Submission to The Human Rights Committee

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Reporting Organisations:

Harm Reduction International (HRI) is a leading NGO dedicated to reducing the negative health, social, and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.

The organisation is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

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Introduction

1. Harm Reduction International and the World Coalition Against the Death Penalty (hereinafter: World Coalition) welcome the opportunity of reporting to the Human Rights Committee ahead of its review of the periodic report of Viet Nam, at its 125th Session. This submission will assess the performance of Viet Nam regarding its obligations under the International Covenant on Civil and Political Rights (ICCPR), with a specific focus on the country's drug policy. Accordingly, it will report on:

    a) The imposition of the death penalty for drug offences (Points 8 and 10, List of Issues);
    b) Compulsory reporting of people who use drugs (Para 14 List of Issues)
    c) Compulsory treatment of people who use drugs (Point 10, 13, and 14, List of Issues);
    d) Criminalisation, over-incarceration, and access to healthcare in prison for people who use drugs (Point 10, and 12 and 14, List of Issues).

2. Vietnamese drug policy is characterised by an intrinsic tension between two co-existing yet conflicting trends. On one side, the country has gradually developed and implemented important reforms aimed at tackling drugs as a health-related issue, introducing harm reduction services and interventions which are often praised as best practices in the region.[1] On the other side, people who use drugs or who are involved in the drug market continue to endure stigmatisation and marginalisation. Drug-related activities are criminalised, and a range of drug offences are punishable by death.

a) The death penalty for drug offences

3. Drug offences do not meet the threshold of 'most serious crimes' to which Article 6(2) of the ICCPR mandates that the death penalty be restricted, in countries which have not abolished this measure. This was most recently reiterated in General Comment 36 on the Right to Life published by this Committee.[2]

4. During the reporting cycle, Viet Nam has committed to reducing the scope of application of the death penalty. Most notably, during the second cycle of Universal Periodic Review (UPR) in 2014, the country accepted recommendations to reduce the number of crimes punishable by death, including drug offences.[3]

5. Accordingly, in the new Penal Code adopted in 2015 (which entered into force on January 1st 2018) the death penalty was abolished for eight offences, including 'surrendering to the enemy', 'robbery', and 'drug possession'.[4] However, a range of drug offences, specifically 'manufacturing',[5] 'transporting',[6] and 'trafficking'[7] controlled substances above the following specified quantities, still may attract capital punishment:
    - Over 500 grams of poppy resin, cannabis resin, or coca glue;
    - Over 100 grams of heroin, cocaine, methamphetamine, amphetamine, or MDMA;
    - Over 300 grams of other solid narcotics substances (unless specified);

[1] As an example, see: https://www.unodc.org/southeastasiaandpacific/en/vietnam/2016/05/mmt-bangladesh/story.html
[2] Human Rights Committee, "General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life" (United Nations, 2018), https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf. Para. 26
[3] Continue to reduce offences subjected to the death penalty" (Belgium C2 - Accepted); "Continue to work towards reducing the number of crimes subject to the death penalty" (Namibia C2 - Accepted); "Reduce the list of crimes punishable by death penalty, in particular economic crimes and those linked to drugs, and examine the possibility of introducing a moratorium" (Switzerland C2 - Accepted); "Consider at least further restricting the use of the death penalty only for the most serious crimes, as stated in article 6 of ICCPR with a view to soon adopting a de facto moratorium on executions" (Italy C2 - Accepted);
[4] Human Rights Committee, Third periodic report submitted by Vietnam under article 40 of the Covenant, due in 2004 (9 January 2018), para. 67. UN Doc. CCPR/C/VNM/3
[5] Socialist Republic of Vietnam, Criminal Code (No. 100/2015/QH13), Art. 248(4). Translated text available at: http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf
[6] Socialist Republic of Vietnam, Criminal Code, Art. 250(4)
[7] Socialist Republic of Vietnam, Criminal Code, Art. 251(4)

- Over 750 grams of other liquid narcotics substances.[8]

6. The rationale of the Government is that these offences constitute "extremely serious crimes"[9] and thus meet the threshold imposed by Art. 6(2) of the International Covenant on Civil and Political Rights for the imposition of the death penalty; this interpretation conflicts with the unanimous determination of both drug control[10] and human rights bodies.[11]

7. For the abovementioned offences, the only alternative punishments to the death penalty are twenty years and life imprisonment. Such limited range of alternatives prevents judges from tailoring the sentence to the circumstances of the crime and the accused, thus heightening the risk of grossly disproportionate sentences.

The use of capital punishment

8. The use of capital punishment in the country is shrouded in secrecy. Harm Reduction International and the World Coalition note with concern that Viet Nam failed to provide data on the numbers of persons executed during the reporting cycle, and number of persons currently under sentence of death, as requested by this Committee in point 8, List of Issues.

9. The death penalty remains a state secret under domestic law.[12] However, official information periodically made available points to an extensive use of the capital punishment in the country. In February 2017, a Resolution adopted by the Supreme People's Court determined "the publication on its online portal of its judgments and decisions within 30 days of their pronouncement,"[13] subject to national security and privacy restrictions. Pursuant to this Resolution, the Court portal now reports on some new death sentences. However, the information provided is extremely limited, and not updated.

10. In March 2017 a report published by the Ministry of Public Security (by mistake, according to local civil society)[14] revealed that 429 individuals had been executed between 2013 and 2016; while non-governmental organisations had only been able to confirm a handful of executions for the same period.[15] On 13 November 2018 the Vietnamese Government reported to the National Assembly that 85 individuals had been executed since the beginning of 2018, and 122 death sentences more than in 2017 were

[8] Same articles as above
[9] Human Rights Committee, "Third Periodic Report Submitted by Viet Nam under Article 40 of the Covenant, Due in 2004 [Date Received: 22 December 2017]" (United Nations, January 30, 2018), UN Doc. CCPR/C/VNM/3, https://www.ecoi.net/en/file/local/1427370/1930_1521719322_g1802085.pdf. Para. 67; Human Rights Committee, "List of Issues in Relation to the Third Periodic Report of Viet Nam. Addendum: Replies of Viet Nam to the List of Issues," November 26, 2018, UN Doc. CCPR/C/VNM/Q/3/Add.1. Para. 23 and 42
[10] The UN Office on Drugs and Crimes has called for the abolition of the death penalty for drug related offences; among others, see: For example, see: *Statement by the UNODC Executive Director on the recent executions in Indonesia* (UNODC, 29 July 2016), https://www.unodc.org/unodc/en/press/releases/2016/July/statement-by-the-unodc-executive-director-on-the-recent-executions-in-indonesia.html. The International Narcotics Control Board also endorses abolition; see: UN Information Service (2014). *INCB encourages States to consider the abolition of the death penalty for drug-related offences*,
[11] Among others, see: Human Rights Council, Report of the Secretary-General: Question of the Death Penalty (1 July 2013), para. 24. UN Doc. A/HRC/24/18; UN Human Rights Committee. Concluding Observations: Sudan (29 August 2007), para. 19. UN Doc. CCPR/C/SDN/CO/3. Human Rights Council. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston: Civil and Political Rights, Including the Questions of Disappearances and Summary Executions (29 January 2007), para. 39-53; UN Economic and Social Council, Resolution 1984/50: Safeguards guaranteeing protection of the rights of those facing the death penalty (25 May 1984)
[12] Gen Sander, 'The Death Penalty for Drug Offences: Global Overview 2017' (London: Harm Reduction International, 2018), 29. Accessible at: https://www.hri.global/the-death-penalty-for-drug-offences
[13] Amnesty International, 'Death Sentences and Executions 2017' (London, 2018), 27. Accessible at: https://www.amnesty.org/en/latest/news/2018/04/death-penalty-sentences-and-executions-2017/
[14] Vietnam Committee on Human Rights [VCHR], "'Shrinking Spaces': Assessment of Human Rights in Vietnam During the 2nd Cycle of Its Universal Periodic Review" (France: Paris, February 2018), http://queme.org/app/uploads/2018/02/Shrinking-spaces-VCHR-2018-EN.pdf, 15
[15] Among others, see: Amnesty International, "Death Sentences and Executions in 2016," April 11, 2017, https://www.amnesty.org/download/Documents/ACT5057402017ENGLISH.PDF.

pronounced (unfortunately, figures for 2017 were not provided).[16]Thirty-one death sentences were reported in 2018 for drug offences, either by the Supreme People's Court or by news outlets, while more could have been pronounced.

11. This lack of complete, reliable, and disaggregated official information prevents from accurately reporting on the imposition of the death penalty for drug offences in the country. The death penalty however appears to be central to the criminal justice strategy of the country, as also transpiring from the fact that "to cope with the large number of executions, five new execution compounds have been built at unspecified locations to supplement those currently operational […] and Security officials were being rapidly trained to administer lethal injections."[17] Accordingly, Viet Nam is considered one of the world's lead executioners.[18]

Conditions of detention on death row

12. Over 600 people are on death row in Viet Nam, many of whom are convicted of drug offences.[19] Conditions of detention on death row are reportedly abysmal. In its 2018 Concluding Observations, the UN Committee against Torture expressed concerns

> "About reports of the physical and psychological suffering that persons sentenced to the death penalty have experienced as a result of their particularly harsh conditions of detention, which may amount to torture or ill-treatment, including solitary confinement in unventilated cells, inadequate food and drink, being shackled 24 hours a day and being subjected to physical abuse, and that such prisoners often commit suicide and develop psychological disorders as a result."[20]

13. According to the Vietnam Committee on Human Rights, authorities often fail to provide prisoners with timely notification about the date of execution.[21] This has been recognised by this Committee as a form of ill-treatment contrary to Article 7 ICCPR.[22]

14. Civil society also denounced unfair limitations imposed on death row prisoners' contact with the outside world. Unlike other prisoners, death row prisoners are not allowed to meet with members of their families outside their parents, siblings, and children – nor with members of organisations.[23]

15. Thirty six death row prisoners died in detention between 2011 and 2016,[24] and the Vietnam Committee on Human Rights reports of "media concerns about the growing suicide rate on Vietnam's death row" (although figures are hard to verify).[25]

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[16] Baomoi, "Government Report on Judgment Execution in 2018," November 13, 2018, https://baomoi.com/chinh-phu-bao-cao-ve-cong-tac-thi-hanh-an-nam-2018/c/28567685.epi.
[17] Vietnam Committee on Human Rights [VCHR], "'Shrinking Spaces': Assessment of Human Rights in Vietnam During the 2nd Cycle of Its Universal Periodic Review.", Page 15
[18] Amnesty International, "Death Sentences and Executions in 2017" (United Kingdom: London, April 12, 2018), https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF.
[19] Amnesty International. Page 27
[20]Committee against Torture, "Concluding Observations on the Initial Report of Viet Nam" (United Nations, December 28, 2018), UN Doc. CAT/C/VNM/CO/1, https://undocs.org/CAT/C/VNM/CO/1., Para. 32
[21]Vietnam Committee on Human Rights [VCHR], "'Shrinking Spaces': Assessment of Human Rights in Vietnam During the 2nd Cycle of Its Universal Periodic Review.", 16
[22] Human Rights Committee, "General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life." Para. 40
[23] ACAT-France et al., "Report to the United Nations Committee Against Torture for the Examination of the First State Report of the Socialist Republic of Vietnam" (United Nations, November 12, 2018), https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/VNM/INT_CAT_CSS_VNM_32824_E.pdf., 45
[24] Vietnam Committee on Human Rights [VCHR], "'Shrinking Spaces': Assessment of Human Rights in Vietnam During the 2nd Cycle of Its Universal Periodic Review," Page 3
[25] Ibid., Page 16

b) Compulsory reporting of people who use drugs

16. Article 17(1) ICCPR recognises that everyone (including people who use controlled substances) has a right to privacy. Any interference with the right to privacy must be provided for by law and be necessary and proportionate to a legitimate aim.

17. At para. 159 of the State report, Viet Nam highlighted the constitutional value of the right to privacy in domestic legislation, as well as the inviolable right to personal life, personal secrets, and family secrets. In contrast with this, Vietnamese legislation mandates "drug addicts" (as defined by the law) to report their drug use to local authorities. Article 26 of the Law on Preventing and Combating Narcotic Drugs[26] requires a "drug addict" to "report[…] his/her own status of addiction to the office/organization where he/she works or the grassroots authorities in his/her place of residence."[27] A corresponding obligation to report "drug addicts" to local authorities is imposed on their families. In many cases, and especially if the person has already undergone a first round of voluntary treatment, the consequence of being reported is forced rehabilitation.[28]

18. This interference with the right to privacy of people who use drugs is not necessary to pursue any legitimate aim. On the contrary, it creates an environment of suspicion and mistrusts, and increases stigma and discrimination against people who use drugs. In turn, this promotes unsafe and risky drug use behaviours, and deters individuals from seeking treatment when needed. A further consequence is the systemic underreporting and underestimation of phenomena such as drug use, drug dependence, and transmission of communicable diseases, which impinges on the ability of the State to design and implement adequate and effective responses.[29] This is highly problematic, in a country where people who inject drugs accounted for over 35% of all new HIV cases identified in 2016.[30]

c) Compulsory treatment of people who use drugs

19. Compulsory drug treatment and rehabilitation have been unanimously recognised by human rights bodies as contravening the prohibition against inhuman and degrading treatment, the prohibition of arbitrary detention, and the right to health;[31] the latter, in particular, sanctions the principle of free and informed consent as one of its fundamental components. From the same also descend obligations for the State to provide accessible, adequate, and non-discriminatory health services, which are safe, effective, people-centred, and evidence-based.[32]

20. A key pillar of Viet Nam's drug policy is forced treatment and rehabilitation (in "Treatment, Education and Social Labour Centres", referred to in the State report as "mandatory drug treatment centres"). As reported in paragraph 52, Reply to List of Issues, these structures ostensibly provide detoxification for

[26] Socialist Republic of Vietnam, Law on Preventing and Combating Narcotic Drugs. Translated text available at: https://www.unodc.org/res/cld/document/vnm/law-on-preventing-and-combatting-narcotics_html/Law_preventnarcoticsdrugs-viet2000.pdf
[27] Socialist Republic of Vietnam, Law on Preventing and Combating Narcotic Drugs, Art. 26
[28] Windle, 'A slow march from social evil to harm reduction: drugs and drug policy in Vietnam', 3
[29] Windle, 'A slow march from social evil to harm reduction: drugs and drug policy in Vietnam', 4
[30] Hoang et al., 'Factors Associated with Concurrent Heroin Use among Patients on Methadone Maintenance Treatment in Vietnam, 113
[31] Among others, see: Human Rights Council, Report of the United Nations High Commissioner for Human Rights: Study on the impact of the world drug problem on the enjoyment of human rights (4 September 2015), para. 46-49. UN Doc. A/HRC/30/65; ILO, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN WOMEN, WFP, WHO, and UNAIDS, Joint Statement: Compulsory drug detention and rehabilitation centres (March 2012)
[32] UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant) (11 August 2000), para. 12. UN Doc. E/C.12/2000/4

people who use drugs.[33] In practice, individuals labelled as "drug addicts" after reporting, self-reporting, or identification by the police, are forcibly detained in these centres for up to two years[34] and subject to degrading and ineffective forms of treatment, often centred around abstinence and 'labour therapy'.[35] By law, the cost of the treatment is often imposed upon the family.[36]

21. In recent years Viet Nam has scaled this system down, also in response to international pressure.[37] The 2012 Law on Handling Administrative Violations, entered into effect in July 2013,[38] introduced a court process for determining whether a person found to have a drug dependence will be compulsory treated. However, it is reported that, in practice, these procedures fail to meet basic standards of fairness and due process.[39] In December 2013 the government approved the Drug Rehabilitation Renovation Plan (hereinafter: Renovation Plan) for 2013 – 2020"[40] which sanctioned a shift from a compulsory to a voluntary system for addressing drug dependence, centred around community-based treatment centres.[41] In the Renovation Plan the Government committed to "diversify drug dependence treatment models, scale up community-based and voluntary treatment centers (including MMT clinics) and gradually reduce the number of drug users held in compulsory treatment centers."[42]

22. The Plan is a timid step in the right direction, and it is concerning that it does not envisage the overcoming of this abusive system of treatment, but rather only a reduction in the proportion of drug users sent to compulsory centers.[43] It is now estimated that 71 centres will be in operation in 2020 – down from the 105 reported in 2015 - with a capacity of 20,000 patients.[44] More than 30 additional detox centres will reportedly be established through private funding.[45]

23. Between 2014 and 2016 alone, over 65,000 individuals were detained in compulsory drug detention centers.[46] The Council of the European Union reported, by July 2017, the presence in the country of at least "five compulsory drug rehabilitation centres, and 75 centres providing a mix of compulsory, voluntary and Methadone treatment"; a total of "17,488 [individuals] are participating in the compulsory programs under Courts' Orders, of which 10,422 have no permanent residence."[47] Worryingly, the number of people in compulsory rehabilitation pursuant to Court orders saw a 12,461 increase between 2015 and 2016,[48] as a further manifestation of the ongoing reliance of the Government of Viet Nam on this abusive system. Human Rights Watch reported the adoption, in August 2017, of a Decree which expands the categories of subjects eligible to be detained in these centres.[49]

[33] Human Rights Committee, "List of Issues in Relation to the Third Periodic Report of Viet Nam. Addendum: Replies of Viet Nam to the List of Issues." Para 52
[34] Socialist Republic of Vietnam, Law on Preventing and Combating Narcotic Drugs, Art. 28
[35] Vuong et al., 'Cost-Effectiveness of Center-Based Compulsory Rehabilitation Compared to Community-Based Voluntary Methadone Maintenance Treatment in Hai Phong City, Vietnam' (2016) *Drug and Alcohol Dependence* 168
[36] Socialist Republic of Vietnam, Law on Preventing and Combating Narcotic Drugs, 26(d)
[37] See Joseph J. Amon et al., 'Compulsory drug detention in East and Southeast Asia: Evolving government, UN and donor responses' (2013) *International Journal of Drug Policy* 25(1)
[38] Council of the European Union, Regional Report on South Asia. From Australian Regional Chair of the Dublin Group (16 October 2017), 56. Doc 13600/17. Available at: https://www.parlament.gv.at/PAKT/EU/XXV/EU/15/95/EU_159529/imfname_10756868.pdf
[39] United States Department of State, 'Vietnam: Country report on Human Rights Practices for 2016', 12. Available at: https://www.state.gov/documents/organization/265598.pdf
[40] Vietnam Ministry of Labor Invalid and Social Affairs (2013), Renovation Plan for drug addiction treatment for 2013–2020 in Vietnam
[41] Windle, 'A slow march from social evil to harm reduction: drugs and drug policy in Vietnam', 7
[42] Council of the European Union, Regional Report on South Asia. From Australian Regional Chair of the Dublin Group (16 October 2017), 55
[43] Windle, 'A slow march from social evil to harm reduction: drugs and drug policy in Vietnam', 7
[44] International Drug Policy Consortium (2019) '10 Years of Drug Policy in Asia: How Far Have We Come? - A Civil Society Shadow Report' (forthcoming)
[45] Ibid.
[46] Ibid.
[47] Council of the European Union, Regional Report on South Asia. From Australian Regional Chair of the Dublin Group (16 October 2017), 54
[48] From figure reported at Council of the European Union, Regional Report on South Asia. From Australian Regional Chair of the Dublin Group (16 October 2017), 55
[49] Human Rights Watch, 'World Report 2018. Events of 2017' (USA, 2017), 630

24. In recent years, credible reports of systematic human rights violations suffered in these centres have emerged, in the form of (among others): inhuman and degrading treatment, physical abuse (such as beatings, deprivation of food and water, confinement, among others)[50], forced testing and treatment. [51]

25. Additionally, because these centres are not formally places of detention, they are subject to only limited judicial oversight.[52]

26. Equally problematic are reports of forced labour being imposed in these centres as part of the detoxification process. This has been acknowledged by the Government of Viet Nam in paragraph 42 of the Reply to the List of Issues, which refers to a "labour regime applicable to prisoners and drug addicts at compulsory rehabilitation establishments [to help them] be aware of the value of labour and restore work skills that had been reduced by addiction". The imposition of labour as therapy not only lacks any scientific basis; it also constitutes a violation of Article 8 ICCPR, according to which "No one shall be required to perform forced or compulsory labour,"[53] and ultimately violates the right of everyone to live a life in dignity.[54] It is also incompatible with the obligations of Viet Nam under ILO Convention 29 concerning Forced or Compulsory Labour, which the country ratified in 2007.[55]

27. In para. 103 of the State report, the government states that detention in drug detoxification centres are limited to individuals over 18 years old. However, civil society reports of children being detained in these centres.[56]

28. This form of treatment is not evidence-based and has not been proven to address drug dependence; it is detrimental to both individual and public health:
    - Recent studies carried out in Viet Nam and other South-East Asian countries confirmed that compulsory rehabilitation is more expensive than community-based voluntary treatment, while also wielding worse results; [57]
    - Sanitary conditions in the centres are often poor, and the risk of contracting HIV and other diseases is higher in some of these centres than in communities;[58]
    - The risk of relapse upon release is elevated, as well as the risk of fatal and non-fatal overdose, for several reasons. First, many individuals use drugs after their release; after a long period of detention they may struggle to assess the quality of the drug, and safely dosing the substance before use, thus increasing the chances of overdose. Second, the fear of being forced back into the treatment centres prompts individuals to adopt risky drug-use behaviours, ands deter them from seeking treatment when needed.[59]

d) Criminalisation, over-incarceration and access to healthcare in prison for people who use drugs

[50] https://www.hrw.org/world-report/2018/country-chapters/vietnam#
[51] AFP, "Cold Turkey at Vietnam's Compulsory Drug Rehab Centres," *News24*, December 11, 2011, https://www.news24.com/World/News/cold-turkey-at-vietnams-compulsory-drug-rehab-centres-20171211; Thailand Institute of Justice and Penal Reform International, "Global Prison Trends 2018," May 2018, https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Global-Prison-Trends-2018_EN_WEB.pdf., 16
[52] Vuong et al., 'Cost-Effectiveness of Center-Based Compulsory Rehabilitation Compared to Community-Based Voluntary Methadone Maintenance Treatment, 148
[53] Notably, detention is rehabilitation centres does not fall under the definition of 'punishment for a crime' as of Article 8.3(b), 8.3(i)
[54] Human Rights Committee, "General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life." Para. 3, 50
[55] International Labour Organization, "Convention Concerning Forced or Compulsory Labour" (1930), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.
[56] Thailand Institute of Justice and Penal Reform International, "Global Prison Trends 2018.", 15
[57] Among others, see: [57] Vuong et al., 'Cost-Effectiveness of Center-Based Compulsory Rehabilitation Compared to Community-Based Voluntary Methadone Maintenance Treatment'; Vuong et al., Vuong et al., 'Outcomes of Compulsory Detention Compared to Community-based Voluntary Methadone Maintenance Treatment in Vietnam'
[58] Windle, 'A slow march from social evil to harm reduction: drugs and drug policy in Vietnam', 6
[59] Windle, 'A slow march from social evil to harm reduction: drugs and drug policy in Vietnam', 7

29. Despite some positive amendments introduced as part of a comprehensive review of the country's criminal laws, punishment and repression are still at the core of Viet Nam response to drugs: drug use constitutes an administrative offence and can be punished with detention up to two years;[60] while possession of drugs (over determined quantities) is a criminal offence, and can lead to imprisonment.[61]

30. Drug offences are responsible for a significant proportion of the prison population. According to the latest available data, between January and June 2017 Vietnamese police arrested 17,680 individuals for drug offences, "representing an approximate 22 percent increase in investigations and 20 percent increase in arrests over the same period in 2016."[62] In October 2018, the Minister of Public Security of Viet Nam acknowledged that 60% to 70% of prisoners in Viet Nam are detained for drug offences.[63]

31. This repressive approach to drug use directly impacts upon access to fundamental services, pushes people who use drugs away from accessing harm reduction services and from seeking treatment when needed, and towards unsafe practices, also fuelling a vicious cycle of stigmatisation and discrimination. Confidential sources report that, although police are legally required not to interfere with needle and syringe outreach services, people who inject drugs are often targeted and harassed, and prevented from making use of these services. Also, police performance is determined on the basis of targets, or quotas, for arrests; these provide a strong motivation for targeting those most vulnerable and 'exposed', such as people who use drugs, which are often arrested and detained for minor offences (such as possession of minimal quantities).

32. According to para. 113 of the State report, Viet Nam guarantees the right to healthcare, medical examination, and treatment to prisoners.[64]
    Individuals in detention retain their fundamental rights – including their right to health - and States have a positive obligation to protect those most vulnerable, and/or under their direct control. In addition, evidence shows that harm reduction interventions can be implemented safely and effectively in prison settings.[65] Effective and high-quality harm reduction and treatment options for persons with drug dependence should thus be available in prisons, in the same measure and of the same quality as those provided to the general public,[66] and in such a way that responds to the specific needs of the prospective beneficiaries.
    Notably, drug dependence treatment and key harm reduction services figure among the fifteen key interventions recommended by UN agencies for HIV prevention, treatment and care in closed settings.[67] Conversely, denying treatment to a person with a drug dependence can cause the person unbearable pain and suffering. Human rights mechanisms – including this Committee – have authoritatively recognised that the denial of treatment services to prisoners with a drug dependence can constitute inhuman or degrading treatment.[68]

[60] Windle, 'A slow march from social evil to harm reduction: drugs and drug policy in Vietnam', 6
[61] Socialist Republic of Vietnam, Criminal Code, Art. 249
[62] United States Department of State, "International Narcotics Control Strategy Report. Volume I: Drug and Chemical Control," March 2018., 287
[63] "Minister To Lam Reiterates Resolve to Combat Drug Crimes," Ministry of Public Security of Socialist Republic of Vietnam, October 24, 2018, http://en.bocongan.gov.vn/news-events/minister-to-lam-reiterates-resolve-to-combat-drug-crimes-t5249.html.
[64] Human Rights Committee, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant," June 20, 2018, UN Doc. CCPR/C/LAO/Q/1/Add.1, https://undocs.org/CCPR/C/LAO/Q/1/ADD.1. Para 113
[65] Gen Sander and Fionnuala Murphy, "The Furthest Left Behind: The Urgent Need to Scale Up Harm Reduction in Prisons" 13(3/4) *International Journal of Prisoner Health* (2017), 185
[66] Among others, see: General Assembly. Resolution 70/175: United Nations Standard Minimum Rules for the Treatment of Prisoners (8 January 2016), Rule 24. UN Doc. A/RES/70/175
[67] UNODC, ILO, UNDP, WHO, and UNAIDS, 'Policy Brief: HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions' (Vienna: UNODC, 2013)
[68] Human Rights Council. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (1 February 2013), para. 54. UN Doc A/HRC/22/53; Human Rights Committee. Concluding observations on the seventh periodic report of the Russian Federation (28 April 2015), para. 16. UN Doc. CCPR/C/RUS/CO/7

33. In recent years, and in response to a growing HIV epidemic,[69] Viet Nam has undertaken some important steps towards embracing a health-based approach to drug use, by gradually introducing and providing certain harm reduction services.[70] Despite this important progress, the Country is failing to uphold its obligations to invest in, and promote, adequate medical care for individuals in prison.
Drug treatment and harm reduction services in Vietnamese prisons are lacking. According to the 2018 *Global State of Harm Reduction,* needle and syringe programmes, anti-retroviral treatment, and naloxone (a lifesaving opioid-overdose reversal drug) are not available in Vietnamese prisons; while opioid substitution therapy – demonstrated to be an evidence-based, effective therapy for opioid dependence -[71] is only provided in two prisons.[72]

Recommendations

In line with these findings, Harm Reduction International and the World Coalition urge the Committee recommend Viet Nam to:

a) Immediately adopt an official moratorium on executions and remove drug offences from the list of crimes punishable by death, as a first step towards the complete abolition of the death penalty;

b) Increase transparency and provide updated, reliable, and disaggregated information on:
   - The imposition and the use of the death penalty;
   - The operation of compulsory drug treatment centres; including details on the number of people undergoing treatment, their conditions of health, and the kind of treatment provided;
   - The prison population, including the number of people detained for drug offences;

c) Amend the Law on Preventing and Combating Narcotic Drugs with an eye to ending the compulsory reporting of drug use by people who use drugs and their families;

d) Close compulsory drug treatment centres still in operation and ensure that subjects who are currently undergoing forced treatment are released, and provided acceptable and evidence-based healthcare on the basis of individual needs. Subjects who endured violations of their rights while detained in these centres must be granted access to justice, without discrimination;

e) End the criminalisation of drug possession, as well as the punishment of drug use through lengthy administrative detention;

f) Further review its drug policies, with an eye to overcoming the system of compulsory rehabilitation of people who use drugs, and fully replacing it with voluntary, community-based interventions which are in line with fundamental human rights standards and with the latest scientific evidence; work to

[69] James Windle, 'A slow march from social evil to harm reduction: drugs and drug policy in Vietnam' (2017) *Journal Of Drug Policy Analysis*, 10 (2), 5

[70] Windle, 'A slow march from social evil to harm reduction: drugs and drug policy in Vietnam', 7. The 2006 Law on HIV/AIDS Prevention and Control[70] formally recognised harm reduction, while the 2010-2020 National HIV/AIDS Strategy[70] set ambitious targets of reduction of HIV transmission among People Who Inject Drugs (PWID) by 2020, including through harm reduction. A 2013 Decision on "Drug Rehabilitation Renovation Plan"[70] also sanctioned a shift from a compulsory to a voluntary system for addressing drug dependence, centred around community-based treatment centres.[70] Methadone maintenance therapy (MMT) –proved to be effective by decades of research[70] - has also been gradually introduced throughout the country: 265 clinics started operating between 2008 and 2016,[70] and in 2015 Viet Nam inaugurated the first MMT service unit for prisoners.[70] In addition to the provision of methadone, the Country is now planning to pilot buprenorphine in seven provinces/cities including two remote provinces with large estimates of people who use drugs – Dien Bien and Son La. For more information see Sam Shirley-Beavan S, Katie Stone (ed.), 'The Global State of Harm Reduction 2018 (London: Harm Reduction International). Accessible at: https://www.hri.global/files/2018/12/10/Asia-harm-reduction.pdf

[71] WHO, UNODC, and UNAIDS, 'Technical Guide for Countries to set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users – 2012 Revision' (Geneva: World Health Organization, 2012), 13. Accessible at: http://www.who.int/hiv/pub/idu/targets_universal_access/en/

[72] Katie Stone and Sam Shirley-Beavan, "The Global State of Harm Reduction" (Harm Reduction International [HRI], December 2018), https://www.hri.global/files/2018/12/11/global-state-harm-reduction-2018.pdf., 39

ensure that harm reduction and voluntary treatment are accessible and affordable for all segments of the population, included individuals in detention.

g) Review its policies to ensure that people in detention, including on death row, have access to fundamental services and are protected from all forms of physical and psychological abuse; establish an effective system of independent monitoring of conditions of detention.