



RULE OF LAW OR RULE *BY* LAW?

Crime and Punishment in the Socialist Republic of Vietnam



A Report for the

Conference on the Rule of Law for Human Rights in ASEAN Countries

Human Rights Resource Center

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Compiled by the

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Cover Photo: Poster celebrating the 80th Anniversary of the Vietnamese Communist Party. Under the heading “Long live the Glorious Communist Party of Vietnam”, it reads: “The People’s Security Police – we only know the Party and the Police”. This phrase contrasts with the motto of late President Ho Chi Minh: “The Security Police are the servants of the people”.

The Vietnam Committee on Human Rights (VCHR) is the international section of Quê Me: Action for Democracy in Vietnam, a non-profit organisation founded in Paris in 1975 with sections in Europe, USA, Canada and Asia. Its aims are to monitor human rights, mobilise support for victims of human rights abuses and work for the respect of democratic freedoms and human rights in Vietnam. It also publishes books and reports in Vietnamese that are circulated underground in Vietnam and amongst the Vietnamese Diaspora to promote human rights education and culture, and provide a podium for all those working for the development of individual liberties and human rights in Vietnam. Vo Van Ai is President of the VCHR. The VCHR is a member of the International Federation for Human Rights (FIDH).

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EXECUTIVE SUMMARY

Despite Vietnam's accession to core human rights treaties and its adoption of extensive new legislation, serious gaps remain between international norms and Vietnamese laws and practices. Vietnam continues to adopt laws that restrict the exercise of human rights, and imprisons peaceful critics under vague "national security" provisions. Legislation on administrative detention empowers local police to detain suspected "national security offenders" without any due process of law.

Vietnam is currently receiving millions of dollars from the World Bank, the ADB, UNDP and a host of donor countries to finance programmes of legal reform. Yet it continues to adopt restrictive laws in violation of the UN treaties to which it adheres. If the international community takes firm steps to ensure that this funding is used to bring domestic legislation into line with international human rights law, these legal reform programmes could have a real impact on human rights protection in Vietnam. If not, then international donors could well be helping Vietnam to build a legal stronghold that will stifle fundamental freedoms and rights, and move not towards the rule of law, but the rule *by* law – the use of the law to suppress alternative expression and reinforce the one-Party State.

This report examines the restrictions in Vietnam's legislation and the inconsistencies with the UN treaties that it has ratified, and makes recommendations to the Vietnamese government, the international community and member states of ASEAN. We hope that it may contribute to the common goal of advancing the rule of law in Vietnam and in the ASEAN community, in conformity with the provisions of the ASEAN Charter and international human rights instruments.

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Rule Of Law or Rule *By* Law

Crime and Punishment in the Socialist Republic of Vietnam

Introduction

Since Vietnam opened its economy to the free market system under the policy of "*Doi moi*" (renovation) in 1986, it has engaged in an intensive law-making process. In Vietnam's National Report to the UN Human Rights Council at its Universal Periodic Review in May 2009, Deputy Foreign Minister Pham Binh Minh declared that "*13,000 laws and by-laws have been enacted and revised since 1986*" in the realm of civil and political rights alone.

Some of these laws aimed to bring domestic legislation into line with the international human rights treaties, such as the UN International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social, Economic and Cultural Rights to which Vietnam acceded in 1982. A new Constitution was adopted in 1992 which guaranteed political and economic rights, and the principle of the presumption of innocence for the very first time.

However, at the same time, Vietnam adopted a whole arsenal of Decrees, Ordinances and Decisions which restrict or even nullify the peaceful exercise of human rights. Today, hundreds of Vietnamese are imprisoned or detained under house arrest under vaguely-defined, catch-all "*national security*" charges which are totally inconsistent with the provisions of the ICCPR.

Over the past decade, UN bodies such as the Human Rights Council (2009), the Human Rights Committee (2002), the Working Group on Arbitrary Detention (1995) and the Special Rapporteur on Religious Intolerance (1999) have repeatedly urged Vietnam to revise or repeal these laws, and bring them into line with international human rights law. Unfortunately, Vietnam has taken no steps to implement UN recommendations. On the contrary, it continues to promulgate legislation that curtails the exercise of fundamental freedoms. Moreover, at the Universal Periodic Review in 2009, Vietnam rejected 44 recommendations by member states to review legislation and improve protection of human rights.

In recent years, Vietnam has received millions of dollars from the World Bank, the ADB, UNDP and a host of donor countries including Japan, the EU, Norway and Australia to finance a programme of legal reforms such as the Strategy on Judicial Reform, the Strategy on the Development of the Legal System and the Social and Economic Development Strategy. These programmes are aimed to help Vietnam promote the rule of law. Vietnam accepts this aid – for example, a recent US\$ 1.2 million UNDP grant to help "implement human rights treaties" - whilst continuing to adopt legislation in total contradiction with the UN treaties to which it adheres. If the international community continues to provide such aid without accountability or measures to condition aid to the respect of international human rights, donor countries may unwittingly lead Vietnam in the opposite direction, not towards the rule of law, but towards the *rule by law* – the use of the law to suppress free expression and reinforce the control of the one-Party State.

Restrictions in the National Legal Framework – the Constitution

The 1992 Constitution of Vietnam, the fourth since the formal establishment of the Democratic Republic of Vietnam in 1946, contains a number of articles enshrining the concept of human rights (Article 50) and the right to fundamental freedoms such as freedom of opinion and speech (Article 69), freedom of religion

(Article 70), inviolability of the individual and the presumption of innocence (Art. 71). However, the same Constitution restricts the exercise of these freedoms. Article 4, for example enshrines the political monopoly of the Communist Party of Vietnam (CPV):

“The Communist Party of Vietnam, the vanguard of the Vietnamese working class (...) acting upon the Marxist-Leninist doctrine and Ho Chi Minh thought, is the force leading the State and society”.

This provision implies that individual rights are conditioned on support for the Communist Party and its doctrine, and that the rights of those who hold different opinions will not be guaranteed.

Other rights enshrined in the 1992 Constitution are conditioned on compliance with *“the policies and interests of the State”*. Article 70 guarantees the right to religious freedom, but adds that *“no-one can misuse beliefs and religions to contravene the law and State policies”*. As the former UN Special Rapporteur on Religious Intolerance Mr. Abdelfattah Amor observed, *“this provision establishes the principle of the priority of the policies of the State, a vague and extendable concept”*. When considered together with Article 4 on the mastery of the Communist Party, Mr. Amor observed: *“These two articles, by their wording and association, are likely to impede freedom of religion or reduce it to very little indeed”*¹.

National Security Legislation in the Penal Code

The 1986 Penal Code sets severe limits to the freedoms and rights enshrined in the 1992 Constitution. A whole chapter is devoted to vaguely-worded *“national security”* crimes which are widely invoked to detain dissidents and human rights defenders. Previously classed as *“anti-revolutionary”* crimes, these broadly-defined offences make no distinction between violent acts such as terrorism and the peaceful exercise of freedom of expression. They are punishable by harsh prison terms, including life imprisonment. Seven carry the death penalty². Despite strong recommendations by the United Nations, Vietnam has made no attempt to revise these laws, which remain the principal tool of political repression against dissent³.

They include ambiguous offenses such as *“undermining national solidarity, sowing divisions between religious and non-religious people”*, (article 87), *“conducting propaganda against the Socialist Republic of Vietnam”* (Article 88), *“abusing democratic freedoms to encroach on the interests of the state”* (article 258). In recent years, Vietnam has routinely used charges of *“espionage”* (Article 80) to detain “cyber-dissidents” for peacefully circulating their views via the Internet. Article 79 on subversion, or *“activities aimed at subverting the people’s power”*, is also used to sanction peaceful pro-democracy activities. Following a visit to Vietnam in 1994, the UN Working Group on Arbitrary Detention called for the immediate revision of Article 79 (then Article 73), noting that it was *“so vague that it could result in penalties being imposed not only on persons using violence for political ends, but also on persons who have merely exercised their legitimate right to freedom of opinion or expression”*.⁴

A number of lawyers in Vietnam have been arrested under these “national security” laws for attempting to defend their clients in court. During the trial of lawyer Nguyen Van Dai, sentenced under Article 88 of the Penal Code on “anti-Socialist propaganda” in 2007, his lawyer Le Cong Dinh spoke out strongly in defence of free speech, and criticised Article 88. Ironically, in 2010, Le Cong Dinh himself was sentenced under the even harsher charge of Article 79, on *“activities aimed at subverting the people’s power”*, a crime punishable by death. In April 2011, prominent legal activist Cu Huy Ha Vu was sentenced to seven years in prison under Article 88 (see box).

¹ Report to the 55th Session, UN Commission on Human Rights, Ref. E/CN.4/199/58/Add.2.

² National security offences carrying the death penalty as maximum punishment in Chapter XI of the Penal Code are : High treason (Article 78), Carrying out activities aimed at overthrowing the people’s administration (Article 79), Spying (Article 80), Rebellion (Article 82), Conducting banditry activities (Article 83), Terrorism (Article 84), Sabotaging the material-technical foundations of the Socialist Republic of Vietnam (Article 85) - cf. A Selection of Fundamental Laws of Vietnam, The Gioi Publishers, Hanoi 2001.

³ **Concluding** Observations of the UN Human Rights Committee: Vietnam. Geneva, 26.7.2002, CCPR/CO/75/VNM.

⁴ *Visit to Vietnam: UN Working group on Arbitrary Detention, E/CN.4/1995/31, Add. 4, par. 58.*

Flawed Process, Unfair Trial: the case of legal expert Cu Huy Ha Vu

Dr. Cu Huy Ha Vu, 54, a legal expert and defender of environmental and political rights, was sentenced to seven years in prison and three years *quan che* (probationary detention) on April 4, 2011 by the Hanoi People's Court on charges of "*propaganda against the Republic Socialist Republic of Vietnam*" under Article 88 of Vietnam's Penal Code.



Cu Huy Ha Vu, who runs a law firm in Hanoi with his wife Nguyen Thi Duong Ha, sought to use the legal system to demand official accountability and justice for victims of human rights abuses. Son of Cu Huy Can, a celebrated poet and leading revolutionary figure who was a confidant of Ho Chi Minh, he became well-known in 2009 for filing a law suit against Prime Minister Nguyen Tan Dung for signing Decision 167 in November 2007, which granted Chinese firms the rights to exploit controversial bauxite mining operations in the Central Highlands. In June 2010, he gave a radio interview to the Voice of America calling for the abolition of Article 4 of the Constitution on the mastery of the Communist Party and multi-party democracy. On October 21, 2010, he filed a second lawsuit against Prime Minister Nguyen Tan Dung for signing Decree 136 in 2006, which prohibits class-action petitions. He was arrested two weeks later.

During his trial at the Hanoi People's Court, the Presiding Judge, Nguyen Huu Chinh refused the request by his defense lawyers to make public ten documents relating to the indictment, in violation of Article 214 of the Criminal Procedures Code. One of Dr. Ha Vu's four lawyers, Tran Vu Hai, was expelled from court for demanding the disclosure of these documents. The other three lawyers walked out in protest. They later declared that there had been "serious violation of the law" during the proceedings.

Supporters of Dr. Ha Vu who gathered peacefully outside the Hanoi People's Court were stopped and dispersed by public security officers. Among them, two activists, Messrs. Pham Hong Son and Le Quoc Quan, were arrested and detained for several hours.

Ordinance 44 on Administrative detention

In 2008, Vietnam repealed the notorious Decree 31/CP on "Administrative Detention" in a move hailed by the international community as a step towards the rule of law. However, unknown to international opinion, in 2002 Vietnam had already replaced 31/CP by the even more repressive Ordinance 44 on "Regulating Administrative Violations", which not only empowers local officials to arrest and detain citizens for up to two years, as Decree 31/CP, but also to commit them to mental hospitals or "rehabilitation camps" without any due process of law. The Ordinance is particularly used against political and religious dissidents, and legalizes the arbitrary practice of detention without trial.

The Criminal Procedures Code: Unlimited Pre-trial Detention

Under the amended 2004 Criminal Procedures Code (Article 120), suspected "national security" offenders may be held in custody pending investigation for four months. This period may be extended four times by the Chairman of the Supreme People's Procuracy. Upon expiry of this period, the authorities must either release detainees or "*if deeming it necessary, apply other deterrent measures*". This vague definition leaves open the possibility of unlimited pre-trial detention for national security offenders. It is thus grossly

inconsistent with Article 71 of the Vietnamese Constitution which guarantees inviolability of the person and protection of the law.

Probationary Detention

Quan che, or “probationary detention” (Article 30 of the Penal Code) is a second punishment inflicted on former political prisoners. It enables the State to place “national security” offenders “*under the supervision and re-education of the local authority*” for a period of 1-5 years’ probation after their release. During this time, they are forbidden to leave their homes, deprived of their civic rights and maintained under constant Police surveillance. In theory, *quan che* cannot be applied without a Court decision, but in practice it is automatically applied to political and religious prisoners after their release for many years. *Quang che* sentences may be lifted or imposed at the authorities’ will. In 1998, Buddhist dissident Thich Quang Do was released in a government amnesty. In 2001, however, after he issued an “Appeal for democracy in Vietnam”, his *quan che* sentence was “re-activated”, and he was held incommunicado at the Thanh Minh Zen Monastery in Ho Chi Minh City for the following two years.

Residence Prohibitions for Former Prisoners

Decree 53/ND-CP adopted in August 2001 on “*residence prohibition and house arrest punishments*” imposes further restrictions on prisoners who have acquitted their prison sentences. The four-chapter, 21-article decree prohibits convicts from temporarily or permanently residing in certain localities from one to five years after their release from prison. The Decree also provides for house arrest as a “*supplementary punishment*” applicable to prisoners convicted of “*violating national security, repeating dangerous crimes, or other crimes as stipulated by the Penal Code*”. These persons must live, work, and “rehabilitate” themselves in designated locality from one to five years after their release.⁵ This Decree, which imposes a second punishment on prisoners, who have completed their prison terms, is not only a violation of the right to freedom of movement, but a violation of Article 14.7 of the ICCPR which stipulates that no one shall be punished a second time for the same offence.

The Definition of a Crime: Protecting Socialist Legality

The very definition of what actually constitutes a criminal offence is arbitrary and discriminatory in Vietnam. The 1992 Constitution defines the duty of the Courts and People’s Procuracy as “*safeguard[ing] Socialist legality and the Socialist regime*” (Article 126). The Penal Code states that its objective is to “*protect the Socialist Regime*” (Article 1), and defines a crime as an act which “*is dangerous to society*” or is “*damaging to the independence, unity and territorial integrity of the Homeland, damaging to the Socialist Regime, economic system and socialist ownership [...] or to other spheres of socialist legal order*” (Article 8). The criterion for defining a crime is thus the degree of danger or the potential prejudice that this act may cause to the regime. Since this interpretation is made by security forces and state prosecutors under the direct orders of the Communist Party, the State has free reign to use the law as a tool to silence all those expressing critical views against the Socialist regime.

Legal Restrictions on Freedom of Expression, Opinion and the Press

Article 69 of the Constitution enshrines the right of all citizens to “*enjoy freedom of opinion and speech, freedom of the press, the right to be informed and the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law*”.

However, these guarantees are nullified by a whole range of laws which strictly prohibit all forms of spoken or written expression deemed to “*violate the interests of the State*”. There is no privately-run, independent

⁵ *Vietnam issues Decrees on Punishment*, Vietnam News Agency, Hanoi, 27.8.2001.

media in Vietnam. Despite Vietnam's adherence to the ICCPR, government officials have repeatedly declared that Vietnam will never allow any privately owned newspapers or "Western-style" press freedom. CPV veteran and dissident General Tran Do and Buddhist monk Thich Quang Do filed applications to set up independent newspapers in 1999, but their requests were refused.

The Press Law

The 1990 Press Law limits the scope of press freedom by making the press a virtual organ of the state. It provides: *"The press in the Socialist Republic of Vietnam constitutes the voice of the Party, of the State and social organizations"* (Article 1). *"No one shall be allowed to abuse the right to freedom of the press and freedom of speech in the press to violate the interests of the State, of any collective group or individual citizen"* (Article 2:3). Article 15 on the *"rights and obligations of journalists"* provides that journalists have the obligation *"to defend the Party's lines, directions and policies and the State's laws"*. Chapter V of the Press Law on *"State management over Press"* defines the contents of State management, such as: *"organizing the provision of information for the press; managing the press's information"* (Article 17:3).

The Publishing Law

The 1993 Publishing Law imposes similar restrictions on all forms of printed matter. It provides: *"Publications with the following contents are strictly prohibited: "opposing the State of the Socialist Republic of Vietnam; destroying the people's solidarity block; disseminating reactionary ideas and culture...; destroying fine customs and habits; divulge secrets of the Party, State, and security...; distorting history, denying revolutionary achievements, hurting our great men and national heroes, slander or hurting the prestige of organisations, honour and dignity of citizens"* (Article 22).

A 1999 law requires journalists to pay damages to persons harmed by their articles, even if their reports are true. Decree 56 passed in July 2006 provides for crushing fines and suspension of licenses for media and journalists who defame and attack the *"prestige of the state"*.

Vietnamese journalists reporting on corruption and other "social evils", even if they are following government directives, risk grave reprisals. When journalists uncovered a massive corruption scandal (PMU-18) involving top government officials in 2006, Prime Minister Phan Van Khai immediately called for *"severe sanctions"* against press agencies and people involved in *"writing and publishing untrue information"*⁶. In the crackdown that followed in 2008, *"six newspapers received warnings, 252 journalists were sanctioned, 15 journalists had their press cards withdrawn (including two editors and four deputy editors), six journalists were prosecuted and two were imprisoned"*⁷. The two journalists imprisoned were Nguyen Van Hai and Nguyen Viet Chien of *Tuoi Tre (Youth)* and *Thanh Nien (Young People)*, who were eventually released after international protests.

Foreign journalists in Vietnam are subjected to strict controls. A 1997 Directive prohibits Vietnamese journalists from passing any information, photographs or other documents to foreign journalists without an authorisation from the Ministry of Culture and Information. This directive jeopardizes any Vietnamese journalists who enter into even informal contacts with foreign correspondents.

Media Decree on Journalism and Publishing

Media Decree 2/2011/ND-CP on Sanctions for Administrative Violations in Journalism and Publishing, signed by Prime Minister Nguyen Tan Dung, came into force on February 25, 2011. The Decree stipulates fines from 1-4 million dong (US\$50–2,000) for journalists and newspapers that violate the decree's overly broad and vague provisions, such as failing to abide by the requirements of the 1990 Press Law (as amended

⁶ Cong An Thu Do, Capital Security newspaper, Hanoi, 11 May 2006).

⁷ Nguyen Quang Duy, *The situation of Vietnamese Journalists in 2009*, <http://www.talawas.org/?p=15478>

Two Charges, No Crime : the case of Blogger Dieu Cay

NGUYEN VAN HAI, pen name Dieu Cay, 59, a prominent internet writer and blogger, was arrested on April 19, 2008 and sentenced to 30 months in prison on charges of "tax evasion" on September 10, 2008. Due to be released from prison on 19 October 2010 after completing his prison sentence, he remains in detention under a second charge, that of circulating "*propaganda against the Socialist Republic of Vietnam*" (Article 88 of the Penal Code). In fact, on 20 October, the day after his expected release, the Investigation Department of the Ho Chi Minh City Security Police sent his family an order (Ref. 927, signed by Lt. Colonel Le Hong Ha) informing them that Nguyen Van Hai was remaining in detention under a new charge. No explanation was given for this second indictment. On the same day, Security Police detained Mrs. Duong Thi Tan, the wife of Dieu Cay for the whole day, searching her bodily and ransacking her home. Police confiscated several objects belonging to her and her children, and prohibited her children from attending school. On 26th October, the Police reported that they had found "no incriminating evidence" during the search, but nevertheless refused to return the confiscated objects to the family.



Mrs, Duong Thi Tan has not been allowed to visit her husband since this second charge was pronounced. She has travelled thirteen times to try and visit him at the Xuan Loc Prison camp in Dong Nai province where he is detained, but has been turned back by the prison authorities each time. The prison wardens even refuse the provisions she brought, stating that her husband "refused to accept them". When she asked them to confirm this in writing, they refused. In a letter dated April 20, 2011, Mrs. Duong Thi Tan said she feared that her husband may have died in detention: "*Only dead prisoners refuse to accept food*". She has written several times to the authorities demanding the right to visit him in accordance with prison regulations, but has never received a reply. This second period of detention is not only unwarranted and unlawful, but it also violates Article 120 of the Criminal Procedures Code which limits pre-trial detention to a maximum of four months, except in "serious cases". Dieu Cay has been held for six months without trial since he was charged in October 2010.

A former soldier with the People's Army of Vietnam and one of the founding members of the Club of Free Journalists (Cau Lac Bo Nha Bao Tu Do), Dieu Cay was arrested after he wrote articles protesting China's claims to the Spratly and Paracel Archipelagos, and unfurled banners in front of the Opera House in Ho Chi Minh City denouncing China's claims to the disputed islands. His trial on 10 September 2008 on charges of "tax evasion" was not open to the public, and his lawyer said that police failed to respect standard procedures. The UN Working Group on Arbitrary Detention has declared Dieu Cay to be a victim of Arbitrary detention (Opinion 1/2009).

in 1999) to "*provide honest domestic and international news in accordance with the interests of the country and the people.*" It also prohibits Bloggers from using nick-names, and imposes fines on journalists who fail to publish their sources of information (Article 7). It also sets out fines of between 10-20 million dong (US\$500-1,000) for journalists and newspapers if they "*use documents and materials from organizations and personal letters and materials from individuals, without clearly stating the sources of such information, related to cases under investigation, cases that have not been brought to trial, 'negative cases or cases where there are indications that laws have been broken but the relevant state offices have not yet issued conclusions.*"

This new Decree seems to contradict the 1990 Press Law which states (Article 7) "*the press has the right and duty not to disclose the names of those who provide information if it is harmful to them, unless*

requested by the Head of the People's Procuracy or the Judge of the People's Court at the provincial and equivalent level or higher, for investigation and trial of serious criminal cases."

Legal Restrictions on Freedom of Expression via the Internet

Tight restrictions are also imposed on the Internet, a fast-growing sector in Vietnam, in violation of Article 19 of the ICCPR. The media watchdog Reporters Without Borders has classed Vietnam as the world's second largest prison for "netizens".

Under Directive 71 (2004) Internet café owners are responsible for their customers' on-line activities, and must keep records of users' ID. The Ministry of Public Security has set up a unit of "cyber-police" to track down the posting of banned material, and firewalls to block access to overseas sites advocating human rights and democracy. Regulations on "blogs" were introduced in 2008 in order to *"constrain propagandas against the state and limit using blogs to smear the image of the party and its governance apparatus"*.

In January 2010, extremely heavy sentences were handed down to a group of dissidents and pro-democracy activists who used the Internet to appeal for multiparty democracy. Human rights lawyer Le Cong Dinh, Nguyen Tien Trung, Le Thang Long and Tran Huynh Duy Thuc received sentences ranging from five to sixteen years in prison on charges of *"activities aimed at subverting the people's administration"* (Article 79) which carries the death penalty. Another member of the group, Tran Kim Anh, was sentenced to five-and-a-half-years in prison in December 2009. Many bloggers, such as Nguyen Van Hai (*see box*) are detained for using the blog to express critical views or call for political reforms.

In April 2010, the People's Committee in Hanoi issued Decision 15/2010/QD-UBND ordering over 4,000 Internet cafés, retail outlets and service providers in Hanoi to install government-provided "Internet Service Retailers Software" by the end of 2011. Although the exact application of this software is unclear, analysts fear it may enable the authorities to block access to websites and track the activities of Internet users, similar to China's "Green Dam" censorware. A Google policy analyst expressed concern that the regulation was a *"troubling example of a government threatening free expression online and an open Internet"*⁸.

Legal Restrictions on Religious Freedom: the Ordinance on Beliefs and Religions

Although religious freedom is guaranteed by Article 70 of the Constitution, religions are subjected to a system of recognition and control. With the exception of the Roman Catholic Church, only State-sponsored religious bodies are allowed to practise their activities, and "non-recognised" organisations are illegal. In November 2004, the *"Ordinance on Beliefs and Religions"* (21/2004/PL-UBTVQH) was adopted. The Ordinance, which authorizes certain non-recognised bodies to register with the State, was welcomed by the international community as a step forward. In fact, the Ordinance imposes stricter controls on religions, and is incompatible with international human rights standards and norms. Under the Ordinance, religious education is subordinated to the *"patriotic"* dictates of the Communist Party; worship may only be carried out in approved religious establishments; it is forbidden to *"abuse"* religious freedom to contravene prevailing Communist Party policies (article 8§2). Religious activities deemed to *"violate national security... negatively affect the unity of the people or the nation's fine cultural traditions"* are banned (art. 15)⁹.

Alongside state legislation, numerous Communist Party directives impose strict measures for controlling or even suppressing religions. One key document, obtained by the Vietnam Committee on Human Rights, is a

⁸ *Google troubled by new Internet rules in Vietnam*, AFP, 10.6.2010.

⁹ *"Vietnam officially recognises 11 religious groups: Buddhism, Islam, Catholicism, Protestantism, Hoa Hao, Cao Dai, Pure Land Buddhist Home Practice, Bani Muslim Sect, Threefold Enlightened Truth Path, Threefold Southern Tradition, and the Baha'i Community. In 2009 the government extended legal status to the Mysterious Fragrance from Precious Mountains, the Four Gratuities and the Vietnam Christian Fellowship. In October, 2009, the Assembly of God denomination was granted permission to operate"*. (US Commission on International Religious Freedom, Country Report on Vietnam, May 2010. (<http://www.uscirf.gov/images/annual%20report%202010.pdf>).

A Legal Limbo - 28 Years in Prison, Internal Exile and House Arrest: the case of Buddhist leader Thich Quang Do

Most Venerable THICH QUANG DO (secular name Dang Phuc Tue), Buddhist monk and leader of the outlawed Unified Buddhist Church of Vietnam (UBCV), has spent more than 28 years in prison, internal exile and house arrest for his peaceful advocacy of religious freedom, democracy and human rights. He is currently under effective house arrest at the Thanh Minh Zen Monastery in Ho Chi Minh City. Although he is not under any formal indictment, Thich Quang Do is denied his citizenship rights, forbidden to preach inside his own monastery and subjected to continuous Police surveillance. In March 2010, US-based Thor Halvorsen was beaten and detained by Police for several hours after he visited Thich Quang Do. Police said that the Monastery was “forbidden” because it was “not recognized by the state”. A Japanese monk who visited Thich Quang Do the following month was fined \$1,000 at the airport as he left Vietnam.



Born in 1928 in Thai Binh Province (former North Vietnam), a monk since the age of 14, Thich Quang Do is also an eminent writer and scholar. During his years in internal exile and prison, he translated a 8,000-page “Great Dictionary of Buddhist Terms”. The book is banned in Vietnam.

Thich Quang Do was first arrested in 1977 and spent 20-months in solitary confinement for denouncing human rights abuses. In 1982, he was sent into internal exile in Thai Binh province for 10 years for protesting the creation of a State-sponsored Buddhist church and the banning of the UBCV; in 1995, he was sentenced to 5 years in prison and 5 years house arrest charged with “*abusing democratic freedoms to harm the interests of the State*” for organizing a UBCV Relief Mission to aid victims of disastrous flooding in the Mekong Delta and sending an Open Letter and a 44-page essay to CPV Secretary-general Do Muoi criticising government policies on religion.

Thich Quang Do was released in a government Amnesty in 1998, but his sentence of house arrest was “re-activated” in 2001 because he launched an “Appeal for Democracy in Vietnam” and he was held incommunicado at his Monastery for two years. Despite these restrictions, he has continued to launch non-violent appeals for reform. In 2007, he broke out of house arrest to address a demonstration of farmers protesting State confiscation of lands; expressed solidarity with the democratic protests of Buddhist monks in Burma and Tibet (2008); opposed a government project to mine Bauxite in the Central Highlands that threatens the environment and culture of thousands of indigenous people (2010). These efforts brought him renewed arrests, interrogations, harassment and accusations of “*violating national security*”. The UN Working Group on Arbitrary Detention has declared Thich Quang Do to be a victim of arbitrary detention (Opinion 18/2005).

Thich Quang Do is a 2011 Nobel peace Prize nominee. He was awarded the Rafto Memorial Prize by the Norwegian Rafto Foundation for his role as a “*unifying force*” and a “*symbol of the growing democracy movement in Vietnam*”, and the World Movement for Democracy’s “Democracy Courage Tribute”. He was not allowed to travel to receive these awards. Describing his current situation, Thich Quang Do says: “*I went from a small prison into a larger one – I live in a legal limbo today*”.

602-page training manual for security police and religious cadres published by the Institute of Public Security Science in Hanoi, entitled *“On Religions and the Struggle against Activities Exploiting Religion”*¹⁰. This document gives detailed directives on the plans of the Ministry of Public Security and the Communist Party to “eradicate” all non-recognised religions that do not submit to the Communist Party’s control, with special instructions regarding the independent Unified Buddhist Church of Vietnam (see box on UBCV leader Thich Quang Do).

The 2008 edition of the Government Board of Religious Affairs’ *“Training Manual for the Task Concerning the Protestant Religion”* contains a whole section on *“the government’s intent in ongoing regulation and tight control of all levels of religious activities in registered groups, individual congregations and meeting places”*¹¹. The Manual details stringent controls that must be applied to Protestants all over Vietnam, with special restrictions in the mountainous regions where the ethnic minorities live.

Legal Restrictions on Freedom of Association

Although this right is guaranteed in the Vietnamese Constitution (Article 69), it is severely restricted under domestic law. All associative activity is strictly controlled by the Communist Party and guided by the Vietnam Fatherland Front (VFF), an umbrella of “mass organisations” that has a constitutional mandate to *“strengthen the people’s unity of mind in political and spiritual matters”* and reinforce the Party’s control over the population. The formation of independent associations, trade unions or civil society organisations remains prohibited.

Decree 88 on “Regulations on the Organisation, Operations and Management of Associations” (2003) restricts the activities of associations exclusively to *“contributing to the country’s socio-economic development”* and makes no provisions for human rights activities or advocacy, neither by local nor international NGOs¹². Associations registered under Decree 88 are directly linked to governmental programmes, and effectively serve as agencies of government ministries. The government has the right to intervene in all stages of the association’s operations, including membership. It may veto members or introduce members of its own choice.

Decree 97

On 24 July 2009, Prime Minister Nguyen Tan Dung issued Decree 97 limiting private research organisations to a list of 317 topics and banning them from publishing results bearing on government policies¹³. Since many civil society groups are affiliated to Vietnam Union of Sciences and Technology Associations (VUSTA) and thus covered by this new regulation, Decree 97 is a serious impediment to research and free speech in Vietnam. After the Decree was promulgated, Vietnam’s first independent think-tank, the Institute of Development Studies in Hanoi decided to close down rather than submit to these provisions.

¹⁰ *“On Religions and the Struggle against Activities Exploiting Religion - Internal Document for Study and Circulation in the People’s Security Services”*, Institute of Public Security Science, Hanoi. The copy obtained by the Vietnam Committee on Human Rights was published in 1997, but the persons who leaked the document confirm that it is still in use as a training manual for security and religious police today.

¹¹ Briefing on Vietnam, Analysis: 2008 Internal “Training Manual for the Task Concerning the Protestant Religion”, Christian Solidarity Worldwide, 2009 - www.csw.org.uk

¹² Decree 88 defines six “socio-political” or “mass organisations”: the VFF, the Vietnam Confederation of Labour, the Ho Chi Minh Communist Youth, the Vietnam Peasants’ Association, the Vietnam War Veterans Association and the Vietnam Women’s Union, which are funded largely by the State and effectively serve as agencies of Government ministries. Defined as organisations with “political goals”, the role of mass organisations is to oversee the implementation of party policies at the grass-roots level. The Vietnam Confederation of Labour, for example, has a constitutional mandate to “educate workers, employees and other labouring people to work well for national construction and defence”. See VCHR and FIDH report, *From “Vision” to Facts: Human Rights in Vietnam under its Chairmanship of ASEAN*, September 13, 2010.

¹³ New Vietnam law shuts down independent think tank, DPA, September 15, 2009.

The Labour Code

The 1995 Labour Code does not authorise freedom of association. All labour unions are under the umbrella of the “Vietnam General Confederation of Labour” (VGCL) that is controlled by the Communist Party of Vietnam. Free trade unions are prohibited. Whilst the Labour Code authorises the right to strike, it also restricts this right severely. Strikes are prohibited in 54 sectors considered to be of “public service” or important to the national economy or defence (including the post office, public transport, banking...). The Prime Minister can terminate any strikes perceived as “detrimental to the national economy or public safety”. Government Decree 11 adopted in 2008 obliges workers to pay their employers three months salary in compensation if their strike is deemed to violate the Labour Code¹⁴.

Legal Restrictions on Peaceful Assembly and Demonstrations

Decree 38: Whereas the right to free assembly and peaceful demonstration is constitutionally guaranteed (Article 69), in 2005 the government adopted Decree 38/2005/ND-CP which prohibits demonstrations outside State agencies and public buildings, and bans all protests deemed to “*interfere with the activities*” of Communist Party leaders and State organs. The “Directives for the Implementation of Decree 38” issued by the Ministry of Public Security in 2006 prohibits gatherings of more than five people without permission from the state.

These laws were adopted in face of growing protests by farmers and peasants, known as the “Victims of Injustice”. This rural protest movement, in which dispossessed farmers, many of them women, march to Hanoi or Ho Chi Minh City to file petitions and camp outside the government’s Complaints Offices, the National Assembly or other public buildings to demand justice for state confiscation of lands. This movement has reached explosive proportions, with over 2 million complaints filed over the past 10 years. Police routinely beat and arrest demonstrators or forcibly return them to their homes. A wave of such protests outside his residence in Hanoi prompted former CPV Secretary-general Nong Duc Manh to exclaim: “*It is abnormal for people to protest with banners. In many cases, our democracy is excessive*”.¹⁵

Recommendations

The Vietnam Committee on Human Rights urges the government of the Socialist Republic of Vietnam to take urgent steps to progress towards the rule of law for human rights in Vietnam, in conformity with its Constitution and the provisions of the ASEAN Charter, by removing all legal impediments to the enjoyment of internationally-recognised human rights.

Specifically, we urge the government of Vietnam to:

- Abrogate Article 4 of the Constitution on the mastery of the Communist Party, which is the key obstacle to freedom of opinion and expression, and the basis of State discrimination against all those who hold alternative political views;
- Delete from the Constitution, Penal Code, Press Law and other domestic laws all articles which subjugate individual rights to the interests and policies of the State, e.g. Article 70 of the Constitution on religious freedom, Article 258 of the Penal Code on “*abusing democratic freedoms to infringe upon the interest of the state*”;
- Urgently revise Chapter XI of the Penal Code on “*crimes of infringing upon national security*”; redefine the concept of national security to bring it into line with the Johannesburg Principles and the norms proposed by the UN Special Rapporteur on Freedom of Expression; amend or

¹⁴ “*Providing for compensation on damage caused by unlawful strikes to employers*”, Decree 11/2008/ND-CP, Jan. 2008.

¹⁵ *Communist party leader says protests show Vietnam has excessive democracy*, Associated Press, Hanoi, 10.5.2002.

delete all articles that could be used to criminalise the legitimate expression of peaceful political and religious dissent;

- Release all prisoners detained under “national security” charges simply for the peaceful expression of their political opinions or religious beliefs;
- Implement the recommendations of the UN Human Rights Committee¹⁶ to bring domestic legislation into line with international human rights law, notably by immediately repealing Ordinance 44 on “Regulating Administrative Violations” and all other legislation restricting the exercise of rights enshrined in the ICCPR;
- Repeal restrictions on religious freedom in conformity with Article 18 of the ICCPR; re-establish the legitimate status of the Unified Buddhist Church of Vietnam and all other non-recognized religious organisations and allow them full freedom of religious activity;
- Revise or repeal all laws and regulations that effectively censor the press, media, Internet and blogs, and which interfere with the freedom to seek, receive and impart information as guaranteed by Article 19 of the ICCPR; authorise the publication of independent newspapers to provide a forum for dialogue and democratic debate; cease legal sanctions and harassment against journalists and citizens expressing peaceful views through the printed media, Internet or radio;
- Adopt a Law on Associations that guarantees the right to form associations outside the framework of the Communist Party, thus fostering the emergence of independent civil society;
- Amend the Labour Code to bring it into line with the ICCPR and all ILO requirements; guarantee the right to peaceful assembly and association and allow the establishment of independent trade unions;

We call upon the international community to:

- Ensure that all laws adopted under legal reform programmes, including the Strategy on Judicial Reform, the Strategy on the Development of the Legal System and the Social and Economic Development Strategy comply with international human rights standards;
- Ensure that funding for legal reforms is never used for the adoption of restrictive human rights legislation, and to withdraw funding whenever this occurs.

We call on the other Member States of ASEAN to:

- Encourage the government of Vietnam to take necessary measures to effectively promote and protect the fundamental freedoms and rights of its people;
- Use the AICHR and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) as the primary platforms to engage Vietnam in a genuine dialogue on the human rights violations occurring in the country; and
- Seek, per the terms of reference of the AICHR, to obtain information from Vietnam on the promotion and protection of human rights in the country.

¹⁶ *Concluding observations of the Human Rights Committee: Viet Nam, CCPR/CO/75/VNM, 26/07/2002.*