

6th World Congress against the Death Penalty, Oslo 2016

THE DEATH PENALTY IN VIETNAM



VIETNAM COMMITTEE ON HUMAN RIGHTS

A member of the International Federation for Human Rights (FIDH)

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The **Vietnam Committee on Human Rights (VCHR)** is a non-profit organization founded in Paris in October 1975. Its aims are to increase awareness of the human rights situation in Vietnam, mobilize support for victims of human rights abuses and promote efforts for advancing internationally-recognized human rights. **Vo Van Ai** is the VCHR President, **Penelope Faulkner** is Vice-President and **Vo Tran Nhat** is Executive Secretary.

The Death Penalty in Vietnam

Report compiled for the
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As 1,300 abolitionists from 80 countries around the world gather in Oslo for the 6th World Congress against the Death Penalty, the Vietnam Committee on Human Rights (VCHR), an affiliate of the International Federation for Human Rights (FIDH) expresses its opposition to the use of this inhuman, cruel and degrading punishment, and calls upon Vietnam to implement an immediate moratorium as a first step to abolishing the death penalty. In Vietnam, statistics on the number of death sentences and executions are classified as “State secrets”. The State-controlled media reported at least 45 death sentences in 2015, most of them for drug offences. But the real figures are much higher. Peaceful political dissent is punishable by death under vaguely-defined “national security laws”, e.g. Article 109 of the 2015 amended Criminal Code (formerly Article 79), which makes no distinction between acts of terrorism and peaceful expression. Many civil society activists are serving sentences of up to life imprisonment under this clause, simply for calling for the respect of environmental rights and democratic reforms.

The Death Penalty

The use of the death penalty is frequent in the Socialist Republic of Vietnam. Capital punishment is applied for 18 offences which cover a wide range of crimes such as murder, drug trafficking, rape of minors, manufacturing fake medicines, as well as economic crimes such as receiving bribes and embezzling property. Six political offences perceived as “*threats against national security*” carry the death penalty as a maximum sentence. In 2013, the UN High Commissioner on Human Rights, Navi Pillay, wrote to Prime Minister Nguyễn Tấn Dũng expressing concern that Vietnam retains the death penalty for several offences that do not meet the threshold of most serious crimes.

Capital punishment is most often used to sanction drug-related offences, followed by corruption, black-market and violent crimes. Vietnam has some of the harshest drug laws in the world. Possession or smuggling of 100g or more of heroin or cocaine, or 5 kilograms or more of cannabis and other opiates is punishable by death.

The Vietnamese authorities have systematically rejected abolishment of the death penalty. Vietnam has not adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolishing the death penalty, and has routinely abstained on resolutions calling for a worldwide moratorium on executions at the UN General Assembly

on the grounds that “*the death penalty is indispensable in Vietnam at present in order to ensure a peaceful life for the whole of the community*”¹, and that “*it is a question of national security, not human rights.*”²

Statistics on death sentences and executions are not published by the Communist authorities. In January 2004, following widespread criticism by the international community and human rights organizations, Vietnam adopted a decree classifying death penalty statistics as “state secrets”. Since then, although some reports on trials are published in the State-controlled press, it has been impossible to correctly assess the numbers of death sentences and executions in Vietnam. International and national media report an average of 100 death sentences per year. At least 148 people were sentenced to death in 2013.³ In December 2014, General Trần Văn Độ, Deputy Chief Justice of the Supreme People’s Court said that approximately 200 people are sentenced to death each year in Vietnam.⁴

The Death Penalty in the Vietnam’s Domestic Legislation

In recent years, Vietnam has reduced the number of crimes punishable by death in the Criminal Code. Whereas 44 crimes led to capital punishment in 1999, this was reduced to 22 in 2009. A reform of the death penalty in May 2000 commuted death sentences to life imprisonment for pregnant women and mothers of children under 3 years old. Taking advantage of this, in 2015, death row prisoner Nguyễn thị Huệ impregnated herself with a fellow inmate's semen to escape execution.

At the second cycle of the Universal Periodic Review in 2014, Vietnam accepted recommendations by Norway to “*fulfill the Government aim of limiting the use of capital punishment promptly by reducing the scope of crimes subject to the death penalty*” and “*reduce the number of offences punishable by the death penalty*” (Germany). As a result, on 27 November 2015, the National Assembly adopted an amended Criminal Code which abolished the death penalty for an additional seven crimes. It also waived capital punishment for people aged 75 and more, and commuted death sentences to life imprisonment for official corruption if the officials paid back at least 75% of their illegal gains. The amended Criminal Code takes effect on 1st July 2016.

In principle, therefore, the number of crimes punishable by death in Vietnam should be 15. However, after a thorough study of the text, VCHR has found that **18 crimes** incur capital punishment (*see annex for complete list of these 18 crimes*). In fact, the death penalty was effectively abolished on certain crimes, such as robbery, disobeying orders or surrendering to the enemy. But in other cases, crimes were simply re-worded to mask their appearance and deceive international opinion. For example, whereas the death penalty was abolished on former articles 193 and 194 on producing, trading in or possessing narcotics, the amended

¹ <http://www.un.org/press/en/2007/gashc3906.doc.htm>

² Declaration by the Vietnamese delegation at UNGA 69th Session in New York, December 2014.

³ FIDH-VCHR, Press release 14 October 2014, http://www.queme.net/eng/news_detail.php?numb=2360.

⁴ <http://ongbachau.vn/kinh-te/can-giam-ap-dung-hinh-phat-tu-hinh-c920a20141216070914587.htm>.

Code contains three articles (248, 250 and 251) condemning ostensibly similar crimes. It also adds one new “national security” crime on “*terrorist activities aimed at opposing the people’s administration*” (Article 113).

Crimes of “Infringing upon National Security”

The Vietnam Committee on Human Rights is particularly disturbed by Vietnam’s use of the death penalty to sanction vaguely-defined crimes of “*infringing upon national security*”. The Criminal Code’s definition of “national security” is extremely broad, and the international community has frequently expressed concern that human rights defenders or government critics may be sentenced to death under these provisions simply for the peaceful exercise of the right to free expression. The UN Working Group on Arbitrary Detention particularly urged Vietnam to revise provisions on “*activities aimed at overthrowing the people’s administration*” (former Article 79) which make no distinction between violent acts such as terrorism, and the peaceful exercise of the rights to freedom of expression.

Despite these strong recommendations, and despite Vietnam’s international obligations as a state party to the International Covenant on Civil and Political Rights since 1982, none of these political offences were included in the 2015 amendments of the Criminal Code. On the contrary, a new crime was added to this chapter. A total of six “national security” crimes in the amended Code are now punishable by death: high treason (Article 108), carrying out activities aimed at



Prisoner Trương Ngọc Điệp (Ba Vì, Hà Nội) takes his last meal before execution by lethal injection, 2013.

overthrowing the people’s administration (Article 109, formerly 79), spying (Article 110, formerly 80), rebellion (112), terrorist activities aimed at opposing the people’s administration (113), and sabotaging the material-technical foundations of the Socialist Republic of Vietnam (114).

For example, the crime of “**spying**” sanctions non-political acts such as “*gathering or supplying information and other materials (i.e. materials which are not State secrets) for use by foreign countries against the Socialist Republic of Vietnam*”. This means that dissidents and peaceful critics may be condemned to death simply for sending emails or circulating opposition views overseas. Many “cyber-dissidents” and peaceful critics have been recently arrested in Vietnam and charged under Article 80 simply for sending information abroad.

Article 109 (formerly 79) of the Criminal Code carries the death penalty for people who “*establish or join organizations with intent to overthrow the people’s administration... or cause serious consequences....*” Dissidents may thus be put to death for the mere “intent” to criticize the government or form opposition movements. In 2013, a group of 22 environmental activists were sentenced to terms of up to life imprisonment, and pro-democracy activist Trần Huỳnh Duy Thức is serving a 16-year sentence under this article.

Methods of execution

For many years, executions were conducted by firing squad. According to the official *Police Review* (Công An), condemned criminals were taken before dawn to a desolate site, read the court’s verdict, offered a bowl of noodle soup and a cigarette, and allowed to write a last letter home. Then they were tied to a wooden pole, gagged with a lemon and blindfolded, and shot by five policemen. The commander then fired a last “humane shot” into the convict’s ear.

In June 2010, the National Assembly passed the Law on Execution of Criminal Judgements to carry out executions by lethal injections rather than the firing squad.⁵ The law also allows relatives of the executed to retrieve their bodies for burial. According to the state-controlled media, the law was aimed to make executions “*more humane*”, and relieve the psychological pressure on executors, many of whom were suffering from trauma. Decree 82/2011 on Execution by Lethal Injection regulated the drugs to be used in executions and adopted a 3-drug protocol of sodium thiopental (an anesthetic), pancuronium bromide (a paralyzing agent) and potassium chloride (which stops the heart).⁶

After these laws were adopted, however, Vietnam could not obtain the lethal drugs because of a ban imposed by the EU, and no executions were held for the next 18 months. The authorities continued to pronounce death sentences, and by 2013 over 700 prisoners were awaiting execution on death row under inhumane conditions. To reduce this backlog, in January 2013, Vietnam amended Decree 82/2011 to authorise Vietnam to produce “domestic poisons” for execution, although the effects of these had not been tested. The government announced that it would begin the executions of 170 prisoners in June 2013. The first person to be executed by lethal injection was Nguyễn Anh Tuấn, 27, on 6 August 2013. It took him two hours to die.

The international community expressed shock at Vietnam’s resumption of executions. The EU pressed Vietnam to formalise its *de facto* moratorium, and UN High Commissioner for Human Rights Navi Pillay said it represented a “*major setback*” in the country’s human rights record. The fact was, however, that Vietnam never intended to introduce a moratorium on the death penalty, but simply suspended executions for very practical reasons of supply and demand.

⁵ Vietnam Law on Execution of Criminal Judgments, art. 59(1), Law No. 53/2010/QH12, Jun. 17, 2010.

⁶ Decree on Execution by Lethal Injection, art. 6(1), Decree No. 82/2011/ND-CP, Sep. 16, 2011. See also **Cornell University Death Penalty Database**, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Vietnam#a16-1>

Because of the lack of availability of “local poisons”, the chief of the Supreme People’s Procuracy, Vietnam’s highest prosecutors’ agency, has suggested further amending the laws to allow for either the firing squad or lethal injections to be used.

Conditions on death row

According to Cornell University Law School’s “Death Penalty Worldwide”, Vietnam’s death row is amongst the 12 largest in the world, with only 4 other Asian countries having more death-sentenced prisoners.⁷ Conditions on death row are particularly inhumane. Executions take place at 4.00 am. As prisoners are not informed in advance of their execution date, they stay awake all night in fear of being called, only sleeping at 6.00 am when they know their turn has not come.

Over the past three years, with the large numbers of prisoners waiting to be executed, conditions on death row have deteriorated considerably. Many prisoners have begged to be executed as soon as possible rather than live with the terror of waiting for an unknown execution day. Several death row inmates have committed suicide, including Nguyễn Tiến Công, 35, in June 2013 in a prison in Hai Phong, and others have unsuccessfully attempted to end their lives.



Compound for executions by lethal injection in Hanoi.

Torture and Wrongful Convictions

The Vietnam Committee on Human Rights is especially concerned about the use of the death penalty in Vietnam because of the lack of transparency of Vietnam’s legal system, inadequate access to defence counsel, unfair trials and numerous wrongful convictions. In Vietnam’s one-Party state, the judiciary is not independent, and the influence of the Communist Party is pervasive. Judges are invariably members of the Communist Party, and are often subjected to political pressure when pronouncing verdicts.

In June 2015, the National Assembly’s Standing Committee declared that miscarriages of justice were on the rise, with at least 71 wrongful convictions over the past three years, several concerning crimes incurring the death penalty. One of these was the case of Hồ Duy

⁷ Delphine Lourteau, Cornell University, Thanh Nien News, “*Is Vietnam ready to abolish the death penalty*”, 22 January 2015, <http://www.thanhniennews.com/politics/is-vietnam-ready-to-abolish-death-penalty-37916.html>

Hải, 29, sentenced to death in Long An in 2008. In December 2014, Vietnamese President Trương Tấn Sang issued orders to halt his execution just one day before it was to take place. His mother denounced irregularities in the evidence against him and asked for more time to prove his innocence, but Western diplomats played a crucial behind-the-scenes role in obtaining this stay of execution.

Sixteen death penalty cases where there were wrongful convictions were identified by the National Assembly's Judiciary Committee in 2015, but these cases have still not been solved. In October 2015, following strong international outcry, notably from the EU delegation in Vietnam, condemned prisoner **Lê Văn Mạnh** received a stay of execution. He had been acquitted twice of his crime on appeal, but the sentence was maintained after he was tried for a third time. Lê Văn Mạnh has maintained his innocence throughout the criminal proceedings, and alleges that the confession on which his conviction is based on was obtained under torture. International NGOs report that the proceedings against him were characterized by procedural errors and that he did not receive adequate legal representation on appeal.

No deterrent to Crime

Vietnam declares that the death penalty is necessary to maintain a “peaceful society”. But statistics prove that capital punishment is no deterrent to crime. According to the Ministry of Public Security, the number of “cruel” and heinous murders and robberies are on the rise, as well as drug-related crimes. One of the reasons for this is the widening gap in wealth disparity in Vietnam. The nouveau riche, including Party officials and their families live in opulence, creating jealousy and frustration amongst the poor. Whereas luxury boutiques such as Hanoi Hermes sell handbags for 140,000 US\$ each, workers and street vendors earn less than five dollars per day to feed their families. *“The rich-poor divide has emerged even within the Communist Party”*, said Secretary general Nguyễn Phú Trọng. *“Some members have got richer so quickly, leading a lavish life that is a far cry from the workers”*.

Recommendations

The Vietnam Committee on Human Rights opposes the death penalty in all circumstances. Our organisation is convinced that capital punishment is not only a violation of the right to life as proclaimed in the Universal Declaration of Human Rights but also an inhuman and cruel treatment. Moreover, it is particularly dangerous in a one-Party State such as Vietnam, where the judiciary is totally subservient to the Communist Party and where citizens may be condemned to death on “*national security*” charges simply for the peaceful advocacy of democracy or human rights.

The VCHR urges the Socialist Republic of Vietnam to sign the Second Optional Protocol to the UN International Covenant on Civil and Political Rights on the Abolition of the Death Penalty as soon as possible, and implement an immediate moratorium as a first step towards abolishing capital punishment in Vietnam.

CRIMES PUNISHABLE BY DEATH IN THE VIETNAMESE CRIMINAL CODE

(Amended 27 November 2015)

Chapter XIII: Crimes of Infringing upon National Security

Article 108: High treason

Article 109: Carrying out activities aimed at overthrowing the people's administration

Article 110: Spying

Article 112: Rebellion

Article 113: Terrorist activities aimed at opposing the people's administration (*new*)

Article 114: Sabotaging the material-technical foundations of the Socialist Republic of Vietnam

Chapter XIV: Crimes of Infringing upon Human Life, Health, Dignity and Honour

Article 123: Murder

Article 142: Rape against a minor under the age of 16

Article 194: Manufacturing and/or trading in fake goods being curative medicines or preventive medicines

Chapter XX: Narcotics-related Crimes

Article 248: Illegally producing narcotics

Article 250: Illegally transporting narcotics

Article 251: Illegally trading in or appropriating narcotics

Chapter XXI: Crimes of Infringement upon Public Safety, Public Order

Article 299: Terrorism

Chapter XXI: Crimes relating to Position

Article 353: Embezzling property

Article 354: Receiving bribes

Chapter XXVI: Crimes of Undermining Peace, Against Humanity and War Crimes

Article 421: Undermining peace, provoking wars of aggression

Article 422: crimes against humanity

Article 423: War Crimes



VIETNAM COMMITTEE ON HUMAN RIGHTS

The **Vietnam Committee on Human Rights (VCHR)**, a registered non-profit organisation, was founded in Paris in October 1975 to increase awareness of human rights violations in Vietnam. It is affiliated to the Paris-based International Federation for Human Rights (FIDH).

The Vietnam Committee on Human Rights :

- monitors and reports violations of internationally-recognized human rights in Vietnam;
- promotes universal human rights and freedoms for the Vietnamese people ;
- informs members of Parliament, UN and government agencies, international organizations, labour unions and the media about violations of human rights and worker rights in Vietnam, organises cultural events and public lectures ;
- campaigns for the release of prisoners of conscience ;
- promotes Vietnamese culture and circulates news and comment on democracy and human rights through the publication of Vietnamese-language books, press releases and reports which are circulated inside Vietnam and to the Vietnamese Diaspora.
- runs a weekly radio programme in Vietnamese on religious freedom, human rights and democracy which is broadcast on short-wave in Vietnam and available online.

Human Rights Monitoring

The Vietnam Committee on Human Rights testifies at the UN Human Rights Council and submits regular information to UN Special Procedures. It has submitted Shadow Reports on Vietnam's implementation of the ICCPR, ICESCR, CEDAW and ICERD, and stakeholder submissions to Vietnam's UPR in 2009 and 2014. The Vietnam Committee closely monitors the cases of political prisoners and informs UN agencies and Governments on their status and health. The Committee translates and publishes reports and testimonies sent from political prisoners in Vietnam.

Advocacy

The Vietnam Committee works actively with governments and international organizations to mobilise support for human rights advancement in Vietnam. VCHR staff have testified at hearings at the US House of Representatives and the European Parliament and conducted many advocacy trips in Europe, the USA and Asia (e.g. Australia, Belgium, Canada, Denmark, France, Holland, Japan, Taiwan, Indonesia, Korea, Norway, the Czech Republic, Sweden, the UK), meeting with Foreign Ministry officials, legislators, civil society organizations and labour movements. VCHR advocacy campaigns on human rights and religious freedom led to several Resolutions in the European Parliament, most recently an EP Resolution on Freedom of Expression Online and Off-line (2013).

Religious Freedom

VCHR works to promote freedom of conscience and combat religious intolerance in Vietnam. It is a member of EPRID, the European Platform on Religious Intolerance and Belief. VCHR President Vo Van Ai is International Spokesman of the Unified Buddhist Church (UBCV) and Director of the UBCV's information office, the **International Buddhist Information Bureau (IBIB)**.

Publications

VCHR publishes regular reports on the situation of human rights and religious freedom in Vietnam. VCHR reports published jointly with the FIDH include *"Bloggers and Netizens Behind Bars: Restrictions on Internet Freedom in Vietnam"* (2013, published in English, French and Vietnamese); *"Vietnam: From Vision to Facts – Human Rights under its Chairmanship of ASEAN"* (2010).

Recent VCHR reports include: **"Freedom of Religion or Belief in Vietnam: State Management of Religions"** (2016); **"Violations of the Rights of Women in Vietnam: Alternative Report on Vietnam's Implementation of the CEDAW"** (2015); **"Violations of Economic, Social and Cultural Rights in Vietnam: Alternative Report on Vietnam's Implementation of the CESCR"** (2014); **"UBCV: the movement for religious freedom in Vietnam"** (2014); **"Arbitrary Detention in the Socialist Republic of Vietnam"** (2012); **"Rule of Law or Rule by Law: Crime and Punishment in Vietnam"** (2011).

VCHR President Vo Van Ai contributes Op-Eds, articles and interviews to many international publications such as the *Wall Street Journal*, *Le Monde*, *Los Angeles Times*, *World Affairs Journal* etc. He is a recipient of the Societa Libera Special Prize for Freedom (Italy, 2011).

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