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**Socialist Republic of
Viet Nam**

**Submission to the UN
Universal Periodic Review**

**Fifth session of the UPR Working Group of
the Human Rights Council**

May 2009



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

Under section B, Amnesty International raises concern over the protection of human rights in national legislation and the death penalty.

Section C highlights Amnesty International's concerns in relation to restrictions on the rights to freedom of expression and assembly and persecution of religious and ethnic groupings.

In section D, Amnesty International makes a number of recommendations for action by the government to address the areas of concern.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

In its 2002 Concluding Observations on the consideration of the second periodic report of Viet Nam's implementation of the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee expressed concern that "*certain constitutional provisions would appear to be incompatible with the Covenant and that the Vietnamese Constitution does not enumerate all Covenant rights, nor the extent to which they may be limited and the criteria used. The Committee is concerned that according to Vietnamese law the Covenant rights must be interpreted in a way that may compromise the enjoyment of these rights by all individuals.*"² These concerns remain valid. Article 69 of Viet Nam's 1992 Constitution affirms the right to freedom of expression, assembly and association, but only "in accordance with the provisions of the law". These laws include, amongst others, Internet decrees, the Press Law (amended in 1999), 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 in an arbitrary manner to stifle the rights to freedom of expression, assembly, and association. Moreover, important provisions of these laws are explicitly in breach of international human rights treaties that Viet Nam has ratified.

Vaguely-worded offences in the national security section of the Penal Code are used to criminalize peaceful political and religious dissent. Articles 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) of this section 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). The length of applicable prison terms ranges from two to 20 years' imprisonment, life imprisonment, or capital punishment.

The authorities also use administrative detention to place restrictions on the peaceful activities of religious and political dissidents. Decree CP-31, which was abolished in March 2007, was frequently used to detain dissidents under house arrest without bringing them before a court. However, other administrative detention provisions remain in place. Dissidents sentenced to prison terms under the national security section of the Penal Code are usually further restricted on release by the imposition of up to five years' house arrest under Article 38 (Probation) of the Penal Code.

The death penalty

Twenty-nine offences in Viet Nam's Penal Code carry the death penalty as an optional punishment. These are economic crimes, such as fraud, embezzlement, smuggling, counterfeiting and offering bribes; manufacturing, concealing and trafficking narcotic substances; murder, rape, robbery; and crimes against national security, including treason, espionage, taking action to overthrow the government, rebellion, banditry,

² Concluding Observations of the Human Rights Committee, Vietnam, U.N. Doc. CCPR/CO/75/VNM (2002). Para.5.

terrorism, sabotage, hijacking, destruction of national security projects, undermining peace, war crimes and crimes against humanity. The majority of death sentences are imposed for drug trafficking offenses.

In July 2008, it was reported that the Ministry of Public Security had recommended that the death penalty be abolished for 12 crimes: appropriating property by fraud; smuggling; producing and trading fake food and medical products; being involved in producing, storing and circulating counterfeit money, bonds and cheques; organising the illegal use of drugs; hijacking aeroplanes or ships; corruption; taking and giving bribes; destroying army weapons or technical equipment; being involved in an invasion; “anti-human” crimes; and those convicted of war crimes. According to an official media report, it has been proposed that Article 35 of the Penal Code, which stipulates the death penalty for certain offences, should be amended to apply only to the “most heinous crimes and people considered to be a serious danger to the community and the nation’s security”.

According to the July 2004 Criminal Procedure Code, once a death sentence has been imposed by a municipal or provincial court, the defendant is allowed 14 days to appeal against the sentence. The appeal must be heard by an appellate court within 60 days. When a death sentence is confirmed by an appellate court, it is sent immediately to the Supreme People’s Court and Supreme People’s Procuracy, which must in turn decide within two months whether the sentence will stand. If the death sentence is upheld at that stage, the defendant may appeal to the State President for clemency. Commutations have been granted to foreign nationals following interventions by their governments; otherwise they appear to be rare.

Executions are carried out by a firing squad of five people, sometimes in public. Families of prisoners are not informed beforehand. The UN Human Rights Committee has stated that “the failure to notify the family and lawyers of the prisoners on death row of their execution” in a state party to the International Covenant on Civil and Political Rights is “incompatible with the Covenant.”³

In January 2004, a government decree prohibited the reporting of statistics on death sentences and executions as a “state secret”, and the total numbers are therefore not made public. This lack of transparency runs counter to repeated calls by the UN for the death penalty to be used only in an open and transparent manner, and for all information about its use to be made publicly available. However, some individual cases are reported in the official and international media. From January 2004 to the end of September 2008, Amnesty International documented from media monitoring that 300 death sentences were imposed and 102 executions carried out. The exact numbers are believed to be much higher.

Viet Nam abstained in the vote against the UN General Assembly resolution 62/149 on a moratorium on executions in December 2007; however, it did not join the statement of disassociation with the resolution.

C. Promotion and protection of human rights on the ground

Restrictions on freedom of expression and assembly

The authorities frequently use provisions of the Penal Code to stifle freedom of expression, including criticism of government policies, and reference to issues considered as politically sensitive. In June 2007, the last known prisoner of conscience arrested in a previous crackdown on dissidents in 2002 and sentenced to a lengthy prison term, was released. However, in the past 18 months courts have handed down prison terms ranging from one and a half to eight years’ imprisonment to at least 26 peaceful activists, including human rights defenders, in a campaign to silence government critics which began in late 2006. For the most part these activists, whom Amnesty International considers to be prisoners of conscience, were charged with

³ Concluding observations of the Human Rights Committee: Japan, UN document CCPR/CO/79/Add.102, 19 November 1998, para. 21.

offences under the national security section of the Penal Code. Trials of political detainees often do not meet international standards for fairness.

Of those who have been sentenced to imprisonment, at least 13 have also been sentenced to an additional period of “probation”, under article 38 of the Penal Code, which includes restrictions on movement after having served their prison term. An unknown number of dissidents are held in pre-trial detention.

The authorities continue to try to control and restrict Internet traffic deemed undesirable. Many of those arrested in the on-going crackdown include lawyers, trade unionists, religious leaders and political activists who are loosely connected through Bloc 8406,⁴ an Internet based pro-democracy movement formed on 8 April 2006, and with other un-authorized political groups advocating democracy and human rights. Charges laid against dissidents often include references to sending and placing information on the Internet aimed at “slandering” and “distorting” government policies. Truong Quoc Huy, a supporter of Bloc 8406, was arrested twice – in October 2005 and again in August 2006 - while logged on to a chat room website about Viet Nam in an Internet café. He is now serving a six year prison sentence after being charged under Article 88 of the Penal Code.

In September 2008 police carried out a violent crackdown on peaceful mass protests in Ha Noi. Since December 2007, members of the Catholic Church there engaged in peaceful mass protests and prayer vigils to support the church’s claims to ownership of two pieces of land. During the crackdown police injured several people with their batons, and 20 people were hospitalised after teargas was used against protesters. At least eight people were arrested in the last wave of protests which began in mid-August; two of them remain in detention. Others, including senior church officials, remain at risk of arrest.

Following the crackdown, the authorities continued to threaten and otherwise intimidate Catholics who supported the church’s claims. The government also failed to protect them against attacks, acts of intimidation and harassment by others, including state-sponsored gangs, even when police were present at the site. Reports of intimidation against Catholics increased in Ha Noi following the crackdown on Catholics and the public campaign against the protesters in the state-controlled mass media.

Other protests and attempted protests have met with harsh treatment by the authorities. In April 2008, at least 12 people demonstrating when the Olympic Torch passed through Ho Chi Minh City were arrested. These included a journalist and blogger who had written articles against China’s foreign policies. He was subsequently sentenced to two and a half years in prison on charges of tax evasion, although these charges were believed to be politically motivated.

Strict controls are maintained over the media in Viet Nam, and press freedom is severely restricted. An increase in recent years of public concern over corruption scandals has resulted in more coverage in the media of important cases. One case involving allegations about the involvement of officials from the Ministry of Transport was initially aired in public with unprecedented openness, until two journalists reporting on the case were arrested in May 2008. On 15 October 2008 journalist Nguyen Viet Chien was found guilty of “abusing democratic freedoms to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens” under Article 258 of the Penal Code for his investigative reporting since 2005 about the corruption scandal. He was sentenced to two years’ imprisonment after a trial which fell short of international standards. Fellow journalist Nguyen Van Hai pleaded guilty at the same trial and received a non-custodial sentence of a two year re-education programme.

⁴ On 8 April 2006 activists launched the Manifesto 2006 on Freedom and Democracy for Vietnam, an on-line petition signed by 118 democracy activists, calling for peaceful political change and respect for human rights. The petition attracted more signatories and its launch marked the effective creation of an Internet based pro-democracy movement, now known as Bloc 8406.

Persecution of religious and ethnic groupings

A new religious decree came into effect in November 2004, which codifies de facto state control over all aspects of religious life. The decree has been criticized by several religious groups in Viet Nam. While the number of churches recognized by the state has increased during the period under review, members of churches still not officially approved by the state continue to face repression, including harassment, forced renunciation of their faith, administrative detention and imprisonment.

Those targeted include Christian and Buddhist groups which the authorities believe oppose the state, such as members of the evangelical Protestant community, Roman Catholics, Hao Hoa Buddhists and the Cao Dai church. The senior leadership of the Unified Buddhist Church of Vietnam have remained under house arrest or restrictions during the period under review. This includes the Venerable Thich Huyen Quang, Supreme Patriarch, until his death in July 2008; he had been under house arrest since 1982.

Human rights violations against ethnic minority Montagnards in the Central Highlands continue. These include restrictions on movement and forcing Christians belonging to unauthorized "house churches" to renounce their religion. An unknown number of Montagnards from among the more than 250 who were sentenced to lengthy prison terms in connection with the large-scale protests in 2001 and 2004 around land ownership and religious freedom are believed to remain in prison. Many of them were sentenced to between five and 12 years' imprisonment under Articles 87 (Undermining the unity policy), 88 (Conducting propaganda against the Socialist Republic of Viet Nam), 89 (Disrupting security) and 91 (Fleeing abroad or defecting to stay overseas with a view to opposing the people's administration) of the national security section of the Penal Code.

In April 2004, thousands of Montagnard people protested against government policies in three provinces of the Central Highlands. Most of the protesters were Christians who had planned five days of peaceful protests against government policies on long-standing land disputes, restrictions on religious practice and restrictions on freedom of movement and expression imposed since the last major protests in 2001. The authorities used disproportionate force to break up the demonstrations. At least eight people were unlawfully killed and many hundreds injured in the ensuing crackdown.

During the period under review, hundreds of Montagnards have attempted to seek asylum in neighbouring Cambodia, where their situation has been precarious, with lack of protection by the Cambodian authorities. A Memorandum of Understanding (MOU) between Viet Nam, Cambodia and UNHCR, signed in January 2005 to resolve the situation of asylum-seekers, remains in place. It appears to have been violated by the Vietnamese authorities, with reports that in some cases people who had returned from Cambodia to Viet Nam under the MOU were detained, interrogated and ill-treated.

Individuals from the mostly Buddhist Khmer Krom community in southern An Giang province likewise face persecution. Media and activists have reported how Buddhist monks have been defrocked for taking part in peaceful protests; other members of the Khmer Krom ethnic group are serving prison terms for seeking to protect their land. Some have fled to Cambodia.

D. Recommendations for action by the State under review

Viet Nam is a state party to six core international human rights treaties. It has yet to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1951 Convention relating to refugees and its 1967 Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Rome Statute of the International Criminal Court.

In order to uphold its commitment to human rights protection, Amnesty International calls on the government to:

Protection of human rights in national legislation

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 dissent, debate, opposition and freedom of expression;

Repeal provisions in the 1999 Penal Code allowing house arrest or probation used to violate freedom of expression and assembly;

Remove all restrictions and arbitrary interference on the operation and use of the Internet that violate the right to freedom of expression and end practices, such as censorship, and surveillance.

The death penalty

Immediately impose a moratorium on executions, with a view to complete abolition of the death penalty, in line with UN General Assembly resolution 62/149;

Reduce the number offences liable for the death penalty, as proposed by the government in July 2008;

Make public all information about the imposition and use of the death penalty, including information on executions carried out;

Encourage discussion among National Assembly members and other appropriate legislative institutions on abolition of the death penalty for all crimes.

Restrictions on freedom of expression and assembly

Take all necessary measures to end restrictions on the rights to freedom of expression and peaceful assembly, in accordance with international human rights law;

Ensure that police officers are made aware of their duty to protect the human rights of all individuals, including by ensuring that they are able to exercise their rights to freedom of expression and peaceful assembly without discrimination;

Immediate and unconditionally release all prisoners of conscience;

Invite the UN Special Rapporteur on the right to freedom of opinion and expression to visit Viet Nam.

Persecution of religious and ethnic groupings

End restrictions on the right to practice one's religion of choice without discrimination, in accordance with Article 69 and 70 of the 1992 Constitution as well as international human rights law;

Ensure that relevant authorities are aware of their duty to protect individuals' right to freedom of religion;

Take measures to ensure protection of the right to peaceful expression of their political beliefs.

Appendix: Amnesty International documents for further reference⁵

Socialist Republic of Viet Nam: After the crackdown: attacks and intimidation, October 2008, AI Index: ASA 41/004/2008

Viet Nam: Time to live up to human rights commitment, 30 June 2008, AI Index: ASA 41/001/2008

Socialist Republic of Viet Nam: A tightening net – Web-based repression and censorship, 22 October 2006, AI Index: ASA 41/008/2006

Socialist Republic of Viet Nam: Duong Quang Tri – Sentenced to death for fraud, May 2006, AI Index: ASA 41/004/2006

Socialist Republic of Viet Nam: Renewed concern for the Montagnard minority, April 2004, AI Index: ASA 41/005/2004

Socialist Republic of Viet Nam: Freedom of expression under threat in cyberspace, 25 November 2003, AI Index: ASA 41/037/2003

Socialist Republic of Viet Nam: The death penalty – inhumane and ineffective, 28 August 2003, AI Index: ASA 41/023/2003

Socialist Republic of Viet Nam/Kingdom of Cambodia: No Sanctuary – The plight of the Montagnard minority, 18 December 2002, AI Index: ASA 41/011/2002

Socialist Republic of Viet Nam: A human rights review based on the International Covenant on Civil and Political Rights, October 2002, AI Index: ASA 41/007/2002

⁵ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/viet-nam>