



VIET NAM

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

18TH SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2014

FOLLOW UP TO THE PREVIOUS REVIEW

Amnesty International welcomes Viet Nam's engagement with the UPR process and its acceptance of 98 recommendations made to it at the sixth session of the UPR Working Group in May 2009.¹ Amnesty International is concerned, however, that despite Viet Nam's expression of support little has been done to implement recommendations to guarantee freedom of expression – relating to dissidents and Human Rights Defenders (HRDs) – and regarding the death penalty. It is also disappointing that Viet Nam rejected a number of other recommendations in these areas.²

Freedom of expression

No discernible progress has been made in implementing recommendations to guarantee the right to freedom of expression.³ The right to freedom of expression is also indirectly encompassed in recommendations, which Viet Nam also supported, to strengthen institutional mechanisms for the implementation of international conventions to which Viet Nam is a party⁴ and to review national legislation, such as the 1999 Penal Code and 2003 Criminal Procedure Code, to ensure consistency with Viet Nam's international human rights commitments.⁵ No progress has been made to implement these recommendations either.

The death penalty

Since the previous review, Viet Nam has made some welcome progress in reducing the scope of the death penalty, as recommended by two States.⁶ The number of capital crimes is now 21, compared to 29 previously. However, there has been no change regarding the lack of transparency over the use of the death penalty, as recommended by one State,⁷ with statistics classified as a "state secret" since January 2004.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

A number of gaps remain in Viet Nam's human rights framework, both in terms of national infrastructure and law, and in terms of ratification of international human rights treaties and cooperation with the UN.

National infrastructure and law

All institutions are state controlled, including the judiciary, the media and social, economic and religious groups affiliated to the Viet Nam Fatherland Front.⁸

Amnesty International is concerned that the justice system lacks independence and is used to repress perceived opposition to the government, its policies and practices. Viet Nam does not have an independent national human rights institution (NHRI) or other independent body, as recommended by several states during the previous review, but rejected by Viet Nam.⁹ The shortcomings and lack of independence of state institutions in Viet Nam that should play a role in protecting and promoting human rights, underscore the importance of establishing an NHRI in accordance with the Paris

Principles, independent of the government and the Communist Party of Viet Nam (CPV).

In January 2013, the government began an unprecedented nationwide consultation process on the draft of a new constitution. The initial deadline for input from stakeholders was 31 March 2013, but subsequently extended until 30 September 2013. Input to the consultation in Viet Nam appears to be controlled by local authorities and CPV-affiliated mass organizations. The 1992 Constitution affirms the right to freedom of expression, assembly and association under Article 69, but only "in accordance with the provisions of the law". In the draft new constitution, Article 69 becomes Article 26, and reads similarly: "Citizens are entitled to freedom of speech and freedom of the press; they have the right to receive information and the right of assembly, association and demonstration in accordance with the law."¹⁰

A preliminary analysis by Amnesty International of the draft new constitution finds that it generally protects the rights to freedom of expression, assembly and association. In addition, the right to freedom of expression is partially acknowledged through draft provisions that require government officials to collect and take people's opinions into account in policy making. However, the draft new constitution also subjects these rights to limits that might be imposed by national legislation. These limits are too vague and broad and go beyond the restrictions set out under the International Covenant on Civil and Political Rights (ICCPR),¹¹ to which Viet Nam is a state party.

A raft of laws and decrees further circumscribe and restrict the right to freedom of expression, including, among others: Internet decrees, the Press Law (amended in 1999) and the January 2011 Decree No 01/2011 on administrative sanctions in the press and publication field, the Publishing Law, the State Secrets Protection Ordinance, and above all the 1999 Penal Code. Ambiguous and loosely-worded provisions of these laws are used to stifle the rights to freedom of expression. Other provisions of these laws, such as articles on national security in the Penal Code,¹² also explicitly breach Viet Nam's international human rights commitments, including under the ICCPR.

International human rights treaties and cooperation with the UN

In its National Report submitted for the 2009 UPR, Viet Nam stated its commitment to consider accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; however, but it appears not to have made any progress in this regard.

Viet Nam is overdue on some its reporting commitments: the third period report to the Human Rights Committee (ICCPR) has been due since January 2004.

A number of requests by the Special Procedures to visit Viet Nam are outstanding, including: a 2012 request by the Special Rapporteur on the situation of human rights defenders, a 2002 request by the Special Rapporteur on the right to freedom of opinion and expression, and a 2011 request by the Special Rapporteur on cultural rights.

In a welcome development, a representative of Amnesty International was able to visit Viet Nam in March 2013, and the country has human rights dialogues with a number of states, including Australia, the EU, Norway and USA.

At the regional level, Viet Nam and the other member states of the Association of Southeast Asian Nations (ASEAN) in November 2012 adopted the ASEAN Human Rights Declaration, despite serious concerns, shared by Amnesty International, that it falls short of international human rights standards. The ASEAN Intergovernmental Commission on Human Rights has yet to investigate or take action on human rights violations in ASEAN member states.

THE HUMAN RIGHTS SITUATION ON THE GROUND

Freedom of expression

In the period since its last review in May 2009, the human rights situation in Viet Nam has deteriorated, continuing decades of suppression of peaceful activism. Severe restrictions on freedom of expression continue, with those critical of government policies harshly sanctioned. Individuals at risk include pro-democracy activists, bloggers and those calling for social and economic reform or protesting about environmental issues, land confiscation and eviction, and for labour

rights. Speaking out about sensitive issues such as corruption and Viet Nam's relationship with China and territorial disputes is generally not tolerated.

Dissidents and human rights defenders are harassed by the authorities and obstructed from carrying out their peaceful activities. Dozens of prisoners of conscience – imprisoned for peacefully exercising their right to freedom of expression – are serving long prison sentences, while others are held in pre-trial detention.

Freedom of expression criminalized

Vaguely-worded offences in the national security section of the Penal Code are used to criminalize peaceful political and religious dissent. Articles 79 (Activities aimed at overthrowing the people's administration), 80 (Spying), 87 (Undermining the unity policy), 88 (Conducting propaganda against the Socialist Republic of Viet Nam), and 91 (Fleeing abroad or defecting to stay overseas with a view to opposing the people's administration) are commonly used to imprison government critics, as is Article 258 (Abusing democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens).

- Three prominent bloggers – **Truong Duy Nhat**, **Pham Viet Dao** and **Dinh Nhat Uy** – were arrested on 26 May, 13 June and 15 June 2013, respectively, and charged under Article 258 for their criticism of the government in their writing. They are now in pre-trial detention.

The length of applicable prison terms ranges from two to 20 years' imprisonment, life imprisonment, or capital punishment. Dissidents serving prison terms under the national security section of the Penal Code are commonly further restricted on release by the imposition of up to five years' house arrest under Article 38 (Probation) of the Penal Code.

Harassment and short term arrests

Despite the criminalization of freedom of expression, bloggers and others continue to find ways to circumvent restrictions and to communicate amongst themselves and with their audiences. They are also using new ways to express their views, which have been met with equal intolerance by the authorities.

- On 5 and 6 May 2013, young people attempted to hold peaceful outdoor picnics in four of Viet Nam's main cities to discuss the Universal Declaration on Human Rights. Security police prevented them from doing so, because they had not registered the small gatherings with the local authorities, and several bloggers taking part in the picnics were briefly arrested and beaten.

Incommunicado pre-trial detention

After arrest, peaceful activists are often held in incommunicado detention, in some cases for up to 18 months. Family members are not allowed to visit and are provided with limited or no information about their relatives' well-being, and they often face obstruction and abuse from security officials when they attempt to gain access to, or elicit information about, their relatives. Most detainees will not have access to a lawyer until shortly before their trial, and so have no time to prepare an adequate defence. Amnesty International has received information that in some cases detainees have been beaten during the interrogation period.

- Three founding members of the *Free Vietnamese Journalists Club* spent months in jail before being tried. Blogger **Nguyen Van Hai**, known as Dieu Cay, imprisoned since 2008 on trumped-up tax fraud charges, was due for release in October 2010, but instead continued to be held until his trial in September 2012, having spent almost two years in pre-trial detention. For most of this time his family was not informed about his whereabouts or about the charges against him and he had no access to a lawyer. His co-defendants – blogger **Phan Thanh Hai**, known as AnhBaSaiGon, and "Justice and Truth" blogger **Ta Phong Tan** – were held in pre-trial detention for 21 months and almost one year, respectively. Their families and lawyers were allowed only limited access to them. The Code of Criminal Procedure sets a maximum period of pre-trial detention of 16 months for those charged with "especially serious crimes". The three bloggers were convicted and sentenced to 12, 10 and four years' imprisonment, respectively.

Unfair trials and lengthy prison terms

Trials of peaceful activists are routinely unfair, falling far short of international standards of fairness. There is no presumption of innocence, lack of effective defence and no opportunity to call witnesses. Attempts by defendants to make statements in court are often cut short. Judgements are apparently decided beforehand, and trials commonly last only a few hours. Police harassment and short-term arrest of family members and supporters of dissident defendants attempting to observe trial proceedings is common.

At least nine trials of 20 dissidents took place in 2011, and 14 trials of 25 defendants in 2012. In the first major trial of 2013, 13 peaceful Catholic activists – students, bloggers and community workers – were sentenced in January to between three and 13 years' imprisonment under Article 79 of the Penal Code (aiming to "overthrow" the state).

- Human rights lawyer **Le Cong Dinh**, businessman **Le Thang Long**, IT engineer and blogger **Nguyen Tien Trung**, and entrepreneur **Tran Huynh Duy Thuc** were tried in January 2010 on charges of "overthrowing" the people's administration under Article 79 of the Penal Code. The judges deliberated for just 15 minutes before returning with a judgement which took 45 minutes to read out, suggesting it had been prepared in advance. The four men – peaceful advocates for reform and human rights – were sentenced to between five and 16 years' imprisonment.

House arrest

Peaceful activists are routinely sentenced to periods of house arrest following release, ranging from three to five years, with varying degrees of restrictions imposed, including regular questioning, surveillance, restrictions on movement, denial of access to visitors and harassment by local police.

- Writer and blogger **Pham Thanh Nghien** was released in September 2012, after serving a four year sentence for attempting to hold a peaceful protest at her home. Local police authorities maintain strict surveillance, carry out intrusive home checks, and have refused her permission to travel to Ho Chi Minh City for the medical treatment she needs. Her attempt to support the human rights picnics, mentioned above, by inviting people to her home, were met with abuse from local security police who prevented anyone from entering her house.
- Human rights lawyer **Nguyen Van Dai**, currently under four years' house arrest since his release from prison in March 2011, was recently detained for several hours to prevent him from attending a meeting with US government officials during the US-Viet Nam human rights dialogue in April 2013.

Online restrictions

Amnesty International is concerned about laws and decrees on internet use that restrict freedom of expression. Although not generally used against dissidents, such laws serve to encourage self-censorship and place practical obstacles in the way of free access to information and to the internet.

The death penalty

In January 2010, the number of capital offences was reduced from 29 to 21. However since then progress towards a further reduction appears to have stalled. Offences which retain the death penalty as an optional punishment include violent crimes, national security offences, drug trafficking and embezzlement.

In July 2011, the authorities amended the Law for Enforcement of Criminal Verdict to change the method of execution from firing squad to lethal injection, on the grounds that it was more humane. A delay in implementation of the use of lethal injection, due to a 2011 EU ban on export of the required drugs, has resulted in no executions being carried out since January 2012. However, in May 2013, the law was amended to allow Viet Nam to source alternative drugs from elsewhere or to manufacture them in-country. This comes into effect on 27 June 2013, after which executions may resume.

As of May 2013, there were more than 530 prisoners awaiting execution.¹³ At least 117 prisoners have exhausted all legal appeals and are at risk of imminent execution.¹⁴ Viet Nam has already prepared for the use of lethal injection with the building of facilities around the country and training of the personnel involved.

Death sentences continue to be handed down: in 2012, more than 86 people were sentenced to death, including two men for embezzlement.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Viet Nam:

Human rights framework

- To undertake reform of the courts and judiciary to ensure independence from the executive;
- To establish a National Human Rights Institution, in accordance with the Paris Principles;
- To ensure that the new constitution recognizes the rights provided for in Articles 19, 21, and 22 of the International Covenant on Civil and Political Rights in terms fully consistent with those articles and that do not circumvent Viet Nam's international human rights obligations as a state party;
- To ratify the First Optional Protocol to the International Covenant on Civil and Political Rights to allow individuals to submit complaints to the Human Rights Committee of violations of the rights set out in the Covenant;
- To issue a standing invitation to the Special Procedures and to facilitate visits by the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.

Freedom of expression

- To immediately and unconditionally release all prisoners of conscience, detained solely for peacefully exercising their right to freedom of expression;
- To repeal or amend provisions in the 1999 Penal Code to ensure that ambiguous provisions relating to national security are clearly defined or removed, so they cannot be applied in an arbitrary manner to stifle legitimate and peaceful dissent, debate, opposition and freedom of expression;¹⁵
- To repeal provisions in the 1999 Penal Code allowing house arrest or probation to violate freedom of expression;
- To ensure that any law on the Internet complies with Viet Nam's international human rights obligations as a state party to the International Covenant on Civil and Political Rights;
- To take all necessary measures to end other restrictions in law and practice on the rights to freedom of expression, in accordance with international human rights law and standards.¹⁶

The death penalty

- To immediately impose a moratorium on executions, with a view to complete abolition of the death penalty, in line with UN General Assembly resolution 67/176 of 20 December 2012;
- To further reduce the number of offences liable for the death penalty;¹⁷
- To make public all information about the imposition and use of the death penalty, including information on executions carried out.¹⁸

END NOTES

¹ A/HRC/12/11, paragraphs 99 and 101.

² See for example, **recommendations on freedom of expression**: 35 (e) Reduce the use of security laws that limit public discussion about multi-party democracy or criticism of the Government, including by bringing security and propaganda laws into compliance with ICCPR (Canada); 41 (b) Give individuals, groups and organs of society the legitimacy and recognition to promote human rights and to express their opinions or dissent publicly (Norway); 63 (c) Recommended repealing or amending its Penal Code to ensure that it cannot be applied in an arbitrary manner to prevent the freedom of expression (Finland); 64 (d) Recommended taking all necessary measures to end restrictions on the rights to freedom of expression and peaceful assembly (Germany); 66 (a) Demonstrate its commitment to article 69 of its Constitution, article 19 of ICCPR and article 19 of the Universal Declaration of Human Rights by ensuring freedom of expression for members of the press without fear of arbitrary arrest or prosecution, provide for the free flow of information on the Internet and abolish restrictive regulations on blogging and the media (United States); 66 (b) Demonstrate its commitment to articles 50 and 69 of the Constitution, articles 19, 21, and 22 of ICCPR and article 20 of the Universal Declaration by allowing individuals to speak out on the political system and by releasing all prisoners of conscience, such as Father Nguyen Van Ly, Nguyen Van Dai, Le Thi Cong Nhan, and abolish vague "national security" provisions such as articles 84, 88, and 258 used to convict those who voice dissent against the Government or its policies (USA); 85 (a) Take measures advocated by the Human Rights Committee to bring to an end restrictions to freedom of expression and opinion and to end, notably, restrictions on the creation of private media at the same time (France); and **recommendations on the death penalty**: 59 (c) Take steps to abolish the death penalty and increase transparency around its use (New Zealand); 63 (d) Recommended imposing a moratorium on executions immediately with the ultimate goal of abolishing the death penalty altogether (Finland); 64 (e) Recommended publishing all information about the imposition and use of the death penalty, including information on executions carried out (Germany).

³ See recommendation 99–44: Take the necessary steps to ensure that citizens can fully enjoy the rights to freedom of expression and freedom of religion (Argentina); 99–45: Fully guarantee the right to receive, seek and impart information and ideas in compliance with article 19 of ICCPR (Italy); 99–47: Take steps to ensure that full respect for the freedom of expression, including on the Internet, is implemented in current preparations for media law reform (Sweden); and 99–52: Strengthen efforts in the areas of civil and political freedoms, including freedom of expression and the press and freedom of religion (Republic of Korea).

⁴ See recommendation 99-12: Strengthen its institutional mechanisms for the promotion and efficient protection of human rights by implementing the various international conventions to which it is party and call upon the international community to back it in this endeavour (Burkina Faso).

⁵ See recommendation 99-11: Engage in dialogue with international experts on legal developments, including on the review of its Penal Code to allow less scope for open interpretation of these provisions by judges and courts (United Kingdom); continue to work to ensure key pieces of national legislation, including the 1999 Penal Code and 2003 Criminal Procedures Code, are consistent with its international human rights treaty commitments (Australia).

⁶ See recommendation 99–33: Fulfil the Government aim of limiting the use of capital punishment promptly by reducing the scope of crimes subject to the death penalty (Norway); reduce the number of offences punishable by the death penalty (Germany).

⁷ See recommendation 99-32: Revise its legislation on the death penalty bearing in mind existing international standards on the subject, especially concerning transparency (Switzerland).

⁸ The Viet Nam Fatherland Front is an umbrella group of pro-government "mass movements" in Viet Nam and has close links to the Communist Party of Viet Nam and the Vietnamese government.

⁹ See rejected recommendations: 55a: Recommended taking necessary measures to establish a national human rights institution in accordance with the Paris Principles. (Mexico); 56c: Establish a national human rights institution in accordance with the Paris Principles (Azerbaijan); 59d: "Establish a national human rights institution, in accordance with the Paris principles. (New Zealand); 64c: Recommended establishing a national human rights institution in accordance with the Paris Principles" (Germany); 85b: Set up a national human rights institution in accordance with the Paris Principles. (France).

¹⁰ Unofficial translation of the Vietnamese language draft new constitution found at the Government Web Portal, <http://baodientu.chinhphu.vn/Home/Chinh-thuc-cong-bo-Du-thao-sua-doi-Hien-phap-1992/20131/158230.vgp> (accessed 10 January 2013).

¹¹ See Article 19, ICCPR: 1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

¹² Articles 79 (Activities aimed at overthrowing the people's administration), 80 (Spying), 87 (Undermining the unity policy), and 88 (Conducting propaganda against the Socialist Republic of Viet Nam) of the 1999 Penal Code are used to imprison peaceful dissidents and human rights defenders, see: Human rights situation on the ground, *Freedom of expression criminalized*.

¹³ See Vietnam plans to produce its own lethal injection drugs, Thanh Nien News, 23 January 2013:

<http://www.thanhniennews.com/index/pages/20130123-vietnam-considers-using-home-made-poisons-for-death-penalties.aspx>.

¹⁴ See "117 inmates to be executed with lethal injections made in Vietnam", Thanh Nien News, 19 June 2013,

<http://www.thanhniennews.com/index/pages/20130618-vietnam-death-row-inmates-to-get-home-made-lethal-injections.aspx>

¹⁵ See recommendation made and accepted at the previous review: 99-11. Engage in dialogue with international experts on legal developments, including on the review of its Penal Code to allow less scope for open interpretation of these provisions by judges and courts (United Kingdom); continue to work to ensure key pieces of national legislation, including the 1999 Penal Code and 2003 Criminal Procedures Code, are consistent with its international human rights treaty commitments (Australia).

¹⁶ See recommendations made and accepted at the previous review: 99-44. Take the necessary steps to ensure that citizens can fully enjoy the rights to freedom of expression and freedom of religion (Argentina); 99-45. Fully guarantee the right to receive, seek and impart information and ideas in compliance with article 19 of ICCPR (Italy); 99-47. Take steps to ensure that full respect for the freedom of expression, including on the Internet, is implemented in current preparations for media law reform (Sweden); 99-52. Strengthen efforts in the areas of civil and political freedoms, including freedom of expression and the press and freedom of religion (Republic of Korea)

¹⁷ See recommendation made and accepted at the previous review: 99-33. Fulfil the Government aim of limiting the use of capital punishment promptly by reducing the scope of crimes subject to the death penalty (Norway); reduce the number of offences punishable by the death penalty (Germany).

¹⁸ See recommendation made and accepted at the previous review: 99-32. Revise its legislation on the death penalty bearing in mind existing international standards on the subject, especially concerning transparency (Switzerland).