

VIET NAM

@Continuing concerns

In April 1992, the Vietnamese National Assembly adopted a new constitution which guarantees fundamental rights including freedoms of expression, association and movement. These are stipulated in Chapter V of the 1992 Constitution. In particular, Article 50 states that "in the Socialist Republic of Viet Nam (SRV), all human rights in the political, civil, economic, cultural and social fields are respected and manifested as citizen rights stipulated in the Constitution and Law".

Amnesty International has welcomed recent positive legal and political developments in Viet Nam such as the inclusion of such human rights provisions in the 1992 Constitution, the release in 1992 of over 100 ex-officials of the former Republic of Viet Nam (RVN) who had been held in "re-education" camps since 1975 and the release of a number of prisoners of conscience in early 1993 including Catholic priest Dominic Tran Dinh Thu, Protestant pastor Tran Mai and economist Do Ngoc Long. However, the organization continues to be concerned about a number of existing legal and political practices which violate the civil and political rights of its citizens. These include the practice of detention without trial and prolonged house arrest without trial, unfair trials, the arbitrary application of national security legislation and the use of the death penalty.

A. The practice of administrative detention

Administrative detention is the practice of detaining persons by the decision of an administrative authority rather than as a result of a judicial process. Any system of administrative or preventive detention which invests an executive authority with the power to detain individuals without charge or trial risks being used to circumvent the due process of law and the authority and protection of the courts. In such situations, individuals may be arbitrarily detained for purposes of harassment or intimidation, as a means of facilitating oppressive and illegal interrogation, or to silence non-violent critics and political opponents of the government exercising their basic human rights such as the rights to freedom of expression and belief and to freedom of association.

Before 1992 some prisoners of conscience and possible prisoners of conscience were held for several years in untried detention before eventually being brought to court and convicted of participating in activities with intent to "overthrow the people's government". Amnesty International is concerned that Viet Nam continues to use arbitrary, indefinite, administrative detention, though to a lesser degree than in previous years. In fact, in a communication to Amnesty International dated 29 March 1990, Viet Nam admitted that several laws and regulations allowing administrative detention were still operational and were under consideration for "amendment or adjustment". Furthermore, Article 71 of the

Criminal Procedure Code while setting out a specific time limit for temporary detention of not more than 12 months for purposes of investigation of serious crimes, also allows for prisoners to be held indefinitely without being charged or tried as it states that "when necessary, for crimes of particular danger to national security, the Chief Procurator may further extend the period". This practice contradicts explicit provisions of the 1989 SRV Criminal Procedure Code and the 1992 Constitution. Article 10 of the 1989 Criminal Procedure Code appears to render all detention without trial illegal as it states that "No one may be considered guilty or forced to undergo punishment without a court judgement that has taken legal effect". This proviso is reinforced by Article 72 of the 1992 Constitution which states that "No one can be considered guilty and be punished until a verdict of the court has legally come into effect..." The detention of Nguyen Si Binh and 16 other members of the opposition People's Action Party in April 1992 until June and July 1993, when seven of them were released without trial, is a clear indication that administrative detention is still practised officially. Another example is the continued detention without trial since October 1992 of prisoner of conscience Buddhist monk Thich Khong Tanh. It is clear that this practice contradicts the fundamental laws of Viet Nam such as its 1992 Constitution and Criminal Procedure Code.

In 1992, more than 100 former officials and military officers of the former Republic of Viet Nam who had been held in "re-education" camps since 1975 without charge or trial under Resolution 49/TVQH, which provides for indefinite detention without charge or trial, were released. Those released included two former senior officials, eight former generals, nine former colonels and 11 former intelligence officers. The government later announced that it had released all civilian and military personnel imprisoned in 1975 for their links with the former Government of the Republic of Viet Nam.

B. Unfair trials

In 1992 and 1993, there were several trials of prominent political prisoners. Doan Thanh Liem, a lawyer and a prisoner of conscience, arrested with several other persons in 1990 for alleged espionage and involvement in the drafting of an unauthorized constitution, was tried on 14 May 1992 in Ho Chi Minh City and sentenced to 12 years' imprisonment for allegedly spreading "anti-socialist propaganda", an offence under article 82 of the Criminal Code. Articles in the official Vietnamese press in 1991 before his trial accused Doan Thanh Liem of being part of a "spy ring" to gather information about Viet Nam. One such article in the journal *Cong An (Public Security)* suggested that "clipping published articles" and "marking passages in writings" was subversive activity.

In March 1993, Doan Viet Hoat, a prisoner of conscience, was sentenced 20 years' imprisonment by the People's Court of Ho Chi Minh City. The defendant reportedly pleaded guilty to activities allegedly aimed at overthrowing the government. Amnesty

International believes that Doan Viet Hoat was only expressing his peaceful dissent against the government. His sentence was later reduced to 15 years' imprisonment by the Supreme Court in an appeal trial in July 1993 in Ho Chi Minh City. He allegedly belonged to an illegal organization formed in June 1989 named *Dien Dan Tu Do (Freedom Forum)*. He was also accused of publishing an unlicensed newsletter also called *Dien Dan Tu Do (Freedom Forum)* which contained writings of its members and translations of articles from abroad which were critical of the Vietnamese Government, and of sending articles critical of the government abroad for publication. His group is reported to have published 10 issues of the newsletter when he was arrested in November 1990. *Saigon Giai Phong*, a Ho Chi Minh City newspaper, in an article published in its 6 May 1992 issue accused Doan Viet Hoat of being the leader of a "reactionary group" and his group of undertaking unlawful activities to overthrow the government.

As in the case of Doan Thanh Liem, Doan Viet Hoat was incriminated by the Vietnamese official press prior to his formal conviction by the court. In Doan Viet Hoat's trial, which lasted just one and a half days the presiding judge reportedly sided with the prosecution by making subjective remarks against the defendants and intimidated the defendants by threats, yelling and pounding the bench. Doan Viet Hoat was not allowed to choose a lawyer for his own defence, and was brought to trial only after being detained for 28 months.

With regards to the case of Dr Nguyen Dan Que, a medical doctor sentenced to 20 years' imprisonment, Amnesty International believes that he is prisoner of conscience detained solely for the non-violent exercise of fundamental human rights. The organization also believes that he was denied a fair trial since he was not allowed legal representation of his own choosing and was unable to present an adequate defence at his trial as he was not allowed to speak for himself and was presumed guilty by the Vietnamese press, including *Phap Luat (Laws and Regulations)*, an official legal magazine, in several articles before the formal trial. His wife and independent observers were also not allowed to attend the trial. He was brought to trial only after being detained for 18 months. The Vietnamese Government did not respond to requests by Amnesty International to attend the trial of Nguyen Dan Que and other similar political trials in the past. In September 1992, the Vietnamese Government, in response to a communication from the United Nations Working Group on Arbitrary Detention concerning the case of Nguyen Dan Que denied that he was a political prisoner subjected to arbitrary detention. The government stated that he had been accused of "activities aimed at overthrowing the government" under Article 73 of the Criminal Code and had subsequently been tried and sentenced by a court of law in a three-hour trial held in Ho Chi Minh City in November 1991.

The United Nations Working Group on Arbitrary Detention decided on 30 April 1993 that the detention of Nguyen Dan Que is arbitrary and a violation of Articles 19 and 20 of the Universal Declaration of Human Rights and Articles 19 and 22 of the International

Covenant on Civil and Political Rights (ICCPR) of which Viet Nam is a state party. It also decided on the same date that the detention of Doan Viet Hoat is arbitrary as it violates Articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and Articles 9, 10, 14, 19 and 21 of the ICCPR.

Amnesty International is further concerned that in several prominent political trials the principle of presumed innocence, guaranteed as a fundamental right in Article 14 of the ICCPR, in Principle 36 of the UN Body of Principles and in Article 11 of the Vietnamese Criminal Procedure Code, may have been seriously undermined by publication of accusations and judgements in the official media before the trial.

C. Broad application of national security laws

The crime of "taking actions to overthrow the people's government" specified in Article 73 of the Vietnamese Criminal Code does not distinguish between armed or violent acts which may pose a threat to national security and the peaceful exercise of the rights to freedom of expression and association. This is also true of other criminal offences specified in Chapter I of the Criminal Code under the heading "especially dangerous crimes against national security". This chapter defines a wide range of peaceful activities as "crimes against national security" and grants judicial authorities the power to convict and imprison people solely on the basis of their real or imputed non-violent beliefs or activities.

For instance, in April 1992, Nguyen Si Binh, a nuclear engineer and businessman with United States citizenship, was arrested along with 16 other persons, including his sister and step-brother, for an alleged attempt to overthrow the government. Nguyen Si Binh had returned to Viet Nam reportedly to do market research on behalf of some US companies. They were released in June and July 1993 without having been brought to trial. Nguyen Ly Tuong, a former parliamentarian and newspaper editor, was arrested in June 1992 near the Thanh Da church in Ho Chi Minh City. Although he had not been formally charged by the government, it appears that he may have been detained under Article 73 of the Criminal Code for alleged "actions aimed at overthrowing the People's Government". He had earlier been detained in a "re-education" camp from January 1975 to February 1988.

Among others who have been detained as they were considered to be threats to national security, were several Buddhists monks, including Thich Khong Tanh and Thich Tri Tuu. Thich Khong Tanh, arrested in October 1992, is believed to be detained on charges of "undermining the policy of unity" and "circulating anti-socialist propaganda", crimes punishable under Articles 81 and 82 of the Criminal Code (Articles 72 to 100 cover "crimes against National Security".) Thich Tri Thu, who was charged with "disrupting security and public order", a crime punishable under Article 83 of the Criminal Code after events in May 1993, which included the self-immolation of a man at a Buddhist Pagoda in Hue in central

Viet Nam followed by a Buddhist demonstration resulting in the burning of an official car and injuries to policemen, was arrested in July 1993. They are followers of Buddhist leader Thich Huyen Quang, a prisoner of conscience under house arrest since 1982. Their group is alleged to have been distributing documents which were addressed to the Vietnamese authorities and distributed to Buddhist followers in Viet Nam and abroad, critical of the government's treatment of and policies towards religious Buddhists. They called on the authorities to return all confiscated church properties and demanded the release of all monks and other persons still in prison or under house arrest for opposing government policies and regulations on religion. They also urged the government to allow the Unified Buddhist Church (UBC) to function independently. Thich Huyen Quang and his followers are members of the UBC and oppose the government-sponsored Viet Nam Buddhist Church (VBC).

D. Death penalty

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 ICCPR. The death penalty in Viet Nam may be applied as a maximum sentence for around 30 criminal offences including serious cases of smuggling, treason, espionage, rebellion, murder, rape, defrauding socialist property and bribery. The death penalty is rarely enforced in Viet Nam. In the past, most death sentences have been commuted to jail terms including life imprisonment. However, Amnesty International is concerned that at least four persons have been sentenced to death in the first nine months of 1993.

On 28 May 1993, the People's Supreme Court in Ho Chi Minh City imposed the death penalty on Wong Chi Shing for trying to smuggle five kilograms of heroin into the country. Smuggling is a crime under Article 97 of the Criminal Code of Viet Nam which may attract the death penalty. Wong Chi Shing, 32, a Hong Kong resident with a British passport, was arrested in Ho Chi Minh City on 11 March 1993 after flying in from Bangkok en route to Germany. Tran Ngoc Minh, a former refugee in Hong Kong deported back to Viet Nam, was sentenced to death in June 1993 by the Supreme People's Court in Ha Noi for committing two murders in April 1993.

Amnesty International is particularly concerned about trials of cases described in Article 145 of the Criminal Procedure Code as being "...especially serious and complex cases...", such as the cases of Wong Chi Shing and Tran Ngoc Minh mentioned above. These are heard by the Supreme People's Court, or the Central Military Court, which simultaneously conduct the preliminary and appellate hearing. The only recourse available to the accused after judgment has been pronounced is to seek commutation from the

President. 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.

E. Refugees

The situation of Vietnamese asylum-seekers who have been returned to Viet Nam after being "screened out" from Hong Kong as not qualifying for refugee status has received wide publicity. Several individuals and non-governmental organizations who have visited and interviewed former refugees in Viet Nam during the past three years have reported no evidence of political persecution. The Parliamentary Assembly of the Council of Europe in its April 1993 Report on Vietnamese migrants and asylum-seekers in Hong Kong concluded that "there is no substantiated evidence to show that returnees have been persecuted, although those accused of serious crimes may be prosecuted".