



PRISONS WITHIN PRISONS-

EXECUTIVE SUMMARY

TORTURE AND ILL-TREATMENT OF PRISONERS OF CONSCIENCE IN VIET NAM

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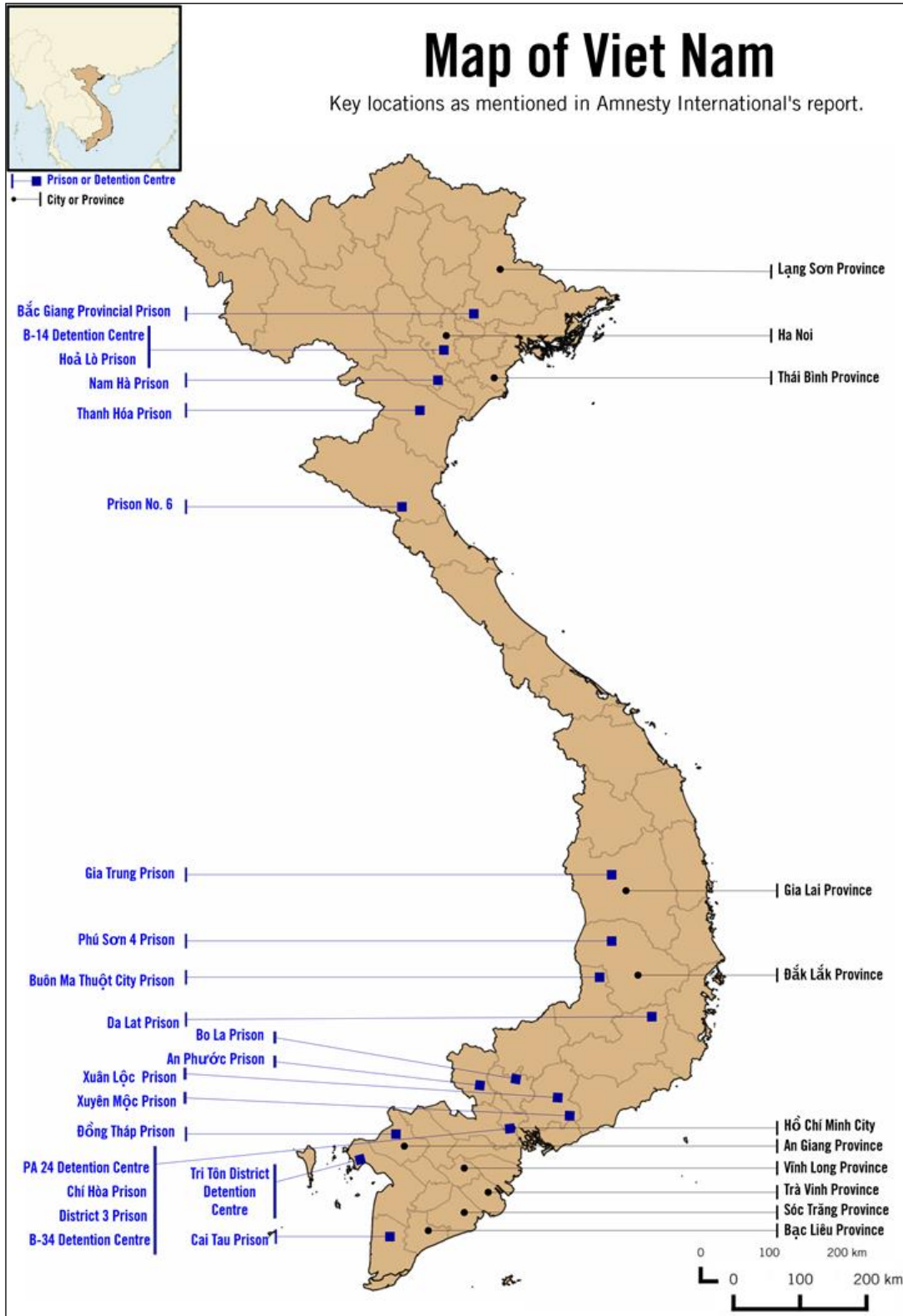
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Cover photo: Illustration depicting solitary confinement experienced by prisoners of conscience in Viet Nam © Colin Foo

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↑ Map depicting prisons and detention centres located in Viet Nam, as featured within this report. Locations depicted above are approximate. Note that certain violations took place in facilities not depicted on the map. These locations were not named in the report to protect the identity of victims. © Amnesty International

EXECUTIVE SUMMARY

“When they arrested me they threw me into a dark cell for 10 months [...] I can’t calculate exactly how many times they beat me, they just did it whenever they wanted [...] They told me that this was all for my crimes but all I had done was demonstrate, to ask for freedom, land rights and religious equality [...] They told me that I would die in prison, that I would die in that cell and my family would never know.”

Dar (Pseudonym), an ethnic and religious minority former prisoner of conscience

Dar (pseudonym) is an ethnic and religious minority Montagnard former prisoner of conscience from the Central Highlands of Viet Nam. He was accused of organizing demonstrations by Montagnard groups, arrested in 2008 and imprisoned for over five years. For three months after his arrest, Dar’s family believed he had been killed and his body dumped in the jungle. They eventually learned that he was still alive from the family of another inmate in the detention facility where Dar was being held.

For the first 10 months of his detention, Dar was held in solitary confinement in complete darkness and total silence, permitted only to wear underwear in a cell he estimates was no bigger than four square metres. For two months, he was taken from his cell every day, interrogated and beaten. He was hit with sticks and rubber tubes, punched, kicked, shocked with electricity, burnt along the length of his legs with a lit paper, and made to stand with his legs apart and arms held above his head for periods of up to eight hours. On one occasion, he was hung by the arms from the ceiling for 15 minutes while police beat him until he lost consciousness. On other occasions, police officers, who were sometimes drunk, came to his cell in the middle of the night and beat him there.

Dar was held in solitary confinement for 10 months, permitted to see his sister only once throughout this period in a meeting where they were not permitted to speak their native language and which was cut short when his sister beseeched him to maintain his faith in god. Dar was tried without legal representation and

without notification being sent to his family. He spent over five years in jail, being released in 2014 after being subjected to countless acts of torture and ill-treatment.

Dar's case is illustrative of practices of torture and other ill-treatment that are inflicted in Viet Nam detention centres and prisons on prisoners of conscience; individuals imprisoned for their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status who have not used violence or advocated violence or hatred. This report – Prisons Within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam – outlines these brutal practices which include incommunicado detention, enforced disappearances, the infliction of severe physical pain and suffering, solitary confinement, the denial of medical treatment, and punitive prison transfers.

The report is written on the basis of a series of interviews conducted by Amnesty International with 18 former prisoners of conscience, seven women and 11 men, all of whom have been released in the last five years. These men and women described appalling conditions in the country's detention centres and prisons, and brutal treatment at the hands of police and prison authorities. They described a system of abuse that spurs into action at the moment of arrest; in many cases, the pressure exerted on detainees is particularly intense in the pre-trial period as authorities seek to extract a confession but abuses often persist throughout the entire period of incarceration up until release.

On 7 November 2013, Viet Nam signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and ratified it on 5 February 2015. On signing the UNCAT, Lê Hoài Trung, Viet Nam's Ambassador to the United Nations asserted it represented his country's "unwavering commitment to prevent all acts of torture and cruel, inhuman or degrading treatment and punishment" and "to better protect and promote fundamental human rights". The cases of Dar and the other 17 former prisoners of conscience interviewed for this report highlights the gulf that exists between Viet Nam's public, explicit commitment to ending the scourge of torture and the reality for prisoners of conscience in the country's police stations, prisons and detention centres.

While Viet Nam's ratification of UNCAT is a welcome development, wide-ranging measures, including legislative, administrative, judicial amongst other measures, are urgently required for Viet Nam to uphold its obligations under the treaty and to bring about and punish the practices outlined in this report. Amnesty International calls on Viet Nam to end arrests and prosecutions of men and women for their beliefs and peaceful activism; to bring about an end to all torture and other ill-treatment in police stations, detention centres and prisons; to investigate all complaints and reports of torture and other ill-treatment promptly, impartially, independently and effectively; and to amend domestic laws to ensure compliance with UNCAT and international standards on the treatment of prisoners.

During the course of our investigation, the term "prisons within prisons" ("nhà tù trong nhà tù" or "tù trong tù" in Vietnamese) was repeatedly used by different interviewees to describe a system of physical and emotional isolation with several deliberate aims: to break prisoners of conscience into "confessing" to the crimes they are charged with; to punish them for challenging the authority of the Communist Party of Viet Nam (CPV) by asserting their rights; and to prevent them from interacting with fellow prisoners and continuing their activism behind bars. This report offers an explanation of Viet Nam's legal and political background and lays out in separate chapters some of the forms of torture and other ill-treatment that are being inflicted on the country's prisoners of conscience. The report concludes with information on current prisoners of conscience, including descriptions of specific cases of individuals currently experiencing the forms of abuse outlined in this report.

TORTURE AND ILL-TREATMENT IN DOMESTIC AND INTERNATIONAL LAW

Under international law, torture and other ill-treatment are prohibited in all circumstances without exception. Not only is the obligation to prevent, stop, punish and ensure reparations for torture and other ill-treatment provided for in several treaties to which Viet Nam is a state party, this obligation is also a rule of customary international law binding on all nations irrespective of treaty obligations.

The UNCAT and the Convention on the Rights of Persons with Disabilities, ratified on the same day, are the sixth and seventh core human rights treaties ratified by Viet Nam. As a party to the International Covenant on Civil and Political Rights (ICCPR) since 1982, Viet Nam was already bound by the prohibition on torture. By ratifying the UNCAT however, Viet Nam committed, amongst other things, to taking “effective legislative, administrative, judicial or other measures to prevent acts of torture”.

Viet Nam’s Constitution prohibits torture in broad terms. However, since signing the UNCAT, Viet Nam failed to use the opportunity in 2015 of amending the country’s Penal Code and Criminal Procedure Code to ensure that they comply with Viet Nam’s UNCAT obligations; including for example, by explicitly criminalising torture as defined in UNCAT Article 1(1). A new Law on Enforcement of Custody and Detention, passed in December 2015 and due to come into force in July 2016, will bring about some useful, but still insufficient, changes in the country’s legal system with regards to torture.

PRISONERS OF CONSCIENCE AND THE MINISTRY OF PUBLIC SECURITY

Viet Nam, a one-party state under the CPV, has long been one of Asia’s most prolific jailers of prisoners of conscience. The CPV brooks no challenge, whether real, perceived or imagined, to its hegemony and is ruthlessly vindictive towards those it views as contesting its authority or undermining its interests. While the entire apparatus of the state is used to silence dissent, the Ministry of Public Security has a unique role in this regard. The Ministry oversees the police and the prison system and is largely responsible for the violations outlined in the Report.

However, despite the overwhelming challenges and desperate consequences they face, people in Viet Nam are speaking out; raising awareness of injustices; calling for multi-party democracy; and advocating for human rights. Throughout 2015, several of these activists were attacked in the streets by plainclothes police officers or thugs acting at the behest of the authorities. A much more established means of punishing activists however is imprisonment: men and women are routinely arrested for their peaceful activism and convicted on baseless charges, often on charges of infringing national security, and given lengthy prison sentences in the country’s notorious prison system where they are subjected to the torture and other ill-treatment detailed in this report.

INCOMMUNICADO DETENTION AND ENFORCED DISAPPEARANCES

An incommunicado detention is when a detainee is held without access to the outside world, particularly to family, friends, lawyers and independent doctors. The practice encourages torture and ill-treatment, and prolonged periods of incommunicado detention themselves violate the prohibition on torture. The practice is inbuilt into Viet Nam’s system of torture and ill-treatment of prisoners of conscience and is imposed as a matter of course after an arrest. All of those interviewed for the report were subjected to prolonged periods of incommunicado detention, the longest lasting over two years.

Amnesty International's interviews also documented cases of enforced disappearance; that is, deprivations of liberty by the state "followed by a refusal to acknowledge the deprivation of liberty or the concealment of the fate or whereabouts of the disappeared persons which place the individual outside the protection of the law". An enforced disappearance, in most cases, constitutes an act of torture or cruel, inhuman and degrading treatment, as well as a violation of the right to life, the right to liberty and security of the person, and the right of persons deprived of their liberty to be treated with humanity and dignity. In the cases documented by Amnesty International, the individuals were held by authorities who failed to notify their families about their whereabouts and well-being, and denied them legal counsel, placing them beyond the protection of the law.

INFLICTION OF SEVERE PHYSICAL PAIN AND SUFFERING

Amnesty International documented several cases involving physical abuse of prisoners of conscience that constituted torture or other ill-treatment. One victim, Lu (pseudonym), was tortured daily for four months as prison authorities sought to force him to confess. His tormentors regularly beat him unconscious and degraded him by, amongst other things, making him eat food that had been left uneaten by a dog.

Abuse constituting torture or other ill-treatment documented by Amnesty International was perpetrated by police and prison officials, as well as by prisoners, some of whom were "antennae" ("ăng ten" in Vietnamese); prisoners who abuse prisoners at the instigation of or with the consent of prison staff.

Paulus Lê Văn Sơn, who was subjected to numerous acts of violence during his four year prison term, described sharing his cell with four men who admitted to being "antennae". When he first arrived in his cell, the four men beat him for 30 minutes, taking turns to kick and punch him. Over a period of five months in this cell, Lê Sơn says that his cellmates beat him on four or five occasions. He was eventually moved to another cell after going on hunger strike to protest being detained in that cell.

SOLITARY CONFINEMENT

Isolation is the primary method by which Viet Nam's prison authorities ensure that prisoners of conscience are left alone and abandoned inside 'prisons within prisons'. The UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) define "solitary confinement" as "confinement of prisoners for 22 hours or more a day without meaningful human contact". "Prolonged solitary confinement" is solitary confinement which goes on for a period in excess of 15 consecutive days; it is prohibited as it amounts to torture or other cruel, inhuman or degrading treatment or punishment.

In Viet Nam, prisoners of conscience are routinely subjected to solitary confinement in appalling conditions during pre-trial detention and as punishment for activism behind bars. Amnesty International documented cases involving solitary confinement for periods up to 10 months and interviewed individuals who described feeling completely abandoned and believing they would be left to die. In the words of Dar, an ethnic Montagnard who spent the first 10 months of his sentence in solitary confinement in total darkness, "[the police] told me that I would die there, that I'd die in that cell and my family would never know".

Another form of isolation documented by Amnesty International involves detaining prisoners of conscience in a cell for 24 hours a day in the company of an "antenna". Mai Thị Dung, a female former prisoner of conscience was put into isolation with an 'antenna' in a cramped, airless and dark cell for more than two years: conditions so unbearable that the series of antennae that shared the cell had to be switched every two or three days.

THE RIGHT TO HEALTH AND THE DENIAL OF MEDICAL TREATMENT

Given the appalling conditions and brutal treatment, it is not surprising that prisoners of conscience routinely fall ill in Viet Nam's detention centres and prisons. In some cases, those interviewed for the report received poor quality generic medicine following months of complaints to the authorities. In others, prisoners of conscience experienced months of severe pain and suffering and were told by the authorities that they would not receive any medical treatment unless they confessed to their alleged crimes. Such denial of medical treatment is a passive but clear form of torture, as it involves the intentional infliction of pain and suffering by officials for the purpose of extracting a confession, thus meeting all the criteria in the definition of torture as set out in Article 1(1) of the UNCAT.

PUNITIVE PRISON TRANSFERS

A central component of Viet Nam's systematic abuse of prisoners of conscience is subjecting them to repeated prison transfers: a deliberate practice that aims to further isolate them from their families, break their spirits and punish them for engaging in prison activism. Without advance warning to them or their families, prisoners of conscience are routinely moved from one detention centre or prison to another, often bringing them the length and breadth of the country and leaving them hundreds of kilometres from their homes and support networks.

The men and women interviewed for this report all experienced prison transfers. The practice is common in the cases of recalcitrant prisoners of conscience who refuse to plead guilty or who resist "re-education", as well as high-profile or influential prisoners who authorities fear will persuade other prisoners to protest prison conditions and ill-treatment. Prominent former prisoners of conscience Nguyễn Văn Hải, better known as Điếu Cày, was transferred 20 times in six and a half years in prison.

The transfers interviewees described were cruel, inhuman and degrading; some involved journeys lasting over 24 hours, during which prisoners were shackled and deprived of food and water.

PRISONERS OF CONSCIENCE IN VIET NAM TODAY

Viet Nam's lack of transparency, particularly regarding its prisons, makes it extremely difficult for independent monitors to gather information about prison conditions. Despite these challenges, Amnesty International has been able to document torture and other ill-treatment of a number of current prisoners of conscience, several of whom are known to have been or are being subjected to the types of treatment outlined in this report. This report is written on the basis of interviews with former prisoners of conscience who have been released in recent months and years but the practices they experienced continue today. The final substantive chapter of the report provides information on the cases of current prisoners of conscience who are or have been the victims of these practices.

Democracy activists Nguyễn Văn Đài and Lê Thu Hà have been held incommunicado since their arrests in December 2015; land rights activist Bùi Thị Minh Hằng, and Hòa Hảo Buddhist Trần Thị Thúy are being denied medical treatment; Catholic activist Đặng Xuân Diệu has been held in solitary confinement for prolonged periods of time; he has been subjected to brutal physical torture, as have labour rights activists Đoàn Huy Chương and Nguyễn Hoàng Quốc Hùng, prominent human rights defender Trần Huỳnh Duy Thức, ethnic minority activist Siu Wiu, and Khmer Krom Buddhist monk Thạch Thuol; Trần Huỳnh Duy Thức has also been subject to several prison transfers since 2009.

CONCLUSION AND RECOMMENDATIONS

The cases outlined in the Report highlight the gap between Viet Nam's public commitment to preventing and ending torture and other ill-treatment and the reality for prisoners of conscience in the country's detention centres and prisons. The ratification of the UNCAT is a welcome development but Amnesty International is concerned that since ratification, Viet Nam has already missed vital opportunities to bring the country closer to realising its UNCAT obligations: including the amendments to the Penal Code and Criminal Procedure Code in late 2015, and the passage of the Law on Enforcement of Custody and Detention. All three laws came into force on 1 July 2016. Their shortcomings are such that further legislation is needed to ensure Viet Nam's compliance with UNCAT.

To prevent torture and other ill-treatment however, Viet Nam will need to do more than just change its laws. Under UNCAT Article 2, "effective legislative, administrative, judicial [and] other measures" are needed to end torture and other ill-treatment. To bring about an end to the abuses outlined in this report and ensure that Viet Nam fully complies with its obligations under the UNCAT, Amnesty International makes the following recommendations:

- End arrests, prosecutions and convictions of men and women for their beliefs and peaceful advocacy for human rights, religious freedom, multi-party democracy and workers' rights, and immediately release all prisoners of conscience currently behind bars;
- End all torture and other ill-treatment in police stations, detention centres and prisons, including enforced disappearances, incommunicado detention, solitary confinement, physical violence, punitive transfers between facilities, and the withholding of medical treatment, committed by public officials, police, prison staff and prisoners;
- Investigate all complaints and reports of torture and other ill-treatment promptly, impartially, independently and effectively, suspending all officials suspected of committing these acts and ensuring protection from reprisals for complainants, witnesses and others at risk, and prosecute all those against whom sufficient, admissible evidence is gathered of their responsibility for torture or other acts of ill-treatment regardless of rank or official status and the time that has elapsed since the commission of the crime;
- Amend domestic laws, namely the Penal Code, the Criminal Procedure Code, the Law on the Execution of Criminal Judgements and the new Law on Enforcement of Custody and Detention to comply with UNCAT and international standards on the treatment of prisoners, and end reliance on Circular 37 of the Ministry of Public Security as a means to facilitate the discriminatory treatment of prisoners of conscience.

METHODOLOGY

The Report is the product of over 150 hours of interviews conducted with 18 prisoners of conscience; 11 men and seven women. Thirteen of the interviewees are ethnic Kinh, the majority ethnic group in Viet Nam, of whom five are members of minority religious groups, three being Catholic and the other two being Hòa Hảo Buddhist. The other interviewees are members of ethnic and religious minority groups including individuals who are ethnic Jarai, Ede, Tay and Khmer Krom. The interviewees have worked on a broad spectrum of rights issues – including freedom of expression, labour, land, and religious freedoms – and come from a variety of professions – including government, journalism, and the legal profession. Between them, the interviewees spent over 77 years in prison. While one of the interviewees was held in the home of a former policeman for one month before escaping and fleeing the country, the other 17 spent between two and just under 10 years in prison respectively. The prison population in Viet Nam in mid-2015, including pre-trial detainees, was 136,245.¹ Amnesty International is aware of 84 prisoners of conscience currently detained in Viet Nam.

Human rights research in Viet Nam is challenging due to the country's closed political system. Access to the victims of human rights violations is difficult to establish and people are sometimes reluctant to share information about their experiences due to well-founded fears of reprisal. The country's detention centres and prisons are closed to external observers, including independent bodies or human rights groups. However, during a mission to Viet Nam in June 2016, Amnesty International representatives were given a guided tour of the women's facility in Bắc Giang provincial prison, which houses 600 women inmates amongst the facility's total inmate population of 4,000 men and women.

Where possible, Amnesty International has sought to corroborate the information provided by interviewees through secondary materials, including reports by non-governmental organizations and the UN bodies. In some cases, interviews with other prisoners provided corroboration where they were held in the same facility at the same time and experienced and/or witnessed the same violations.

This report focuses entirely on torture and other ill-treatment of prisoners of conscience and does not consider violations of the rights of the general prison population. A prisoner of conscience is a person imprisoned or otherwise physically restricted because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status who has not used violence or advocated violence or hatred.² The former prisoners of conscience interviewed for this report stated repeatedly that there are differences between the treatment of prisoners of conscience and the general prison population: stating that restrictions on access to family are more prevalent in cases involving prisoners of conscience, but that other prisoners are more frequently the victims of physical abuse, including beatings, which amount to torture or other ill-treatment. This report deals with a range of inter-related human rights violations and the interviewees all experienced a combination of these violations. To avoid repetition, the details of each case are not restated in each relevant chapter.

¹ See, "World Prison Brief – Viet Nam", *Institute for Criminal Police Research*, available at http://www.prisonstudies.org/country/vietnam?_sm_au_=iVvf05nkjF87FLQ8.

² Police violence against detainees arrested for common criminal offences, including beatings and other forms of torture resulting in deaths, has been documented by Vietnamese and international human rights organizations. See for example, "Public Insecurity: Deaths in Custody and Police Brutality in Vietnam", *Human Rights Watch*, 16 September 2014, available at <https://www.hrw.org/report/2014/09/16/public-insecurity/deaths-custody-and-police-brutality-vietnam>; "Torture of Political and Religious Prisoners in Vietnam", *Campaign to Abolish Torture in Vietnam*, 16 January 2014, available at <http://www.stoptorture-vn.org/torture-report.html>; "Vietnam: Widespread Police Brutality, Deaths in Custody", *Human Rights Watch*, 22 September 2010, available at <https://www.hrw.org/news/2010/09/22/vietnam-widespread-police-brutality-deaths-custody>. In March 2015, Vietnam's Ministry of Public Security reported that there were 226 deaths of detainees in police stations between October 2011 and September 2014. See, "Doubts linger as Vietnam reports causes of 226 deaths in custody", *Thanh Nien News*, 22 March 2015, available at <http://www.thanhniennews.com/politics/doubts-linger-as-vietnam-reports-causes-of-226-deaths-in-custody-40112.html>.

To protect sources against retribution, the names and other identifying information of some interviewees are not provided in the text. This includes information pertaining to their charges, the dates of their court procedures, the facilities they were held in, the dates of transfers between facilities, and the dates of the interviews conducted with them by Amnesty International. As indicated throughout the text, the names used to refer to certain interviewees are pseudonyms. All interviews were conducted by Amnesty International between April 2015 and April 2016. Amnesty International is grateful to all those who interviewed for this report.

This report includes an analysis of Viet Nam's penal and criminal procedure codes, both of which were amended in 2015, with the amended versions due to come into force on 1 July 2016. As those interviewed for this report were arrested and convicted before the coming into force of the amended codes, analysis of the previous codes is included in the body of the text throughout the report, with information pertaining to corresponding articles in the amended codes provided in footnotes. On 1 July, the scheduled effective date of the amended codes, it was announced by the National Assembly that the coming into force of both codes, as well as the Law on Enforcement of Custody and Detention and the Law on Criminal Investigation Agencies, was being postponed due to flaws in the Amended Penal Code.³ Amnesty International views the postponement of these laws as a welcome development which provides an opportunity to the Vietnamese authorities to resolve the issues outlined in this report arising from the texts of those instruments and to ensure compliance of the country's legal system with its international human rights obligations, including under the UNCAT.

In June 2016, an Amnesty International delegation undertook an official visit to Viet Nam at the invitation of the Vietnamese government to discuss the findings outlined in this report. During the visit, Amnesty International met with officials from the Ministry of Public Security; the Ministry of Justice; the Ministry of Foreign Affairs; the Ministry of Labour, Invalids and Social Affairs; the National Assembly Foreign Affairs Department; the Permanent Office on Human Rights of Viet Nam; the Viet Nam Union of Friendship Organizations; the People's Aid Coordinating Committee; and the Commission for External Relations of the Communist Party of Viet Nam. Amnesty International is grateful to all government interlocutors who took part in these meetings.

³ "NA approves delay to Penal Code 2015", *Viet Nam News*, 1 July 2016, available at <http://vietnamnews.vn/politics-laws/298919/na-approves-delay-to-penal-code-2015.html#ylcgjDQiLHbIQ5CK.97>.

TORTURE AND OTHER ILL-TREATMENT IN INTERNATIONAL AND DOMESTIC LAW

Under international law, torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) are prohibited absolutely, in all circumstances and without exception. The prohibition of torture and other ill-treatment was recognized in 1948 in Article 5 of the Universal Declaration of Human Rights. The prohibition has been included in many subsequent human rights treaties, and other international and regional instruments, not least the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)⁴ and the International Covenant on Civil and Political Rights (ICCPR).⁵ The prohibition of torture and other ill-treatment is also a rule of customary international law,⁶ binding on all states whether or not they are parties to particular treaties which contain the prohibition. Indeed, the prohibition of torture is widely recognised as one of a relatively small number of particularly fundamental norms of general international law.⁷

Viet Nam signed the UNCAT on 7 November 2013 and ratified it on 5 February 2015.⁸ Viet Nam is also party to several other treaties which prohibit torture and other ill-treatment, including the ICCPR, which it signed in 1982. Article 7 of the ICCPR prohibits torture and cruel, inhuman and degrading treatment and punishment,⁹ while Article 4 provides that this prohibition is non-derogable, that is, it cannot be repealed or relaxed even in “times of emergency threatening the life of the nation”.¹⁰

⁴ UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNGA res. 39/46, 10 December 1984, entered into force 26 June 1987.

⁵ International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976, Article 7 (and see also Article 4).

⁶ See e.g. International Court of Justice, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, Judgment of 20 July 2012, para. 99; International Court of Justice, *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment of 30 November 2010, para. 87; UN General Assembly Resolution 66/150 (19 December 2011), third preambular paragraph; International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v Furundzija*, no IT-95-17/1, Trial Judgment, 10 December 1998, paras. 137-146.

⁷ International Court of Justice, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, Judgment of 20 July 2012, para 99; UN General Assembly Resolution 66/150 (19 December 2011), third preambular paragraph; International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v Furundzija*, no IT-95-17/1, Trial Judgment, 10 December 1998, paras 153-157.

⁸ See, CAT Status of ratifications, UN Office of the High Commissioner for Human Rights, available at <http://indicators.ohchr.org/>.

⁹ See, ICCPR Status of ratifications, UN Office of the High Commissioner for Human Rights, available at <http://indicators.ohchr.org/>.

¹⁰ See Article 15 of The Convention on the Rights of Persons with Disabilities ratified in 2015. See also, Article 37 of The Convention on the Rights of the Child, ratified by Viet Nam in 1990. The Convention on the Elimination of All Forms of Racial Discrimination, ratified by Viet Nam in 1969, does not contain the prohibition on torture, however, Article 5 guarantees the security of the person and the protection of the

THE UN CONVENTION AGAINST TORTURE

The UNCAT defines torture in Article 1(1) as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

Article 2 of the UNCAT requires states parties, among other things, to take “effective legislative, administrative, judicial or other measures to prevent acts of torture” in their territory and precludes reliance on any exceptional circumstances, including internal political instability, as a justification for torture.

Article 16 requires states parties to undertake to prevent “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture” which are committed by, at the instigation or with the consent or acquiescence of officials. UNCAT does not define cruel, inhuman or degrading treatment or punishment.

Vietnamese law prohibits torture. The Constitution, amended in 2013, provides that “[e]veryone shall enjoy inviolability of the individual and the legal protection of his or her life, health, honor and dignity, and is protected against torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health”.¹¹ Neither the Penal Code (1999) nor the Amended Penal Code (2015), which was due to come into force on 1 July 2016 but which has been postponed due to flaws in its content, explicitly criminalise torture or other cruel, inhuman and degrading treatment and punishment.¹² Article 107 of the 1999 code criminalised other acts of violence perpetrated by those acting in an official capacity, as follows:

*Those who, while performing their official duties, resort to violence outside the scope permitted by law, thus inflicting injury on or causing harm to the health of other persons with an infirmity rate of 31% or higher shall be sentenced to non-custodial reform for up to three years or between three months' and three years of imprisonment.*¹³

Article 97 of the 1999 Code provided for a punishment of two to seven years for the offence of “causing death to people in the performance of official duties”;¹⁴ while Article 298 of the 1999 Code provided for the imprisonment of “[t]hose who apply corporal punishment in investigating, prosecuting, adjudicating and/or judgement-executing activities” for up to 12 years;¹⁵ and Article 299 provided for a punishment of up to 10 years’ imprisonment for “[t]hose who, while conducting investigation, prosecution or trial, employ illegal tricks in order to force persons being questioned to give false evidence”.¹⁶ No explanation of the term

State against violence and bodily harm. The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) was ratified by Viet Nam in 1983. The Committee on the Elimination of Discrimination Against Women has stated that gender-based violence which impairs the enjoyment of human rights by women, including the right not to be subject to torture and other ill-treatment, is discrimination within the meaning of CEDAW Article 1.

¹¹ Constitution of the Socialist Republic of Viet Nam, as amended, adopted by the National Assembly on 28 November 2013, Article 20. An unofficial English translation of the amended constitution by International Democracy and Electoral Assistance (IDEA) is available at http://www.constitutionnet.org/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf. The current Constitution took effect on 1 January 2014. The previous Constitution, adopted in 1992 and amended in 2001, guaranteed, in Article 71, that “[c]itizens have the right to physical inviolability and to have their lives, health, honour and dignity protected by law” but did not contain any express reference to torture or other forms of cruel, inhuman, or degrading treatment or punishment. Article 71 also provided that “[a]ll forms of coercion, humiliation and violation of a citizen’s honour and dignity are strictly prohibited”. The 1992 Constitution, as amended, is available at [http://www.vietnamlaws.com/freelaws/Constitution92\(aa01\).pdf](http://www.vietnamlaws.com/freelaws/Constitution92(aa01).pdf).

¹² See “NA approves delay to Penal Code 2015”, *Viet Nam News*, 1 July 2016, available at <http://vietnamnews.vn/politics-laws/298919/na-approves-delay-to-penal-code-2015.html#ylcglDQiLHblQ5CK.97>.

¹³ Penal Code of the Socialist Republic of Viet Nam, National Assembly, No. 15/1999/QH10, 21 December 1999, Article 107, available at <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn017en.pdf>. See Article 137 of the Amended Penal Code, National Assembly, No. 100/2015/QH13, 27 November 2015, available in Vietnamese at <http://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-hinh-su-2015-296661.aspx>. All references to the content of the Amended Penal Code contained in this Report are taken from an unofficial translation by Amnesty International.

¹⁴ See Article 127 of the Amended Penal Code which increases the punishment range for this offence to imprisonment from five to 10 years.

¹⁵ See Article 373 of the Amended Penal Code which refers to the use of corporal punishment, cruel treatment and humiliation “during the process of criminal procedure, judgement execution or enforcement of measures such as compulsory reform schools, compulsory re-education centres, compulsory [and] detoxification camps”.

¹⁶ See Article 374 of the Amended Penal Code.

“employ illegal tricks” is provided in the law.

Despite this legal framework, however, police brutality, including torture and lethal beatings in police custody, has been reported throughout Viet Nam; victims include not only prisoners of conscience but also people arrested for other crimes.¹⁷ Police officials have been charged and convicted in cases involving deaths in prison. Charges have tended to include lesser offences than murder. For example, Nguyễn Văn Ninh, a police lieutenant colonel, received a four year prison sentence under Article 97 of the 1999 Code for the killing in police custody of a man named Trịnh Xuân Tùng.¹⁸

The Criminal Procedure Code (2003) did not explicitly refer to torture or other cruel, inhuman, or degrading treatment or punishment.¹⁹ However, Article 4 broadly provided that those implementing the Code “respect and protect the legitimate rights and interests of citizens”; Article 6 forbade “[a]ll forms of coercion and corporal punishment” and Article 7 provided for the right of citizens to have “their life, health, honor, dignity and property protected by law”. The Amended Criminal Procedure Code (2015), which was due to come into force on 1 July 2016 but which has been postponed due to flaws in the Amended Penal Code, does expressly provide in Article 10 that “it is strictly prohibited to use torture, extortion, corporal punishment or any other forms of treatment that violate a person’s body, life and health”.²⁰

The Law on the Execution of Criminal Judgements (2010) also does not contain an explicit prohibition on torture and cruel, inhuman or degrading treatment or punishment nor does it outline any prohibition on violence or corporal punishment against detainees.²¹ Article 4, however, does broadly state, without further elaboration, that the “[p]rinciples of execution of criminal judgements” include “[a]bidance by the Constitution and law, guarantee of the interests of the State and the legitimate rights and interests of organizations and individuals”. Paragraph 4 of the same Article guarantees “respect for the dignity and legitimate rights and interests of sentenced persons”.

The new Law on Enforcement of Custody and Detention, which was also due to come into force on 1 July 2016 and which has also been postponed due to flaws in the Amended Penal Code states that the “[p]rinciples of management, enforcement of custody, detention” include “ensur[ing] humanity; no torture, violence, coercion, corporal punishment or any other forms of treatment infringing the legitimate rights and legitimate interests of people in custody and detention”.²² Article 8(1) includes in a list of acts prohibited by the law, “[t]orture, corporal punishment and other forms of treatment and punishment which [are] cruel, inhuman and humiliating towards people; or any other forms of infringement of the rights and legitimate interests of people in custody and detention”. Other elements of the amended code which represent an improvement on existing law include the creation of a more detailed complaints procedure for those in custody and detention albeit one which lacks several of the safeguards outlined in the Mandela Rules.²³

¹⁷ See, for example, “Report on Human Rights in Vietnam 2012”, *Vietnam Human Rights Network*, 11 April, 2013. See also, “Public Insecurity: Deaths in Custody and Police Brutality in Vietnam”, *Human Rights Watch*, 16 September 2014, pp. 36-42, available at <https://www.hrw.org/report/2014/09/16/public-insecurity/deaths-custody-and-police-brutality-vietnam>; “Lại thêm một người chết trong đồn công an” (Another Death in Police Station), *Radio Free Asia*, 23 January 2013, available at http://www.rfa.org/vietnamese/in_depth/poli-abus-powe-01232013065741.html.

¹⁸ *Ibid*, *Human Rights Watch*, pp. 36-42.

¹⁹ Criminal Procedure Code of the Socialist Republic of Viet Nam, National Assembly, No.: 19/2003/QH11, 26 November 2003, available at http://www.wipo.int/wipolex/en/text.jsp?file_id=184178.

²⁰ Amended Criminal Procedure Code of Socialist Republic of Viet Nam, National Assembly, 101/2015/QH13, 27 November 2015, available in Vietnamese at <http://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-to-tung-hinh-su-2015-296884.aspx>. All references to the content of the Amended Criminal Procedure Code contained in this Report are taken from an unofficial translation by Amnesty International. Article 10 of the Amended Criminal Procedure Code is the amended equivalent to Article 6 of the 2003 Code.

²¹ The Law on the Execution of Criminal Judgements (2010) is available in Vietnamese at <http://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Luat-thi-hanh-an-hinh-su-2010-108086.aspx>; and in English at <http://lawfirm.vn/download.php?id=1894>.

²² Law on Enforcement of Custody and Detention, Article 4(3).

²³ See Chapter IX, “Complaint, Denunciation and Resolving Complaint, Denunciation about the Management and Enforcement of Custody, Detention”. Article 44 provides for the right to complain about any infringement of detainee and prisoner rights. However, Chapter IX fails to guarantee, amongst other things, that complaints may be made “without censorship as to substance”; submitted “in a confidential manner”; and that the complainant “must not be exposed to any risk of retaliation, intimidation of other negative consequence as a result of having submitted a request or complaint” as required by Mandela Rules 56 and 57.

The 2010 Law on the Execution of Criminal Judgements and the new Law on Enforcement of Custody and Detention overlap significantly, contradicting each other on several issues. The dynamics between the two instruments, and the primacy of one over the other, is unclear. There is no provision in the Law on Enforcement of Custody and Detention providing for the abrogation of its provisions over pre-existing laws with which it overlaps and/or contradicts. In a meeting with representatives of the Ministry of Justice of Viet Nam on 9 June 2016, Amnesty International was informed that the 2010 Law on Execution of Criminal Judgements is to be reviewed and amended to take into account, amongst other things, Viet Nam's new obligations under the UNCAT.

Viewed in its entirety, the Vietnamese legal framework pertaining to torture and ill-treatment is wholly inadequate and falls well below the standards required by the UNCAT. The Constitution broadly prohibits torture but this prohibition means little in practice in the absence of a criminal offence based on a conclusive definition of torture, as defined in UNCAT Article 1(1). In this regard, the Committee against Torture has stated, in its authoritative General Comment on Article 2, that "States parties must make the offence of torture punishable as an offence under its criminal law, in accordance, at a minimum, with the elements of torture as defined in article 1 of the Convention, and the requirements of article 4."²⁴ The Committee has consistently called on states parties to criminalise torture as a specific crime and to define that crime in accordance with Article 1(1).²⁵ This most basic protection is absent from Vietnamese law.

The Penal Code provisions that do address violence by state officials do so in language that avoids torture and other ill-treatment terminology. The result is vague and deficient criminal offences that tend to reduce the gravity of the criminal conduct involved in a manner which is totally inconsistent with the fundamental and immutable nature of the prohibition on torture and other ill-treatment. The Penal Code also relies on a troubling injury classification scheme which appears to actually permit a wide range of torture and ill-treatment practices. Article 107 of the 1999 Code criminalised the use of violence by state officials which results in harm or injury "with an infirmity rate of 31%", therefore appearing to permit harm or injury of a lower infirmity rate.²⁶ Further, as Article 107 did not appear to account for the mental and psychological element of torture and ill-treatment, and as it relied on a certain level of infirmity, it failed to prohibit torture and ill-treatment which, by design, seek to avoid the infliction of physical injury.

The Criminal Procedure Code similarly fails to provide real substance to the country's broad constitutional ban on torture. In addition to the provisions outlined above which require those implementing the code to respect the "rights and interests of citizens", the Code also contains some procedural safeguards. However, these are limited as a means to prevent torture and ill-treatment and fall short of international standards on fair trial rights. For example, while Article 58 of the 2003 Code provided that "defense counsels shall participate in the [criminal] procedure from the time the custody decisions are issued", a decision which had to be taken within 24 hours of an arrest, participation of defence counsel could be suspended until the "termination of investigation" in cases that involved crimes of infringing upon national security.²⁷ Similarly, while Article 58 also provided for the "right" of defense counsel to "ask questions to the persons in custody or the accused", this was subject to the consent of the investigators. Article 58(2)(f) of the 2003 Code stated that defense counsel also have the "right" to "meet the persons kept in custody; and [to] meet the accused or defendants being under temporary detention" but failed to provide that these meetings were to be conducted in confidentiality and without monitoring or supervision by police or prosecution officials.

²⁴ See for instance, Committee against Torture, General Comment No. 2: Implementation of article 2 by States parties. UN Doc. CAT/C/GC/2, 24 January 2008, para. 8.

²⁵ See for instance, Committee against Torture, Concluding observations on the initial report of Thailand, UN Doc. CAT/C/THA/CO/1, 20 June 2014, para. 9(a); Andorra, UN Doc. A/69/44 (2013-14), para. 54(6); Belgium, *ibid.* para. 55(8); Burkina Faso, *ibid.* para. 56(8).

²⁶ It is noteworthy that the infirmity rate outlined in Article 107 where violence by state officials is concerned, 31%, exceeds the infirmity rate in other provisions not dealing specifically with state officials. See for example, Article 104 which criminalises the infliction of injury at a rate of infirmity between 11% and 30% as well as, where certain other conditions such as the use of a weapon are involved, injuries at an infirmity rate of less than 11%.

²⁷ This limitation is particularly significant for the purposes of this report as a large proportion of prisoners of conscience are arrested under charges of infringing national security. See Chapter 2.

While the Law on Enforcement of Custody and Detention, when it comes into force, will bring about some improvements to the legal framework, it still falls startlingly short of ensuring real protection against torture and other ill-treatment. For example, the text of the new law contains restrictions on visitation by family and legal representation which, as outlined in Chapter 3, are an essential safeguard against torture and other ill-treatment and can, in certain circumstances, themselves amount to torture and ill-treatment.²⁸ The new law also provides for disciplinary procedures that could constitute torture and other ill-treatment, including shackling.²⁹

As mentioned above, the coming into force of the Amended Penal Code, Amended Criminal Procedure Code and the Law on Enforcement of Custody and Detention, due to take place on 1 July 2016, has been postponed due to flaws in the Amended Penal Code. Amnesty International views the postponement of these laws as a welcome development which provides an opportunity to the Vietnamese authorities to resolve the issues outlined in this report arising from the texts of those instruments and to ensure compliance of the country's legal system with its international human rights obligations, including under the UNCAT.

Despite the significant shortcomings outlined above, the country's national laws provide for standards of practice which are higher than the standards contained in other instruments that do not have the status of national law but are heavily relied upon in practice in detention centre and prisons throughout Viet Nam. One such set of standards is Circular No. 37 of the Ministry of Public Security (2011), which provides the legal basis for many of the human rights violations documented in this report.³⁰ Circular 37 is examined in detail in the following chapter.

²⁸ The law states that visits by family are supervised and monitored "closely by the agency dealing with the case and by detention facilities" and provides for denial of visitation rights "of people in custody or detention [who] have violated the rules of detention facilities and custodial management system twice or more" despite the bar, in Mandela Rule 45, on the prohibition of family contact as a disciplinary measure.

²⁹ See Article 23(3).

³⁰ Circular 37, Detailing Classification and Incarceration of Inmates according to Categories, Ministry of Public Security, No. 37/2011/YY-BCA, (2011).

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PRISONS WITHIN PRISONS- EXECUTIVE SUMMARY

TORTURE AND ILL-TREATMENT OF PRISONERS OF CONSCIENCE IN VIET NAM

“Life in prison is hard. I fell into despair. I was in this situation because I was trying to be a good citizen, to help people out according to the law [...] But I was arrested and put in prison. I felt like I was in a dark tunnel with no way out.” Phạm Thị Lộc is a former prisoner of conscience – an individual who was detained for her beliefs or peaceful activism. Her story reflects those of so many of Viet Nam’s peaceful activists. Compelled by injustice in her own life and the lives of others in her community, she started to speak out and to advocate for change. She soon found herself in jail, caught up in a system designed to mete out retribution to those viewed as questioning the authority of the Vietnamese government.

The report Prisons Within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam documents treatment of prisoners of conscience which violates Viet Nam’s international human rights obligations, including the prohibition on torture. The violations documented in the report include enforced disappearances; prolonged periods of incommunicado detention and solitary confinement; the infliction of severe physical pain and suffering; the withholding of medical treatment; and punitive prison transfers. The report is written on the basis of interviews with men and women released in the past five years but also raises concerns relating to the treatment of some of the country’s current prisoners of conscience, which Amnesty International estimates to be 84 men and women.