

VIET NAM: PURSUIT OF CIVIL SPACE

AMNESTY INTERNATIONAL: SUBMISSION TO THE 44TH SESSION OF THE UPR WORKING GROUP, 29 APRIL – 10 MAY 2024

SUMMARY

This submission was prepared for the Universal Periodic Review (UPR) of Viet Nam scheduled for 30 April 2024. In it, Amnesty International evaluates the implementation of recommendations made to Viet Nam in its previous UPR, including in relation to the right to freedom of expression and human rights defenders, fair trials and the death penalty.

It also assesses the national human rights framework with regard to the rights to freedom of expression, association and peaceful assembly.

Amnesty International also raises concerns about unfair trials and the continued imprisonment of human rights defenders, journalists and activists; torture and other ill-treatment in detention; incommunicado detention and solitary confinement; and denial of medical treatment in detention.

It ends with a set of recommendations to Viet Nam which, if implemented, would contribute to improving the human rights situation.

FOLLOW UP TO THE PREVIOUS REVIEW

FREEDOM OF EXPRESSION AND HUMAN RIGHTS DEFENDERS

1. Viet Nam accepted 13 recommendations on the right to freedom of expression, including ensuring that national legislation is in line with international human rights standards, allowing bloggers and journalists unrestricted access to the internet, and creating a favourable environment for human rights defenders and other civil society actors.¹
2. Since the last review, the crackdown on the right to freedom of expression and any criticism of the government has intensified. Since announcing its candidacy for the Human Rights Council on 22 February 2021, Viet Nam has arrested, detained or sentenced at least 48 journalists, activists and NGO leaders for bogus charges ranging from 'abusing democratic freedoms' to 'propaganda against the State' to 'tax evasion', under Articles 311, 117 and 200 of the Criminal Code.²

UNFAIR TRIALS

3. Viet Nam accepted a range of recommendations to guarantee the right to equality before the law and to a fair and public trial that includes access to lawyers. However, trials continue to fall below international standards of fairness, including lack of legal representation and denial of the presumption of innocence.³

PRISONERS

4. Viet Nam noted recommendations to unconditionally release all political prisoners. Since the previous UPR cycle, Viet Nam has not acted on this recommendation and has continued to imprison critics of the government.⁴

THE DEATH PENALTY

5. Viet Nam received 26 recommendations on the death penalty, including reducing the list of crimes punishable by the death penalty, establishing a moratorium on executions, abolishing the death penalty and ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the full abolition of the death penalty.⁵ While the range of crimes punishable by death has been reduced, Viet Nam sentenced at least 102 people to death in 2022, primarily for drug-related offenses.⁶

THE NATIONAL HUMAN RIGHTS FRAMEWORK

LACK OF PROTECTION AGAINST TORTURE AND OTHER ILL-TREATMENT

6. The 2013 Constitution guarantees that "everyone shall enjoy inviolability of the individual and the legal protection of his or her life, health, honour and dignity, and is protected against torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health"⁷. In practice, however, torture and other ill-treatment persist and are alleged to occur in police custody, pre-trial detention and prisons. See below paragraphs 18 and 19 for detailed allegations.

SPECIAL PROCEDURES

7. Viet Nam failed to cooperate with the UN Special Procedures in accepting their visit request for topics on extrajudicial, summary or arbitrary executions, toxics and human rights, sale of children, human rights defenders, slavery and trafficking and Indigenous Peoples.⁸

RESTRICTIVE LAWS

8. The 2019 Cyber Security Law gives authorities broad powers to force technology companies to hand over vast amounts of data and censor internet users' posts. Many of the law's provisions are vaguely worded and allow for broad interpretation by the authorities. For example, provisions in Articles 8 and 15 could lead to people being arbitrarily charged for the peaceful exercise of their right to freedom of expression on the basis

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of overly broad and vague offenses, such as “negating the revolution achievement” or giving “misleading information causing confusion among the people”. Amnesty International research from 2020 shows that arrested at least 100 individuals after they used the internet to promote human rights and peacefully express their opinions.⁹

9. Articles 117, which criminalizes “making, storing or spreading information, materials or items for the purpose of opposing the State of the Socialist Republic of Viet Nam”, and 331, which creates the offence of “abusing democratic freedoms to infringe the interests of the State”, of the Criminal Code are overly broad and appear to be aimed at silencing those who seek to exercise their human right to freely express their views and share information with others.¹⁰

NATIONAL HUMAN RIGHTS INSTITUTION

10. Viet Nam accepted four recommendations to establish a National Human Rights Institution; however, Viet Nam has not established an independent National Human Rights Institution in line with the Paris Principles.¹¹

THE HUMAN RIGHTS SITUATION ON THE GROUND

RESTRICTIONS ON FREEDOM OF EXPRESSION AND ASSOCIATION

11. Human rights defenders, activists, journalists, lawyers, religious practitioners and even social media users face arbitrary arrests and detention, unjust prosecutions and other forms of harassment and intimidation.¹²
12. The Cyber Security Law and the Draft Decree on the management, provision and use of internet services and online information threaten online space for freedom of expression, association and peaceful assembly. The regulations require cross-border information providers to remove content within 24 hours on social media platforms, deny internet access and provide user's personal data upon request of the authorities.¹³ An Amnesty International report from 2021 shows censorship of political content requested by the authorities to “big tech” companies Google and Facebook, the government's online harassment and abuse of activists and spyware attacks.¹⁴
13. In October 2023, Amnesty International published evidence on the targeted surveillance operation by a customer of Intellexa's Predator spyware with connections to Viet Nam. Amnesty International's findings show how Intellexa alliance's surveillance products were sold to the Vietnamese Ministry of Public Security suggesting that agents of the Vietnamese authorities, or persons acting on their behalf, may be utilizing the spyware against journalists.¹⁵
14. The government has abused powers under tax laws and NGO regulations to arrest and prosecute environment and climate leaders and frustrate NGO activities. Five climate leaders have been arrested in the last two years including environmental lawyer Dang Dinh Bach and Hoang Thi Minh Hong.¹⁶ Decree 58, Decree 80/2020/ND-CP, Decree 56/2020/ND-CP, Decision 8/2020/QD-TTg, and other decrees restrict both local and foreign NGOs' operations and funding,¹⁷ preventing local and foreign NGOs from carrying out their work.

UNFAIR TRIALS

15. Environmental lawyer Dang Dinh Bach was sentenced to five years for “tax evasion” under Article 200 of the Penal Code on 24 January 2022. UN Human Rights Council Working Group on Arbitrary Detention raised concerns on fair trial procedure for his case.¹⁸ Bach was held incommunicado for the most of his pre-trial detention, not granted adequate access to his lawyer, and not given access to his family before the trial.

16. On 21 May 2022, human rights activist Truong Van Dung was arrested under Article 88 of the 1999 Criminal Code on “propaganda against the government” charges. He was sentenced to six years in prison on 28 March 2023, accused of giving interviews to foreign media and possessing copies of two “illegally printed books” authored by imprisoned journalist Pham Doan Trang and formerly imprisoned activist Pham Thanh Nghien. Dung accused the police of beating him during his detention; these allegations have not been investigated by the authorities.¹⁹
17. Land rights activists Nguyen Thi Tam, Can Thi Theu, Trinh Ba Tu and Trinh Ba Phuong were sentenced to between six and 10 years under Article 117 of the Penal Code for exercising their right to freedom of expression.²⁰ All four were denied reasonable access to family and adequate access to their lawyers in order to prepare their defense during pre-trial detention. Phuong and Tu said they were beaten by police while in detention. These allegations were not investigated by the authorities.

TORTURE AND OTHER ILL-TREATMENT IN DETENTION

18. Solitary confinement is used routinely against political prisoners to exert pressure on them to “confess” to the crimes of which they are charged, to punish them for disputing the charges against them, for refusing to submit to “re-education” or for raising their voices against the appalling conditions inside Viet Nam’s prison system.²¹
19. Numerous reports made by activists to Amnesty International show that imprisoned activists have faced serious ill-treatment in prison in the last three years. For example, Trinh Ba Tu reported being beaten and shackled for 10 days in September 2022²² and Nguyen Van Duc Do reported being tortured by being held in solitary confinement for over 300 days from May 2020 to March 2021.²³ Journalists Le Huu Minh Tuan, Nguyen Tuong Thuy, Pham Chi Dung and activist Tran Bang were reported to have deteriorating health conditions but were denied access to proper medical treatment by authorities.²⁴ At least three prisoners have died in prison from health conditions that Amnesty International believe could have been prevented with access to medical care.²⁵

ENFORCED DISAPPEARANCE

- ^{20.} Viet Nam failed to ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearance despite accepting two recommendations to ratify this convention in a previous UPR cycle. Viet Nam has been implicated in the enforced disappearances of journalist Truong Duy Nhat²⁶ and Youtuber Duong Van Thai.²⁷ Both disappeared in Thailand in the past four years, resulting in a chilling effect to those critical of the government even when outside of the country.
21. Journalist Truong Duy Nhat fled Viet Nam in early January 2019. He submitted an asylum claim at the Bangkok office of the United Nations High Commissioner for Refugees on 25 January 2019, the day before he disappeared.²⁸ Nhat was arrested by Thai police and returned to Viet Nam, tried and sentenced to 10 years imprisonment on 9 March 2020.²⁹
22. Youtuber Duong Van Thai, who was granted refugee status in Thailand in 2020, went missing in Bangkok on 13 April 2023.³⁰ On 5 July 2023, Vietnamese police announced that Duong Van Thai had been charged with Article 117 of the Penal Code and was under pre-trial detention in Vietnam.³¹ Duong Van Thai went missing in circumstances that suggest Vietnamese state agents may have been involved in capturing him in Bangkok, according to witness testimony and audio recordings on file with Amnesty International.
23. On 8 May 2019, Vietnamese authorities allegedly deported three Thai political activists who were living in Viet Nam in exile – Chuchee Chaivasut, Siam Theerawut and Kritsana Tapthai – back to Thailand.³² The three activists faced charges of lèse-majesté under Article 112 of the Thai Criminal Code.³³ On 11 December

2020, UN experts submitted a letter to the Vietnamese government regarding the case of Siam, raising concerns about “the reported lack of progress in the search and investigation into his disappearance.”³⁴ On 18 March 2021, the Vietnamese government denied that Siam had entered Viet Nam and refused to carry out an investigation due to the lack of sufficient information.³⁵ The whereabouts of the three Thai activists remain unknown.

THE DEATH PENALTY

24. Figures on the use of the death penalty continue to be classified as a state secret. Nguyen Van Chuong, who was convicted of robbery and the murder of a policeman in July 2007 and claimed to have been tortured to extract a “confession” while in police custody,³⁶ is awaiting execution. On 4 August 2023, Nguyen’s family was requested by the court to make arrangements to receive Nguyen’s remains.³⁷ He has yet to be executed.
25. Prisoner Le Van Manh’s family received a letter on 18 September 2023, informing them that the decision for his execution had been confirmed and asking them to report to the court on 23 September to register arrangements for the funeral.³⁸ Le Van Manh alleged he was tortured while in police custody.³⁹ Cruelly, his family members received the court announcement that Manh’s execution had been carried out on 22 September without the possibility of the last visit for the family being granted.⁴⁰

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Socialist Republic of Viet Nam to:

RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION

- Repeal or revise Articles 117, 118 and 331 of the 2015 Criminal Code, which unduly restrict the rights to freedom of expression, association and peaceful assembly, in line with international human rights law.
- Amend the Cyber Security Law, especially Articles 8, 15, 16, 17 and 26 to comply fully with international human rights law and standards.
- Repeal or amend Articles 99, 100 and 101 of Decree 15/2020/ND-CP so they align with international human rights law and standards.
- Repeal or amend Articles 5, 22 and 25 of Decree 72/2013/ND-CP so they align with international human rights law and standards, and refrain from introducing the currently proposed amendment to the Decree, in particular the proposed amendments under Article 23.d.
- Immediately and unconditionally release those detained or imprisoned solely for peacefully exercising their rights to freedom of expression, association and assembly.
- Ensure prompt, thorough, impartial, independent, transparent and effective 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 and issue a standing invitation to enable them to conduct visits in accordance with their respective mandates and ensure they are allowed to meet with HRDs without hindrance.
- Publicly commit to immediately stopping the use of spyware to unlawfully target human rights defenders, civil society, and journalists within and outside Viet Nam.
- Implement a human rights regulatory framework that ensures any state surveillance is in line with international human rights standards. Until such a framework is implemented, a moratorium on the purchase, sale, transfer and use of all spyware should be enforced.

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- Ensure that fair trial guarantees, especially rights to access the outside world, family and lawyers, as provided in international law and standards are respected and upheld in all cases.

TORTURE AND OTHER ILL-TREATMENT IN DETENTION AND PRISON

- Investigate all complaints and reports of torture and other acts of ill-treatment promptly, impartially, independently and effectively, and ensure protection from reprisals for complainants, witnesses and others at risk.
- Provide reparations to the victims of torture and other ill-treatment and their dependents in accordance with Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international standards.
- Ensure all prisoners have reasonable access to the outside world, family, 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.
- End the practice of prolonged solitary confinement and other forms of ill treatment 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.

ENFORCED DISAPPEARANCE

- End enforced disappearances, including the arrests, detention and transfer of foreign nationals to other countries without access to due process to challenge the arrest, detention and transfer.

THE DEATH PENALTY

- Establish a moratorium on all executions, as a first critical step.
- Abolish the death penalty for all crimes pending full abolition.
- 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 drug offences or economic crimes or where the trial did not meet the most rigorous international fair trial standards. In cases where the procedures were seriously flawed, as it was for Nguyen Van Chuong and Ho Duy Hai, offer a retrial that fully complies with international fair trial standards, and without resort to the death penalty.
- 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, including by providing all those on death row, regardless of means, with adequate and effective legal aid to pursue any appeals against their conviction and death sentence.
- Regularly publish full and detailed information, if possible disaggregated by nationality and ethnic background, about the use of the death penalty which can contribute to a public debate on the issue. These should include: the number of persons sentenced to death and for what offences; the number of prisoners appealing the sentences and at what level; location of detention; information on past and imminent executions; the total number of persons under sentence of death; the number of death sentences reversed or commuted on appeal; and the number of instances in which clemency has been granted.
- Ratify, without reservations, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

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