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“The Death Penalty in Vietnam: Facts and Solutions”

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A. PREAMBLE

1. The use of capital punishment is an ultimate and irreversible violation of the right to life as declared in the Universal Declaration of Human Rights, and the right to be free from cruel, inhumane and degrading treatment. When the death penalty is imposed following a trial which does not meet the international standards on fair trial, including those contained in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) to which Vietnam is a member, it also violates international law.¹

2. In an Amnesty International report on the status of executions being carried out around the world published in 2017, Vietnam was listed as one of the 23 countries that still execute people.² Accordingly, between 2013 to 2016, Vietnam ranked only behind China and Iran on the list of governments that carried out executions, joining the top 5 recorded executing countries³.

3. The following UPR submission provides intimate details and analysis to demonstrate that while Vietnam has shown specific improvements in reducing the number of crimes punishable by death⁴, the failure of the State to adhere to international standards on fair trial makes capital punishment disturbingly problematic, with blatant violations of Vietnam's criminal procedures in those wrongful death penalty cases which civil society organizations have been able to document between December 2014 and June 2018.

4. Vietnam needs not only to follow international standards on fair trial, but the government should also impose a moratorium on executions immediately with the ultimate goal of abolishing the death penalty altogether.

5. The following organizations jointly submit the report:

Legal Initiatives for Vietnam (LIV) was formed by a group of Vietnamese lawyers, jurists, and journalists who have been working with various independent CSOs in the country since at least 2011. LIV works to improve the political and legal framework and culture in Vietnam through the implementation of universal values of human rights, democracy, and the rule of law. LIV's objectives are:

- a. to promote human rights, democracy and the rule of law in Vietnam by practicing high-quality and independent journalism, providing knowledge, accurate information as well as in-depth analyses of our thematic issues;

¹ Amnesty International Public Statement, 25 October 2015, Index: ASA 41/2737/2015, <https://www.amnesty.org/download/Documents/ASA4127372015ENGLISH.pdf>

² Only 23 countries continued to execute – the same number as in 2016, despite several states resuming executions after a hiatus, the second paragraph, Significant Process All Around, Death Sentences and Executions 2017, Amnesty International, <https://www.amnesty.org/en/latest/news/2018/04/Death-penalty-sentences-and-executions-2017/>

³ Viet Nam joins the top 5 recorded executing countries 1 August 2013 – 30 June 2016, Secret Executions in Vietnam, Death Sentences and Executions 2016, <https://www.amnesty.org/download/Documents/ACT5057402017ENGLISH.PDF>

⁴ Vietnam has abolished the death penalty for 15 crimes since 2009 according to the amendments of its Penal Code in 2009 and 2017.

- b. to train a new generation of independent journalists and activists with a strong background in laws and politics;
- c. to generate public awareness about Vietnam's current politics and human rights situation on the international stage.

Action by Christians for the Abolition of Torture (ACAT) was founded in 1974. ACAT is an ecumenical Christian human rights NGO that fights to stop torture, abolish death penalty, defend the right of asylum and promote respect for the dignity of all. ACAT bases its action on an active network of members, donors, and employees. Its thematic issues are:

- a. The fight against torture
- b. Abolition of the death penalty
- c. Support for asylum
- d. Monitoring detention conditions

ACAT carries out investigations, analysis, legal assistance and advocacy work. It conducts field missions, writes reports, and files complaints in court. It also supports asylum seekers in their efforts. It is also responsible for raising public awareness, particularly through the media and demonstrations. It bases its action on an active network of 36,000 members.

B. PARTIAL OR LACK OF IMPLEMENTATION OF RECOMMENDATIONS ACCEPTED BY VIETNAM

6. In May 2009, under its 1st Universal Periodic Review (UPR) cycle, Vietnam was reviewed at the 12th session of the Human Rights Council Universal Periodic Review, and in September 2009, it subsequently responded to these recommendations (A/HRC/12/11). Vietnam received the following eight recommendations regarding the death penalty⁵:

- a. Reduce the number of offenses punishable by the death penalty (Germany).
(ACCEPTED/SUPPORTED)
- b. Publish all information about the imposition and use of the death penalty, including information on executions carried out (Germany).
(NOTED)
- c. Fulfill the Government aim of limiting the use of capital punishment promptly by reducing the scope of crimes subject to the death penalty (Norway).
(ACCEPTED/SUPPORTED)
- d. Revise its legislation on the death penalty bearing in mind existing international standards on the subject, especially concerning transparency (Switzerland).
(ACCEPTED/SUPPORTED)
- e. Ratify the Second Optional Protocol to ICCPR to abolish the death penalty. Until this happens, it commands the reduced number of crimes to which this penalty is

⁵ Recommendations received by Vietnam on the issue of the death penalty at the 1st UPR cycle, https://www.upr-info.org/database/index.php?limit=0&f_SUR=191&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

applicable and hopes that this will be done in accordance with international standards and in full transparency (Argentina).

(NOTED)

- f. Impose a moratorium on executions immediately with the ultimate goal of abolishing the death penalty altogether (Finland).

(NOTED)

- g. Take steps to abolish the death penalty and increase transparency around its use (New Zealand).

(NOTED)

- h. Review the list of crimes for which the death penalty is imposed, with a view to abolishing capital punishment (Brazil).

(NOTED)

7. In February 2014, under its 2nd UPR cycle, Vietnam was reviewed at the 18th session of the Human Rights Council Universal Periodic Review (A/HRC/26/6) and in June 2014, at the 26th plenary session, it subsequently provided responses to these recommendations (A/HRC/25/5/Add.1). The most relevant UPR recommendations related to the abolition of the death penalty (from a total of 37) are as follows⁶:

Recommendations which Vietnam supported/accepted:

- a. Continue to reduce offenses subjected to the death penalty (Belgium)
- b. Continue to work towards reducing the number of crimes subject to the death penalty (Namibia).
- c. Consider at least further restrict the use of the death penalty only for the most serious crimes, as stated in Article 6 of ICCPR with a view too soon adopting a de facto moratorium on executions (Italy).
- d. Continue reform towards eventual abolition of the death penalty, including greater transparency around its use (New Zealand).
- e. Revise its legislation on the death penalty bearing in mind existing international standards on the subject, especially concerning transparency (Switzerland).
- f. Reduce the list of crimes punishable by the death penalty, in particular, economic crimes and those linked to drugs, and examine the possibility of introducing a moratorium (Switzerland).
- g. Reduce the number of offenses punishable by the death penalty (Germany).

⁶ Recommendations received by Vietnam on the issue of the death penalty at the 2nd UPR cycle, https://www.upr-info.org/database/index.php?limit=0&f_SUR=191&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

- h. Fulfill the Government aim of limiting the use of capital punishment promptly by reducing the scope of crimes subject to the death penalty (Norway).

8. Accordingly, Vietnam has agreed to continue working to not only reduce the number of crimes subject to the death penalty, but also to push for reforms towards greater transparency around the issue. The State further agreed to consider restricting the use of the death penalty only for the most serious crimes in accordance with Article 6 of the ICCPR, and to examine the possibility of introducing a moratorium. However, in reality, from Vietnam's last cycle of UPR in 2014 until today, there has been no substantial implementation of the accepted UPR recommendations regarding the death penalty.

9. Most noteworthy is the fact that while Vietnam, since its first UPR cycle in 2009, has until now reduced a total of 15 offenses subjected to the death penalty (including three drugs-related offenses out of a total of 10 non-violent crimes), yet it also sentenced more people to death and the number of executions carried out by the government during the same period has increased⁷.

10. According to the statistics of the Office of the People's Supreme Court as cited in the research magazine of Hanoi National University, Law Studies Department, there was a total of 1,470 people sentenced to death between the years 2011-2016. This number is equal to the number of death sentences given out in the ten years between 1992 to 2002⁸.

11. Further, Amnesty International also noted that any data related to the death penalty is classified as state secrets in Vietnam. Thus, there are almost close to none publicly disclosed information regarding the number of executions being carried out by the State. There are also no details provided to the public regarding the method of execution by the use of lethal injection since it was introduced in 2011 to replace the firing squad⁹.

12. Amnesty International did further note that according to a report provided by the Vietnam's Ministry of Public Security, which was first published by a national media outlet in February 2017, 429 prisoners were executed between August 8, 2013 and June 30, 2016, at an average rate of 147 executions per year¹⁰. Thus, with these statistics, Amnesty International had placed Vietnam among the top executioners in the world in 2016, well above Iraq and the United States, "with numbers comparable to Saudi Arabia and Pakistan."

⁷ Vietnam's Ministry of Public Security's Report Regarding executions carried out in the previous 5 years dated January 4, 2017, provided to us unofficially from some members of the press <https://www.documentcloud.org/documents/4456429-Bao-Cao-Tong-Ket-5-Nam-Doc.html>

⁸ Death Sentence in Vietnam's Criminal Law: Maintain or moving towards Abolition by Lê Văn Cẩm, Nguyễn Thị Lan, Hanoi National University Research Magazine: Law Studies, Volume 30, No. 3 (2014) pp.1- 14, at p.6, <https://js.vnu.edu.vn/LS/article/view/477/453>

⁹ Vietnam's Governmental Decree on the Implementation of Execution by Lethal Injection 82/2011/NĐ-C, http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&_page=1&mode=detail&document_id=151638

¹⁰ Report of the Ministry of Public Security No. 05/BC-BCA-C81, 4 January 2017. See also Dtinews, "Vietnam to build five more lethal injection venues," 9 February 2017, available at www.dtinews.vn/en/news/017/49419/vietnam-to-build-five-more-lethal-injection-venues.html

C. CHALLENGES TO THE SITUATION REGARDING THE IMPLEMENTATION OF THE DEATH PENALTY IN VIETNAM

I. Political background and legislative context in Vietnam regarding the death penalty

13. After Vietnam's last UPR in 2014, the country ratified two more international human rights treaties in February 2015: the Convention against Torture and Other Cruel Inhuman or Degrading Treatment (CAT) or Punishment and the Convention on the Rights of Persons with Disabilities (CRPD)¹¹. However, the CAT-OP - Optional Protocol of the Convention against Torture and the CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty, have yet to be ratified.

14. Since the last two UPR cycles, Vietnam had made some other efforts in improving its legal framework regarding the criminal procedures besides reducing the number of crimes subject to the death penalty. For example, in March 2018, Vietnam started to implement the new regulation from its Code of Criminal Procedures to require that all police interrogations and interviews must be recorded. The amended Penal Code of 2015 also reaffirms the principle of "presumption of innocence" and the right of the defendant to remain silent.

15. Moreover, even before the last two UPR cycles, Vietnam had, in the past, expressed its willingness to consider a moratorium on the imposition of the death penalty. During the 42nd and 43rd of the UN General Assembly meetings on the resolution on the death penalty moratorium in 2008, while Vietnam abstained from voting, citing their belief that each country had the sovereign right to choose its legal measures as appropriate, the representative of Vietnam also stated that the country would likely move towards the abolition of the death penalty should a number of proposed policies be adopted.¹²

16. At the moment, Vietnam is imposing the death penalty on a total of 18 offenses, including eight non-violent crimes: attempting to overthrow the people's government; espionage; producing, dealing counterfeit of cured or preventive medicine; producing, trafficking and dealing illicit drugs; embezzlement; and bribe-taking.

17. The Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty under Article 6 of the ICCPR states : "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."¹³

18. Moreover, the resolution on judicial reform strategy of Vietnam's Politico Bureau of the Communist Party in 2005 also agreed to "limiting the application of capital punishment only for a few of the most serious crimes, reducing the highest punishment for some crimes."¹⁴

¹¹ United Nations Ratification status for Vietnam,

https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=192&Lang=EN

¹² GA/SHC/3939 20 November 2008, <https://www.un.org/press/en/2008/gashc3939.doc.htm>

¹³ Safeguards 1 the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, <https://www.ohchr.org/en/professionalinterest/pages/deathpenalty.aspx>

¹⁴ Resolution on judicial reform strategy of the Politico Bureau of the Communist Party, lines 90-92, dated 02/06/2005, Department of Justice, <http://www.moj.gov.vn/qt/clqhkh/Pages/chien-luoc-quy-hoach-ke-hoach.aspx?ItemID=11&CateID=1>

19. Nevertheless, there are at least four crimes defined in the amended Penal Code of 2015 in which Vietnam imposes the death penalty in direct violation of the ICCPR : Article 109 - Activities against the people's government, Article 110 - Espionage, Article 353 - Embezzlement, and Article 354 - Taking Bribes.

20. Continuing to imposing the death penalty on these offenses also shows that Vietnam has yet to implement the recommendation it accepted from Italy during the last UPR cycle in 2014 as prescribed above.

21. It also should be noted that Article 109 is the amended version of Article 79 of the old penal code, which the government had used to file charges against political dissidents and prisoners of conscience such as Tran Huynh Duy Thuc and Nguyen Van Dai.

II. LIV's work on cases of wrongful death penalty cases in Vietnam

22. LIV monitors the cases of Ho Duy Hai, Le Van Manh, and Nguyen Van Chuong. We have concluded, after our independent review of the evidence presented at trial, that the international standards of fair trial were not followed and that the defendants were wrongfully convicted. For this reason, the following section of this UPR submission will focus on the cases of wrongful death penalty monitored by the LIV between December 2014 and June 2018, and the correlated human rights violated. The case was to demonstrate that as long as Vietnam fails to follow the international standards on fair trial in its criminal court proceedings, a moratorium on executions should be imposed immediately with the ultimate goal of abolishing the death penalty altogether.

23. Wrongful death penalty cases monitored by LIV from December 2014 to date show clear violations of their right to a fair trial under international laws and their right to be free from cruel, inhumane and degrading treatment.

a. Ho Duy Hai

24. Hai was a 23-year-old recent college graduate who was convicted of double homicide and robbery in 2008. On March 22, 2008, Hai was arrested and tried for the double-murder of two women when none of the fingerprints left at the scene matched his, no physical evidence tied him to the case, and there were testimonies that other men were seen at the crime scene during the night of the murders.

25. According to the indictment, one of the prosecution's witnesses, Nguyen Van Thu, later purchased a knife at a local market and gave it to the police, vowing that it would have matched the size and shape of the knife from the scene. That was enough for the police to conclude that they had sufficiently determined the murder weapon. It was this "purchased" weapon that got admitted into evidence to be parts of the case file which convicted Ho Duy Hai of double-murder and sentenced him to death in December 2008.

26. During visitation, Hai told his mother and aunt that he was beaten up by the police and tortured during his pre-trial detention to confess to the crimes. Also according to his family, Hai's appeal process began immediately after the conviction, but the court system repeatedly denied review.

27. Social media in Vietnam came to know of Hai's case when his younger sister, Thuy, created a Facebook group in November 2014 to raise awareness about his conviction and

plead for his life. At the time, Hai's family had just received notice from the Long An Province Police Department that they would execute him on December 5, 2014. Due to pressure from both the public in Vietnam and international organizations, on December 4, 2014, the then President Truong Tan Sang personally ordered a halt of his execution – which would have been carried out the next day.

28. Despite the fact that a special team of jurists and legislative members was set up to investigate wrongful convictions in 2014 and 2015, and that the Deputy Commissioner of the National Assembly's Judiciary Committee at the time – Le Thi Nga – already reported to Congress there were severe violations committed by the police and prosecution in Hai's case, he had yet been granted a review and remained incarcerated.

b. Le Van Manh

29. On October 16, 2015, the family of death-row inmate Le Van Manh received a written notice from the People Court of Thanh Hoa Province, informing them about procedures to pick up and bury his body after execution, which was scheduled for October 26, 2015. Le Van Manh was convicted of robbery, rape, and murder of a 14-year old girl in July 2005.

30. On October 25, 2015, Amnesty International issued a statement on behalf of Le Van Manh, urging the Vietnamese government to spare his life and investigate allegations that he was tortured in police custody¹⁵. Like Ho Duy Hai, Manh's execution was halted due to domestic and international pressure. Moreover, also like Hai, Manh continues to be incarcerated since then, with not much progress in his plea for justice.

31. The case began in 2005. On April 20, 2005, Le Van Manh, who was 23 year old at the time, was arrested according to a provisional arrest warrant issued by the investigative police unit of Dong Nai Province for an entirely different matter, suspected robbery and attempting to flee criminal custody, earlier that month.

32. However, according to the criminal complaint, just three days later, by April 23, 2005, a confession letter, claimed to be written by Le Van Manh to his father while in police detention, had surfaced, admitting guilt to the rape and murder of Hoang Thi Loan. The police was able to confiscate this letter from Manh and used it as evidence of his guilt. The criminal complaint further showed that investigation relied on the testimony of a 9-year old child – who had limited education and was interviewed by the police without parental permission – for leads.

33. From 2005-2008, Le Van Manh underwent a total of seven court hearings, including three trials, three appeals, and one cassation trial. In all of his court hearings, Manh vehemently denied all of the charges and retracted his earlier confessions, alleging that he had to confess after being beaten by both the police officers investigating his case and his cellmates who were acting under police's instructions.

c. Nguyen Van Chuong

34. Nguyen Van Chuong's official case file reveals that it could probably be the strongest one among these three to demonstrate how police brutality affected criminal investigation in Vietnam because not only the suspects but witnesses also fell victims to such practice.

¹⁵ Amnesty International, ASA 41/2737/2015, Vietnam: Halt Imminent Execution of Le Van Manh and Order Investigation into Allegations of Torture, <https://www.amnesty.org/en/documents/asa41/2737/2015/en/>

35. The only evidence used to convict Chuong was his and his co-defendants' confessions. The defendants alleged that the police obtained these confessions through torture. His parents recalled how Chuong had described the police would handcuff him so that he was hanging and only the tips of his toes would touch the floor, then they would beat him repeatedly until he confessed.

36. Court's dockets confirmed that Chuong and other defendants had all petitioned for review after the appellate court confirmed their convictions in November 2008. Not only did the defendants claim that they were tortured by the police during the investigation to confess, but Chuong's alibi witnesses had also come forward and alleged they were physically abused by the authorities as well.

37. The police never investigated the validity of Chuong's alibi, and instead, they also arrested his brother, Doan, alleging that Doan was manipulating evidence and witnesses to help Chuong conceal his crimes.

38. One of Chuong's alibi witnesses was Tran Quang Tuat, who later told Tien Phong newspaper in November 2007 that the police had intimidated him into changing his testimony about Chuong's whereabouts during the night of the murder.

39. Another witness, Trinh Xuan Truong, petitioned to the People's Supreme Procuracy Office on September 10, 2013 and claimed that the police had beaten him up, burnt him with cigarettes, threatened to arrest him, and ordered him to change his testimony, from being with Chuong in a different city during the night of the attack to did not see Chuong that night.

40. On June 12, 2008, Chuong and co-defendants were tried for murder, and he was given the death penalty and the other two received life sentence and 20-year imprisonment respectively.

41. Nguyen Trong Doan, Chuong's younger brother, was also sentenced to two years imprisonment for "concealing criminals" because he was trying to bring forward Chuong's alibi witnesses.

III. Other related violations of international human rights law

a. Prison conditions for death row inmates fail to follow international standards.

42. There are concerns regarding the poor living conditions of death row inmates, and also the lack of independent supervision. LIV and ACAT believe that prisoners on death row in Vietnam are treated with inhumane conditions.

43. One of our witnesses attested that he was temporarily solitary confined with three others in a 15 square meter cell, lack of ventilation, lack of proper food and exercise, faced with extreme temperature, and not allowed to spend time outside the cell.

44. The witness was held in a prison center of a district in Ca Mau Province. His parents were also not allowed to visit him during such solitary confinement for six months. To prevent skin diseases, he and his cellmates had to take off their clothes. He believed that the treatment was a reprisal because he did not plead guilty as requested by the investigators. After one year of imprisonment, he walked free and was awarded compensation.

b. Death row inmates are not guaranteed the right to contact with the outside world

45. According to Vietnam's laws, death row inmates do not have the right to meet with their brothers and sisters-in-law, aunts, uncles, cousins in comparison with the other types of prisoners. There has yet to be a law provision which allows death row inmates to meet with any organizations or individuals besides their immediate family. They are also not allowed contact by phone with non-family members.

46. Besides, their foot could get shackled 24/7 if they express any sign of wanting to commit suicide, escaping the prison, and/or any other dangerous acts. The inmates will be allowed to go to the toilet unshackled for one time per day for 15 minutes, and to change their shackle from one foot to another every week.

D. RECOMMENDATIONS

47. LIV and ACAT call upon the member states of the UN Human Rights Council to urge the Vietnamese authorities to:

- Initiate a moratorium on the execution of non-violent crimes, including those offenses which related to drugs;
- Consider imposing a death penalty moratorium while undergoing significant reforms regarding the code of criminal procedures to ensure it follows the international standards;
- Eliminate the number of offenses punishable by death which are not in line with international laws, and only impose this punishment for the most serious crimes according to Article 6 of ICCPR;
- Increase transparency in the application of the death penalty. At the minimum, the government is to provide legal requirements for the publishing of adequate, and accessible information on the death penalty annually; and to release a report on the use of the death penalty in Vietnam in the past 20 years;
- Announce to the public at once the name (or names) of the lethal drugs and its dosage which the government has been using for executions currently and in the past;
- Consider ratifying the Second Optional Protocol to the ICCPR before the midterm review of the next UPR cycle;
- Ensure the right of death row inmates to make contact with others; and allow all, including those who are in the process of appealing their cases, to be able to communicate by telephone phone with anyone for not less than 15 minutes each time;
- Guarantee to all citizens the right not to be subjected to torture, or to be treated in an inhumane or degrading manner;
- Guarantee to all citizens the right to a fair trial;
- Initiate the appropriate legal proceedings to review the case of Ho Duy Hai, Le Van Manh, and Nguyen Van Chuong, and if possible, to dismiss the charges filed against them for lack of credible evidence and exonerate them at once;

- Continue to raise awareness regarding the abolition of the death penalty within government's officials and among members of society as efforts towards eventual abolition of the death penalty in the country.