



Vietnam

3 May 2011

Vietnam must reform its Legal System says report on "Crime and Punishment in the Socialist Republic of Vietnam"

JAKARTA, 30 April 2011 (VIETNAM COMMITTEE) - In a report made public at the Conference on the Rule of law for human rights in the ASEAN region held by the Human Rights Resource Centre for ASEAN (HRRCA) in Jakarta, Indonesia, today, Mr. **Vo Van Ai**, President of *Quê Me: Action for Democracy in Vietnam* and the *Vietnam Committee for Human Rights* called on Vietnam to urgently reform its legal system and bring domestic legislation into line with international human rights laws. This Conference is one of many activities taking place in Indonesia this year during Indonesia's chairmanship of ASEAN. Speakers included Dr. Param Cumaraswamy, former UN Special Rapporteur for Judicial Independence and Impartiality, David Carden, US Ambassador to ASEAN, Martin Hatfull, UK Ambassador to ASEAN, and many academics, civil society delegates and members of the diplomatic community.

The publication of the report, entitled "The Rule of Law or the Rule by Law: Crime and Punishment in the Socialist Republic of Vietnam", coincides with the 36th anniversary of April 30, 1975, the end of the Vietnam War and Vietnam's reunification under communist rule. Mr. Vo Van Ai declared:

"36 years after the end of the Vietnam War, the rule of law exists only in theory in Vietnam. The government has incorporated human rights into its 1992 Constitution. Yet it has also adopted a whole arsenal of Laws, Decrees, Ordinances and Decisions which restrict or even nullify the exercise of these rights, in total violation of the UN Covenant on Civil and Political Rights (ICCPR) to which Vietnam adhered in 1982".

The report examines provisions in the Vietnamese Constitution, Penal Code, Criminal Procedures Code, Press Law, Labour Code, Ordinance on Religion and Belief, and numerous Decisions and Decrees that restrict freedom of expression, opinion, the press, religion, association and assembly, in violation of the ICCPR.

It particularly condemns Vietnam's use of "vaguely-defined, catch-all national security" provisions in the 1986 Penal Code to detain human rights defenders and pro-democracy activists for the legitimate expression of dissenting views. Ambiguous offenses such as "undermining national solidarity, sowing divisions between religious and non-religious people", (article 87), "conducting propaganda against the Socialist Republic of Vietnam" (Article 88), "abusing democratic freedoms to encroach on the interests of the state" (article 258) carry heavy prison sentences. Seven are punishable by death. Ordinance 44, adopted in 2002, authorizes local security police and People's Committee's to detain "suspected national security offenders" for up to two years under house arrest, in "rehabilitation" camps or in psychiatric institutions without any due process of law.

The report notes that Vietnam continues to adopt restrictive legislation whilst receiving millions of dollars from the World Bank, the UNDP, the ADB and a host of donor countries for legal reform programmes such as the Strategy on Development of the Legal System and the Strategy on Judicial Reform.

"The international community should ensure that legal reforms comply with international human rights standards,

otherwise funding should be withdrawn. Without guarantees of accountability, tax-payers' money will help Vietnam to stifle its people's freedoms and rights. Vietnam is not building the rule of law but the rule by law - the use of the law to suppress legitimate democratic advocacy and reinforce the powers of the one-Party state" said Vo Van Ai.

It gives three profiles of people detained under different aspects of the arbitrary legal system:

"Flawed process, Unfair trial: the case of legal expert Cu Huy Ha Vu" describes the flawed accusations and unfair Court hearing of this prominent defender of political and environmental rights who "sought to use the legal system to demand official accountability and justice for victims of human rights abuses". The son of a celebrated poet and revolutionary figure, Cu Huy Ha Can was sentenced to 7 years in prison and 3 years house arrest on April 4, 2011 for "anti-Socialist propaganda".

"Two charges, No crime: the case of blogger Dieu Cay" describes the second charge of "anti-socialist propaganda" imposed on blogger Nguyen Van Hai (pen name Dieu Cay) on the day of his release from prison (19.10.2010) after completing a 30-month sentence for "tax evasion". His wife has not seen him since then. She has travelled 13 times to the Xuan Loc prison camp in Dong Nai but has been refused the right to visit. Prison authorities would not take the provisions she brought her husband on the grounds that "he refuses to accept them". She fears that Dieu Cay may have died in detention. "Only dead prisoners refuse food", she wrote in a letter on April 20, 2011.

"Legal Limbo - 28 years in Prison, Internal Exile and House Arrest: the case of Buddhist leader Thich Quang Do" describes the plight of Buddhist monk and leader of the banned Unified Buddhist Church of Vietnam who has endured various forms of imprisonment over the past 28 years for "crimes" such as opposing the creation of the State-sponsored Vietnam Buddhist Church (10 years in internal exile) or organizing an UBCV relief mission for victims of flooding in the Mekong Delta (5 years in prison). He has been under de facto house arrest at the Thanh Minh Zen Monastery since 1998, forbidden to preach, denied citizenship rights and held under continuous surveillance.

In its recommendations, the report called on Vietnam to **abrogate Article 4 of the Constitution** on the mastery of the Communist Party, which is "the key obstacle to freedom of opinion and expression, and the basis of State discrimination"; **to delete from the Constitution**, Penal Code, Press Law, Labour Code and other domestic legislation "all articles which subjugate individual rights to the interests and policies of the State" and otherwise limit the exercise of human rights enshrined in the ICCPR; to urgently repeal or revise the **"national security laws"** as recommended by UN member states at Vietnam's Universal Periodic Review in 2009; to release all prisoners detained under national security laws for the expression of peaceful political views or religious beliefs; bring the **Ordinance on Religions and Beliefs** into line with freedom of religion as guaranteed in Article 18 of the ICCPR and re-establish the legal status of the UBCV and all other non-recognised religions.

In conclusion, it urged the international community to ensure that all laws adopted under legal reform programmes, including the Strategy on Judicial Reform and the Strategy on the Development of the Legal System comply with international human rights standards, and to withdraw funding if compliance is not met.

The report also called on member states of ASEAN, under this year's chairmanship of Indonesia to use the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) as platforms to engage Vietnam in a genuine dialogue on human rights violations in its country.

<http://www.fidh.org/Vietnam-must-reform-its-Legal-System-says-report>