



VIET NAM

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 32ND SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2019

FOLLOW-UP TO THE PREVIOUS REVIEW

Freedom of expression, human rights defenders, bloggers

Viet Nam accepted more than 20 recommendations on freedom of expression, including to ensure national legislation is in line with international human rights standards, to allow bloggers and journalists unrestricted access to the Internet, and to create a favourable environment for human rights defenders and other civil society actors.¹

However, since the last review, the crackdown on freedom of expression and criticism of government has intensified. In 2017, 41 persons were arrested and in 2018 so far six activists have been arrested. The terms of imprisonment have increased with some serving sentences of up to 14 years, while scores of others have fled the country.

Freedom of peaceful assembly, excessive use of force by the police

While Viet Nam accepted a recommendation to enact laws in line with the ICCPR to regulate freedom of assembly and peaceful demonstration,² it rejected another recommendations which called on it to end prosecution of peaceful protesters.³ Amnesty International is concerned at reports that the authorities use unnecessary and excessive force to disperse peaceful protests.

Prisoners

Amnesty International regrets that Viet Nam rejected a recommendations to unconditionally release all political prisoners.⁴ Although some prisoners of conscience have been released either upon completion of their sentence or because they agreed to go into exile, over 100 prisoners of conscience remain in jail.

Unfair trials

Although Viet Nam accepted a range of recommendations to guarantee the right to equality before the law, to a fair and public trial, including effective access to lawyers,⁵ trials of dissidents continue to fall below international standards of fairness, including lack of adequate defence and denial of the presumption of innocence.

¹ Report of the Working Group on the Universal Periodic Review, Viet Nam, A/HRC/26/6, recommendations 143.148-143.150 (Netherlands, Luxembourg, Finland), 143.153-159 (New Zealand, Ireland, Finland, Australia, Canada, Brazil, Estonia), 143.161-171 (Austria, Norway, Hungary, Poland, Sweden, Tunisia, Chile, Spain, Pakistan, Germany).

² A/HRC/26/6, recommendation 143.175 (Australia).

³ A/HRC/26/6, recommendation 143.176 (Greece).

⁴ A/HRC/26.6, recommendation 143.118 (USA).

⁵ A/HRC/26/6, recommendations 143.127-135 (Cabo Verde, Japan, Malaysia, Serbia, Syria, Angola, Canada, Luxembourg, Denmark).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Provisions in the **1999 Penal Code** address violence by state officials, but in language that avoids the terms “torture” and “cruel, inhuman or degrading treatment or punishment”. The result is vague and deficient criminal offences that reduce the gravity of the criminal conduct involved in a manner which is inconsistent with the international prohibition on torture and other ill-treatment. The Penal Code also relies on an injury classification scheme which appears to permit a wide range of torture and ill-treatment practices. Article 107 of the Penal Code criminalizes the use of violence by state officials which results in harm or injury “with an infirmity rate of 31%”, therefore appearing to permit harm or injury of a lower infirmity rate.⁶

Like the 1999 Penal Code, the **Amended Penal Code (2015)**, whose entry into force was scheduled for 1 July 2016 but postponed due to flaws in its content, does not explicitly criminalize torture or other acts of cruel, inhuman or degrading treatment or punishment.⁷

The **Criminal Procedure Code** similarly fails to provide real substance to the broad constitutional ban on torture. In addition to the prohibition in Article 6 of “[a]ll forms of coercion and corporal punishment”, the Code also contains some procedural safeguards. However, these are limited as a means to prevent torture and other ill-treatment and fall short of international standards on fair trial rights, including in relation to the participation of the defence counsel in the criminal procedure⁸ and their right to “ask questions to the accused”.

Cyber Security Law

Under a new Cyber Security Law, passed by the National Assembly on 12 June 2018 and scheduled to take effect on 1 January 2019, the authorities will have unbridled powers to police the last safe space for freedom of expression in the country. The law will permit the authorities to force technology companies to hand over potentially vast amounts of data, including personal information, and to censor users’ posts.

Many provisions in the law are vaguely worded, allowing for broad interpretation by authorities. Amnesty International is particularly alarmed that provisions in Articles 8 and 15 could lead to people being arbitrarily charged for the peaceful exercise of their rights on the basis of extremely broad and vague offenses, such as “negating the revolution achievement” or giving “misleading information causing confusion among the people”.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Restrictions on freedom of expression: human rights defenders, activists and bloggers

The 2013 Constitution guarantees, in Article 25, that “the citizen shall enjoy the right to freedom of opinion and speech, freedom of the press, to access to information, to assembly, form associations and hold demonstrations” and further, in Article 24, “freedom of belief and religion” and the equality of all religions before the law. In reality, however, the exercise of these rights is severely restricted and in practice is subject to the caveat that their exercise cannot appear to undermine the pre-eminence of the Communist Party of Viet Nam (CPV) in all aspects of public and private life.⁹

⁶ The infirmity rate of 31% outlined in Article 107 where violence by state officials is concerned exceeds the infirmity rate in other provisions not dealing specifically with state officials, for example, Article 104 which also criminalizes the infliction of injury at a rate of infirmity between 11% and 30%.

⁷ See “NA approves delay to Penal Code 2015”, Viet Nam News, 1 July 2016, available at <http://vietnamnews.vn/politics-laws/298919/naapproves-delay-to-penal-code-2015.html#ylcqiDQiLHblQ5CK.97> .

⁸ This limitation is particularly significant because a large proportion of prisoners of conscience are arrested under charges of infringing national security.

⁹ Article 15(4) of the Constitution states that the “practice of human rights and citizens’ rights cannot infringe national interests and legal and legitimate rights and interests of others”. In reality, the “national interests” and the interests of the CPV are viewed as one and the same thing.

Since the beginning of 2015, there has been an alarming increase in physical attacks on human right defenders, with activists brutally assaulted on the street in broad daylight by police and men in plain-clothes.¹⁰ Arrests, prosecutions and convictions are a more established form of abuse and intimidation of human rights defenders in the country. Amnesty International is aware of at least 84 prisoners of conscience currently behind bars in Viet Nam.

Bloggers and pro-democracy activists are particularly targeted, as are social and environmental activists who were campaigning in the aftermath of the 2016 Formosa Plastics toxic spill that killed tonnes of fish and destroyed the livelihoods of thousands of people.¹¹ Following an investigation by the government it was confirmed that a steel plant owned by the Taiwanese Formosa Plastics Group, based in Hà Tĩnh province, was the source of discharges of toxic waste into coastal waters.

Arbitrary restrictions on freedom of peaceful assembly and excessive use of force

The authorities routinely use unnecessary or excessive force to disperse and prevent peaceful gatherings and protests. In February 2017, police and plain-clothes men attacked around 700 mainly Catholic peaceful protesters gathered in Nghệ An province before marching to present legal complaints against Formosa Plastics (see also above). Several individuals were injured and required hospital treatment, and others were arrested.¹²

Unfair trials

Trials of dissidents routinely fail to meet international standards of fairness, including a lack of adequate defence and denial of the presumption of innocence.

- Human rights defender and blogger Nguyễn Ngọc Như Quỳnh, also known as Mẹ Nấm, (Mother Mushroom), was sentenced to 10 years' imprisonment for "conducting propaganda" (Article 88) in June 2017.

Prisoners of conscience

As of early 2018, over 100 prisoners of conscience are detained or imprisoned, despite some being released on completion of their sentence or when they agreed to go into exile. Among them are bloggers, human rights defenders working on land and labour issues, political activists, religious followers and members of ethnic minority groups.

In some cases, the authorities have granted early release to prisoners of conscience who agreed to go into exile.

- Đặng Xuân Diệu, a Catholic social activist and blogger arrested in 2011, was released in January 2017 after serving six years of a 13-year prison sentence. He was immediately flown to exile in France.
- In July 2017, Pastor Nguyễn Công Chính was released four years before the end of his 11-year sentence and immediately flown to exile in the USA. Both men were tortured while imprisoned.

¹⁰ See, "Threats and Attacks Against Human Rights Defenders in Vietnam", Civil Rights Defenders, 5 February 2015, available at <http://www.civilrightsdefenders.org/news/threats-and-attacks-against-human-rights-defenders-in-vietnam/>.

¹¹ Timeline: The Formosa Environmental Disaster: <https://www.thevietnamese.org/2017/11/timeline-the-formosa-environmental-disaster/>

¹² Viet Nam: Hundreds of peaceful marchers attacked by police (ASA 41/5728/2017).

Torture and other ill-treatment in detention

Amnesty International research has documented a number of cases involving physical violence against detainees and prisoners that constituted torture or other cruel, inhuman or degrading treatment or punishment. In most cases, the violence took place during the pre-trial period and in other cases after conviction. Perpetrators included police and prison officials, as well as “antennae”.¹³ The cases in which Amnesty International documented routine beatings of prisoners of conscience by police or prison officers all involved members of ethnic minority groups.

Incommunicado detention

In the cases documented by Amnesty International, prisoners were held in solitary confinement throughout the period of incommunicado detention; in other cases, an individual was held in a cell alone with an “antenna”, whose function was to gather information about the detainee. Some of them were able to receive packages from their families during this period, including food, medicine and sleeping materials. In most cases, the prisoners were denied access to a lawyer until days before trial when they were permitted to meet their legal counsel once or twice.

Solitary confinement

Solitary confinement is used against prisoners of conscience for a number of reasons: to exert pressure on them to “confess” the crimes they are charged with, to punish them for withstanding this pressure and disputing the charges against them, for refusing to submit to “re-education”, and for raising their voices against the ruthless practices and appalling conditions inside Viet Nam’s prison system.

Right to health and denial of medical treatment

Most of the men and women interviewed by Amnesty International said that they went to jail fit and robust, or in some cases with minor medical complaints, but emerged with broken bodies and failing health. Many of them now have long lasting medical problems. Their testimonies reveal how Vietnamese prison authorities withheld medical treatment and assistance to apply further pressure on them to “confess” to the charges against them, or simply as a means to punish them for their alleged crimes against the authorities.

Punitive prison transfers

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

The practice is common in cases of prisoners of conscience who withstand pressure to “confess” to their alleged crimes, or those who engage in activism behind bars. The transfers are invariably unannounced and the individual is moved without being told where he/she is going and how long the journey is likely to take. The conditions of the transfers in the cases documented were appalling and amount to cruel, inhuman and degrading treatment.

The death penalty

Figures on the use of the death penalty continue to be classified as a state secret. However, in February 2017, a report by the Ministry of Public Security revealed that 429 prisoners were executed between 8 August 2013 and 30 June 2016, at an average rate of 147 executions per year. The report also stated that five new lethal injection centres were to be built.¹⁴

Amnesty International gathered information on only two executions during 2017 for the crime of murder, but believes the total figure to be significantly higher. At least 35 new death sentences were known to have been imposed in 2017, including one for murder, three for embezzlement and 31 for drug trafficking; and at least 63 in 2016, including 54 for drug-related offences. According to official figures, 681 people were under sentence of death as of 1 July 2016.¹⁵

¹³ “Antennae” are prisoners who abuse other prisoners at the instigation of or with the consent of prison staff.

¹⁴ Report of the Ministry of Public Security, No.05/BC-BCA-C81, 4 January 2017.

¹⁵ Amnesty International, Death sentences and executions in 2016 (ACT 50/5740/2017), April 2017, <https://www.amnesty.org/en/documents/act50/5740/2017/en/>

On 27 November 2015, the National Assembly voted in favour of removing seven crimes from the list of offences that can be punished by death, bringing the total number of capital offences from 22 to 15.¹⁶ The amendments also require the commutation of the death penalty for pregnant women, women with children under the age of 36 months, people aged 75 and over; and people sentenced to death for embezzlement of assets or taking bribes who return at least three fourths of the embezzled asset. The reduction in the number of capital crimes and provisions for commutations represent a positive development; however, other offences not involving “the most serious crimes”, to which the use of the death penalty must be restricted under international law, remain punishable by death.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the authorities of Viet Nam to:

Protection against torture and other ill-treatment in national law

- Amend domestic laws, including the Amended Penal Code, Amended Criminal Procedure Code and Law on Enforcement of Custody and Detention, to comply with UNCAT, including by criminalising torture as defined in Article 1(1) of that Convention;
- Ratify and implement the Optional Protocol to the UNCAT, including by establishing professional, independent and well-resourced National Preventive Mechanisms in accordance with the Protocol.

Cyber Security Law

- Amend the Cyber Security Law, especially Articles 8 and 15, to fully comply with international human rights law;
- Respect and protect freedom of expression and other human rights online, including the rights to freedom of expression and to privacy.

Restrictions on the right to freedom of expression, human rights defenders, activists, bloggers

- Respect and protect the rights to freedom of association, peaceful assembly and expression, including by bringing into effect the necessary legal measures to facilitate the creation and operation of independent civil society groups;
- Ensure thorough, prompt and independent investigations into all reports of human rights violations against human rights defenders and bring to justice, in fair trials those suspected of criminal responsibility for any related offences;
- Fully co-operate with the UN human rights mechanisms, in particular the Special Rapporteur on the situation of human rights defenders.

Restrictions on the right to freedom of peaceful assembly and excessive use of force

- Immediately and unconditionally release those detained or imprisoned simply for exercising their right to peaceful assembly;
- Ensure prompt, impartial, independent and effective investigations into reports of unnecessary or excessive use of force by the police and bring the perpetrators to justice in fair trials, including for the attack in February 2017 on peaceful protesters in Nghe An province marching against Formosa Plastics;
- Ensure that policing of demonstrations is consistent with national law and international human rights standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, including by providing appropriate training of police and other security forces.

¹⁶ The offences that were no longer punishable by death as of 1 July 2016 are: plundering property; destroying important national security works and/or facilities; disobeying orders in the military; surrendering to the enemy, which is applicable in the army; undermining peace, provoking aggressive wars; crimes against mankind; and war crimes.

Unfair trials

- Ensure that fair trial guarantees and due process rights as provided in international law and standards are respected and upheld in all cases, in particular for all persons arrested and convicted on politically motivated charges.

Prisoners of conscience

- End arrests, prosecutions and convictions of men and women solely for their peaceful exercise of their human rights, including advocacy for human rights, religious freedom, democracy and workers' rights;
- Immediately and unconditionally release all prisoners of conscience.

Torture and other ill-treatment

- Publicly reiterate Viet Nam's commitment to ending torture and other ill-treatment;
- Ensure that no statements extracted under torture or other ill-treatment are admitted as evidence in any proceedings, except against suspected perpetrators as proof that the statements were taken;
- Investigate all complaints and reports of torture and other acts of ill-treatment promptly, impartially, independently and effectively, suspending all officials suspected of committing these acts and ensuring protection from reprisals for complainants, witnesses and others at risk;
- Prosecute all those against whom sufficient, admissible evidence is gathered of their responsibility for torture or other acts of ill-treatment regardless of rank or official status and the time that has elapsed since the commission of the crime;
- Provide reparations to victims of torture and other ill-treatment and their dependents in accordance with Article 14 of the Convention against and international standards more generally, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- Take measures to end abusive practices by "antennae" prisoners and ensure violence by other prisoners is investigated and, where sufficient admissible evidence exists, prosecuted;
- Ensure all prisoners have access to family, friends, lawyers of their choice, adequate medical care, and independent courts during custody, detention and imprisonment, and end the practice of incommunicado detention;
- Ensure the provision of adequate health care to all persons deprived of their liberty, including prompt access to medical attention in urgent cases and access to specialized treatment where necessary;
- Ensure accurate information about arrests and detainees' whereabouts is made available immediately to family, friends, legal counsel and courts;
- Provide access to independent monitoring bodies to all detention centres and prisons, and to all persons deprived of liberty;
- Provide effective training to all officials involved in custody, interrogation or medical care of prisoners outlining that all torture and other acts of ill-treatment are criminal acts;
- End the practice of prolonged solitary confinement and ensure that all disciplinary measures conform to international law and standards, including the Nelson Mandela Rules;
- End the practice of punitive transfers of all detainees and prisoners and ensure that prisoners are allocated, to the extent possible, to prisons close to their homes.

The death penalty

- Abolish the death penalty for all crimes;
- Pending full abolition of the death penalty:
 - Establish an official moratorium on executions;

- Commute all death sentences to terms of imprisonment;
- Review the cases of all death row prisoners with a view to commuting the death sentences, in particular where the death penalty has been imposed for drugs offences or economic crimes and where the trial did not meet the most rigorous international fair trial;
- Bring provisions in national legislation that allow for the death penalty in line with international law and standards, including by removing from the scope of the death penalty any offence other than intentional killing;
- Ensure that in proceedings related to offences where the death penalty might be imposed that the most rigorous internationally recognized standards for fair trial are respected;
- Ratify, without reservations, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.