is concerned that the new provisions in the Criminal Procedure Code have not yet been fully implemented. Reports indicate that in particular defendants are not

afforded adequate time and facilities to prepare their defence or granted access to independent counsel of their own choosing. These shortcomings have to some extent been acknowledged by officials in the judiciary. During the May 1989 visit, officials also informed the Amnesty International delegation that in future people held for investigation would be granted early access to lawyers but acknowledged this has yet to become a common practice. Amnesty International is aware that the number of qualified lawyers in Viet Nam is still small, but believes this should not be seen as an insuperable obstacle to the full implementation of new provisions concerning the right to legal defence. Amnesty International also believes that a review of the regulations governing the organization of lawyers and the establishment of an independent bar association of lawyers are essential if the right to independent legal counsel is to be upheld.

Amnesty International is also concerned about the practice of condemning people charged with "crimes against national security" in press articles which appear before their trials have begun. This practice may effectively undermine the independence of the judiciary and mean that international standards for fair trial cannot be met.

Amnesty International has asked for, but been unable to obtain, copies of trial transcripts, verdicts and sentences from the trials of prisoners of conscience and prisoners who may be prisoners of conscience. The organization believes that these should be made publicly available.

iv) Instances of torture and ill-treatment

Amnesty International opposes by all appropriate means the use of torture or other cruel, inhuman or degrading treatment or punishment of prisoners or other detained or restricted persons whether or not they have used or advocated violence. Amnesty International is concerned by reports describing incidents of torture, ill-treatment and deaths of prisoners held for investigation in police custody, in prisons and in "re-education" camps. Central government authorities have acknowledged these abuses but said they were isolated incidents. In recent years the Vietnamese press has played a significant role in publicizing reports about these abuses and about the practice of forcing suspected criminals to "confess". Amnesty International continues to receive information, including statements made by former detainees, which suggest that these practices are still widespread and that measures to combat them are not yet adequate.

Amnesty International regards the use of solitary confinement in combination with the use of shackles or leg irons, the reduction of food rations, and the reported beatings of prisoners in "re-education" camps as serious violations of international legal standards. These practices constitute torture or cruel, inhuman or degrading treatment or punishment which are prohibited in Article 5 of the Universal Declaration of Human Rights and Article 7 of the ICCPR.

Amnesty International recognizes the important steps undertaken by the government to expose incidents of torture in the Vietnamese media, and to bring to justice those responsible for such abuses. The organization is concerned that although in some cases officers found guilty of torture or ill-treatment of prisoners were prosecuted and punished, in others they were only subject to administrative disciplinary measures. Amnesty International believes that criminal proceedings should always be instituted when there are reasonable grounds to believe that an act of

torture or ill-treatment has been committed. Similarly Amnesty International believes that police or public security officers should be suspended until judicial proceedings have been completed.

In its General Comment on Article 7 of the ICCPR, the United Nations Human Rights Committee noted that implementation of Article 7 is not in itself sufficient to ensure that torture or ill-treatment do not occur in practice, and that there is a need for effective forms of control. The Committee stated that protection of detainees can be afforded through provisions against incommunicado detention, and the granting of access of lawyers, doctors and family members to the detainees. It also stated that detainees should be held in publicly recognized places and that their names and places of detention should be entered in a register which is publicly available.

v) The use of the death penalty

Amnesty International advocates the total abolition of the death penalty by all countries on the grounds that it constitutes the most cruel, inhuman and degrading form of punishment and is a violation of the right to life. The issue is compounded by the irreversibility of the sentence once it has been carried out. Even when the most stringent judicial safeguards are respected innocent people may be sent to their deaths. Judicial errors occur in any legal system, but the risks of a miscarriage of justice are greater when accepted minimum internationally standards for a fair trial are not met; when the rights of the accused are limited and the outcome of trials may even have been decided in advance. In death penalty cases such judicial errors are irreparable. Where governments do not make available information about capital cases, death sentences and executions, confidence that judicial errors have not occurred, and that executions of the innocent have not been carried out, is further eroded.

During its visit in May 1989 the Amnesty International delegation was assured that the death penalty is imposed only in the most serious cases. The organization remains concerned that a large number of articles in the Criminal Code allow for the imposition of the death penalty for a wide variety of offences, and by reports that at least 107 people have been sentenced to death since 1975, of whom at least 26 have been executed.

Amnesty International has urged the government to review the Criminal Code and to take the necessary steps for the complete abolition of the death penalty.

In the light of these conclusions Amnesty International urges the government:

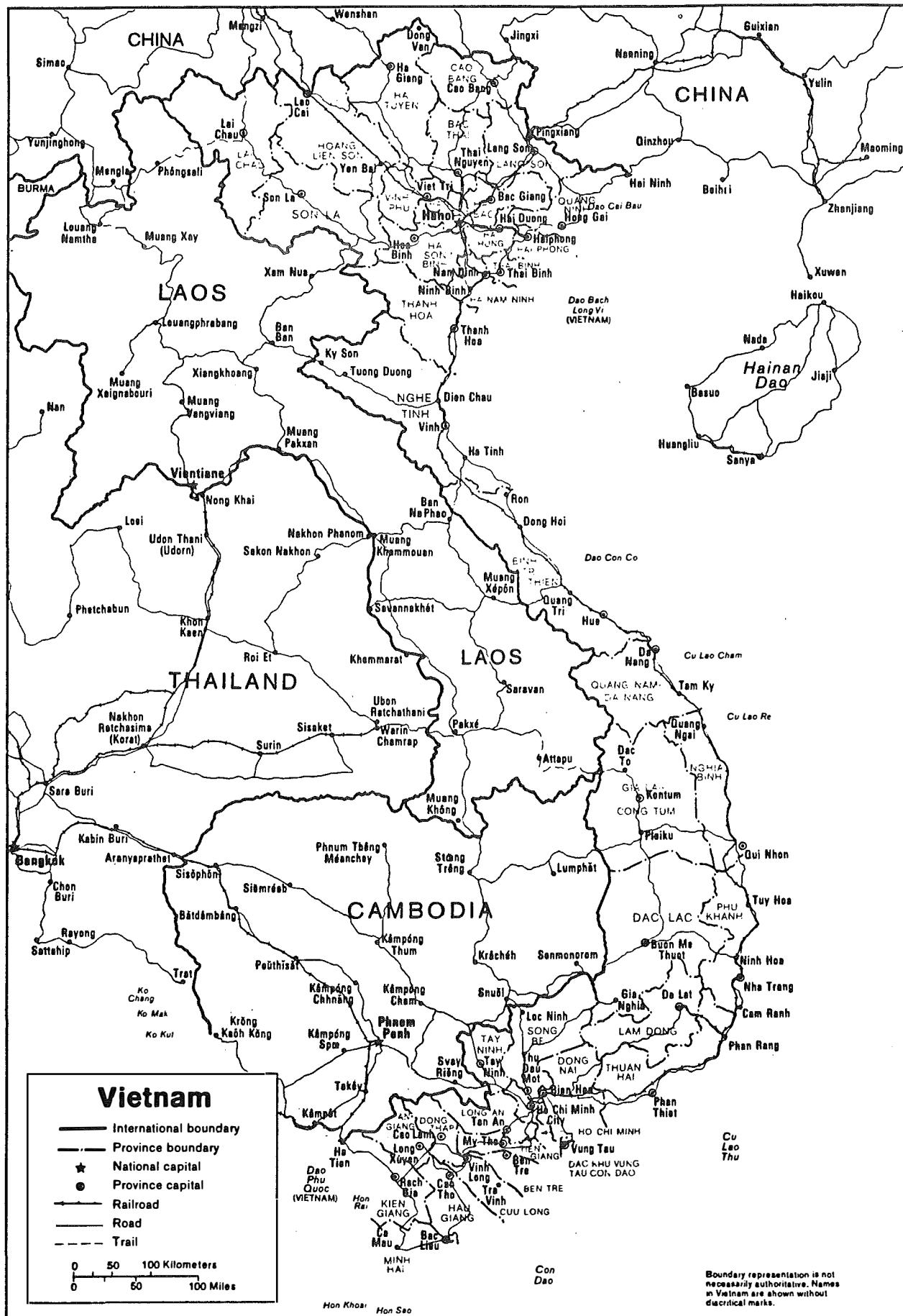
1. To ensure that the system of detention without charge or trial through "re-education" is eliminated in practice.

2. To repeal resolutions 49-NQ/TVQH and any other resolutions or regulations providing for detention without trial; and to make all legislation consistent with international human rights agreements and the 1989 Criminal Procedure Code, which uphold the right to be presumed innocent until proved guilty and the right not to be subject to arbitrary arrest.
3. To release all prisoners of conscience immediately and unconditionally.
4. As a matter of urgency, to review the cases of all political prisoners detained without charge or trial in prisons and "re-education" camps. This review should take into account the obstacles posed to a fair trial should criminal charges be brought many years after the offence was allegedly committed. International fair trial standards require that prisoners should not be charged and brought to trial under legislation introduced since the alleged offences were committed.
5. To review the cases of people imprisoned for political reasons as a result of trials which did not satisfy international standards of fair trial: such prisoners, in Amnesty International's view, should be given a retrial which conforms fully to international fair trial standards, or released.
6. To review provisions contained in the Criminal Code, particularly those concerning "crimes against national security" which may be invoked and used as the basis for conviction of people for the peaceful expression of their religious, political or other opinions, for legitimate religious, political or cultural activities, or for exercising their right to leave the country.
7. To review legislation governing trial procedures and to ensure that trials are conducted in full accordance with international human rights standards, notably requirements to ensure that defendants are informed of the charges against them and have adequate time to prepare their defence; granted full and early access to independent legal counsel; and that copies of trial transcripts, verdicts and sentences are made available. The practice whereby self-incriminating "confessions" are obtained from prisoners during pre-trial investigation should also cease.
8. To end the practice of condemning prisoners in the official media before their trial takes place, given that this may seriously reduce the possibility of their receiving a fair trial.
9. To review the regulations governing the organization of lawyers and to establish an independent bar association.
10. To ensure that existing provisions prohibiting the use of torture and ill-treatment of prisoners are enforced in practice and to implement safeguards against these abuses. In particular, prisoners should not be held in incommunicado detention, and information about where they are held should be recorded centrally and made available to family members and others involved in the defence such as lawyers and doctors. Suspects held for investigation should also be granted early access to independent legal counsel. Rules governing the treatment of prisoners and conditions of their detention should be known to all

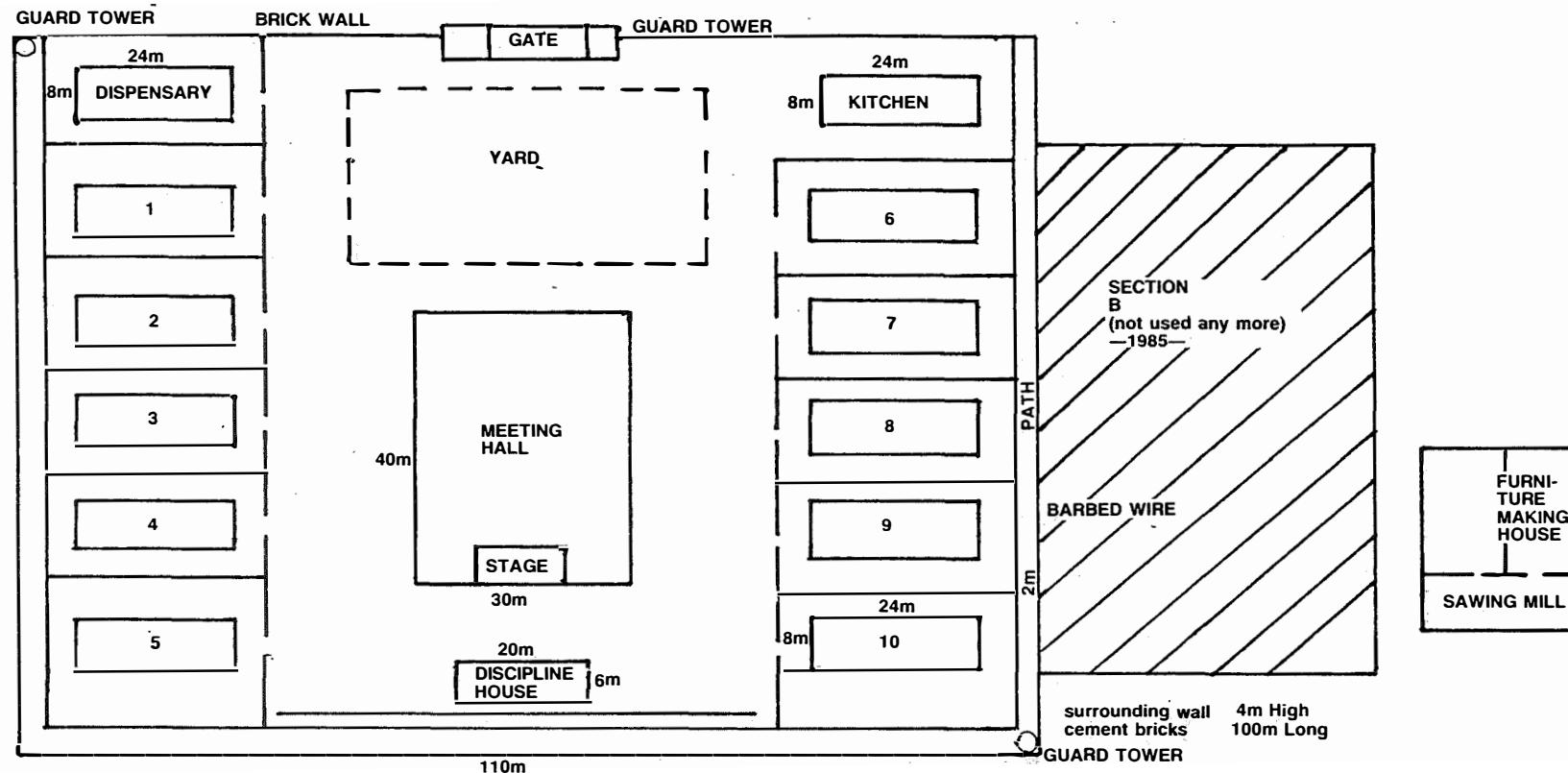
prison and police officers and all prisoners should be informed of these rules and of their rights at an early stage of their detention.

11. To abolish the use of leg irons and shackles on prisoners held in solitary confinement in prisons and "re-education" camps and to prohibit the reduction of food rations as a means of punishment. To ensure that regular inspections of all places of detention are carried out by an independent body with the appropriate expertise, and to ensure that their findings are made public.
12. To institute criminal proceedings in all cases where torture or ill-treatment of prisoners is believed to have occurred; to suspend officers alleged to have committed such acts until judicial proceedings have been completed. To make information about these proceedings publicly available. In the case of death in custody to carry out a public judicial inquiry to determine the cause of death.
13. To accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Optional Protocol of the International Covenant on Civil and Political Rights.
14. To revise the provisions in the Criminal Code allowing for the imposition of the death penalty and to take the necessary steps for the total abolition of the death penalty in Viet Nam.

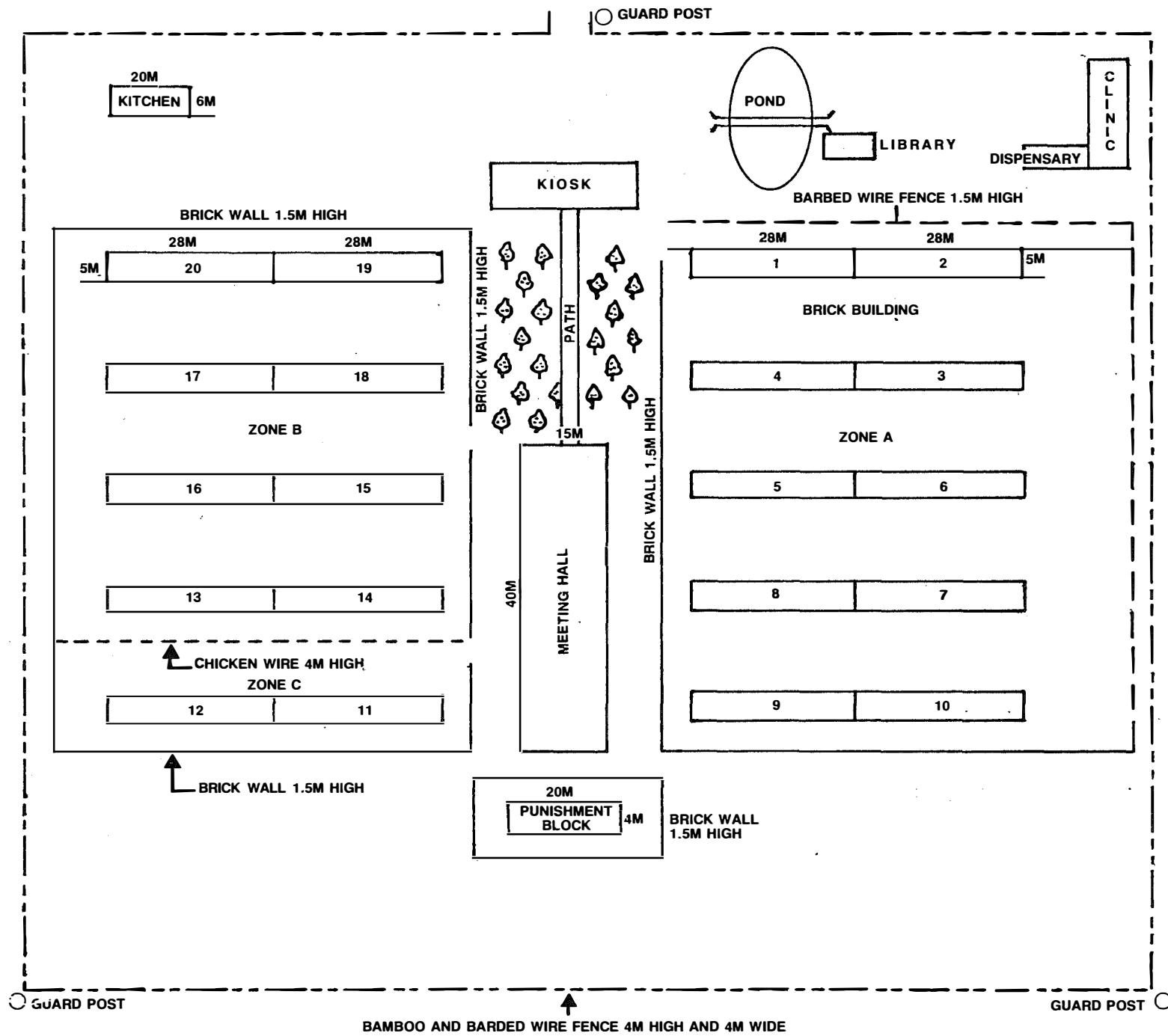
APPENDIX I



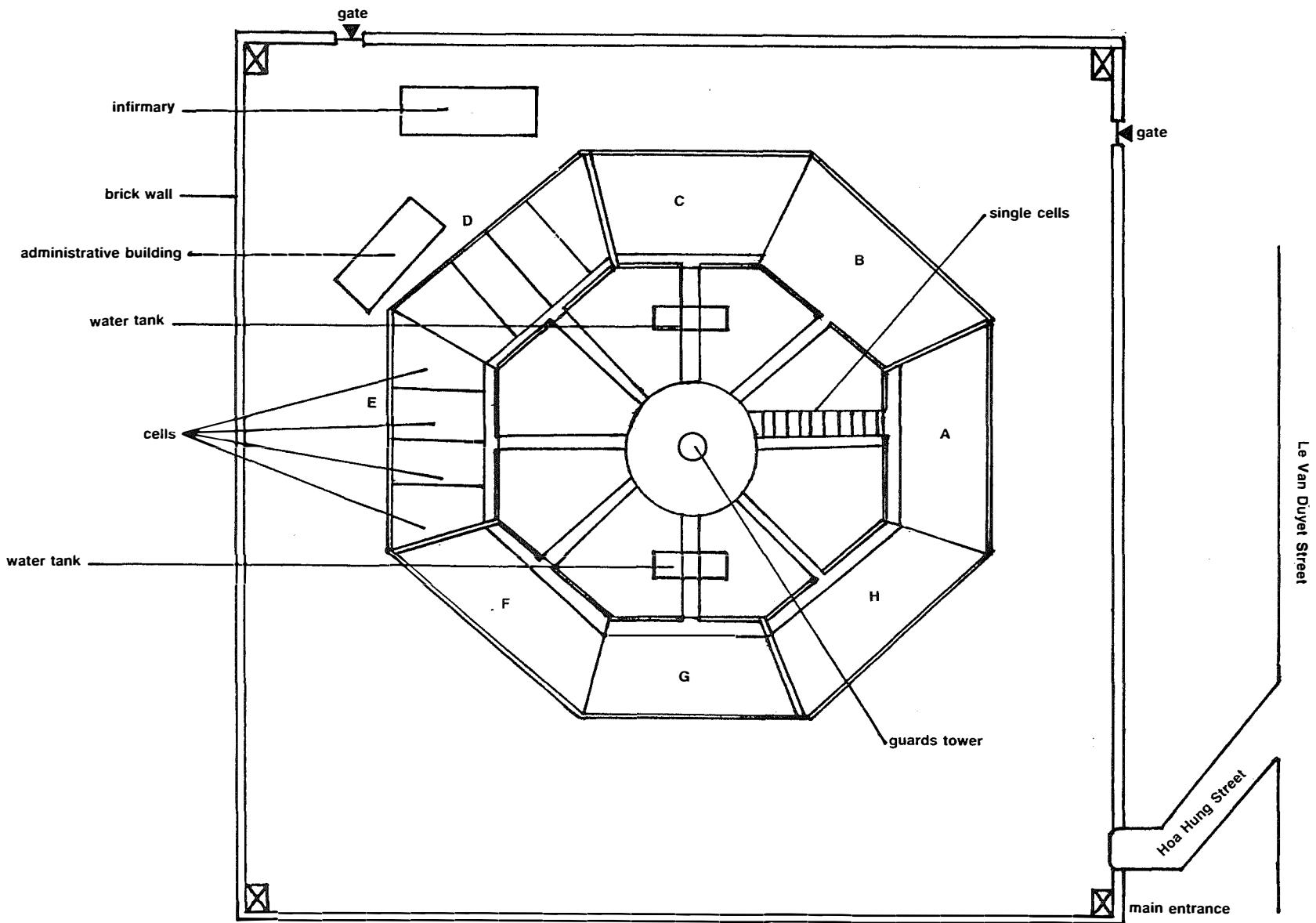
ZONE A, 230A, XUÂN LỘC, DONG NAI PROVINCE



K1 Z30D, "THU DUC", THUAN HAI



CHI HOA PRISON, HO CHI MINH CITY



Chi Hoa Prison,
Ho Chi Minh City

