



# Uniya

JESUIT SOCIAL JUSTICE CENTRE

VIEW ON ASIA briefing series



## VIETNAM

### Socialist Republic of Vietnam

**Capital:** Hanoi

**Head of state:** Tran Duc Luong

**Head of government:** Phan Van Khai

**Border countries:** China, Laos, Cambodia

Vietnam<sup>1</sup> is a one party state, which is ruled and controlled by the Communist Party of Vietnam (CPV). Since the collapse of the USSR and the market-based economic reforms undertaken by the Vietnamese Government in the 1980s, Vietnam has moved away from defining its relationships on the basis of ideological considerations and is taking an increasing role in the international community through its participation as a member of the UN, ASEAN, ARF, ASEM, APEC, the Non-Aligned Movement and has sought accession to the WTO. Vietnam also has significant trading relations with a number of countries within and outside the region. Japan is currently Vietnam's most significant trading partner.<sup>2</sup>



<sup>1</sup> The correct spelling of the country's name is "Vi?t Nam". For practical reasons, this paper follows Western convention for all Vietnamese spelling of names.

<sup>2</sup> Australian Department of Foreign Affairs and Trade (DFAT), *Fact Sheet on Vietnam*, March 2004.

Vietnam has a population of over 76 million, with about 80% of the population being ethnic Vietnamese. The remainder of the population come from the country's 53 ethnic minority groups, which include the Hmong and Tay in the north and west, the Montagnard<sup>3</sup> in the central highlands, the Cham in the south-central coastal plain and the ethnic Chinese (Hoa) and Khmer in the south.<sup>4</sup>

Mahayana Buddhism is the principal religion in Vietnam. There are also significant religious minorities, including Protestant, Catholic, Muslim, Theravada Buddhism, Hindu and Baha'i and the native Hoa Hao and Cao Dai religions.

Despite the political, ethnic and religious differences between Australia and Vietnam and Australia's participation in the war between the United States and North Vietnam in the 1960s, Australia and Vietnam are developing a bilateral relationship. This is principally through trade with Australia being Vietnam's third largest customer for exported goods and services and the 15th largest supplier of imported goods and services to Vietnam.<sup>5</sup> Australia also holds annual human rights talks with Vietnam, which is now in its third year.

The Vietnamese/Australian relationship is also developing well on an education level. RMIT University has established a Centre for Systems Development with the Vietnamese National University in Hanoi for the development of engineering programs. It has also recently established a University in Ho Chi Minh City and undertakes research in partnership with Vietnamese scientific institutions. This has resulted in the development of a number of collaborative research projects for

Vietnamese and Australian university staff and students into issues such as water quality and water treatment.

This paper provides an overview of the historical, political and legal situation in Vietnam, discusses some of the key human rights challenges currently facing Vietnam, and considers the issues these challenges raise for Australia as a member of this region and trading partner of Vietnam.

### Historical overview

Since obtaining independence from the Chinese in 938 AD, Vietnam has defended itself against a number of attempts by China to reintegrate Vietnam as a Chinese province. Present day Vietnam was first unified in 1802. In 1862, Emperor Tu Duc ceded several provinces in the Mekong Delta to France as a colony of Cochin China. By 1901, Vietnam had accepted French rule over the remaining territory of Vietnam, which was divided into two protectorates: Tonkin in the Red River Delta and Annam on the central coast.

The Communist Party of Indochina grew out of the early nationalist and revolutionary movements which emerged in the decades before the Second World War. The Party was established in 1930 and was supported by the USSR. Although left-wing activities were banned during the Second World War, secret networks continued to operate, and in 1941 the Revolutionary League for the Independence of Vietnam (Viet Minh) was formed under the leadership of Ho Chi Minh.

France maintained control of Vietnam until early 1945 when it was deposed by the Japanese. The Japanese appointed a Japanese sympathetic emperor, Emperor Bao Dai. Following the Japanese surrender in the Second World War, Viet Minh took control of a number of mainly northern provinces of Vietnam. In the same year, Bao Dai abdicated and the National

<sup>3</sup> The indigenous minorities in the Central Highlands are collectively known as the Montagnards.

<sup>4</sup> DFAT, *Vietnam Country Brief*, July 2004, p.1.

<sup>5</sup> DFAT, March 2004, op cit.

People's Congress headed by President Ho Chi Minh was convened in Tan Trao on 16 August 1945. The Congress appointed a provisional Government and Ho Chi Minh declared independence and the establishment of the Democratic Republic of Vietnam on 2 September 1945. The First General Election to elect the National Assembly was held on 6 January 1946.

After the conclusion of the Second World War, France regained control over the south from the British and negotiated the withdrawal of the Chinese in the north by March 1946. The relationship between France and the Viet Minh degenerated by late 1946 which led to a protracted guerrilla war, with China supporting the Viet Minh. The war ended with the French defeat in May 1954. An agreement negotiated in Geneva provided for a single Vietnam which was to be administered in the north from Hanoi by the government of the Democratic Republic of Vietnam and in the south by the government of the State of Vietnam. The French under Bao Dai founded the southern government in 1949.

Ngo Dinh Diem overthrew Bao Dai in 1955 and more closely aligned South Vietnam with the US creating tension with the communists in South Vietnam. From 1963, the US provided military advice to South Vietnam and subsequently provided military force in the war against North Vietnam. Australia, New Zealand, Thailand, South Korea and the Philippines also contributed forces in support.

The Vietnam War (known in Vietnam as the American War) devastated Vietnam's economy and environment, cost the lives of 1 million Vietnamese combatants and 4 million civilians, and left millions more displaced. Nearly 60,000 American soldiers also died or are missing. Australia lost almost 500 of the 47,000 combatants they had deployed. The war continues to impact Vietnam's society, economy and environment through the effects of, among other things, the toxic chemical defoliant

Agent Orange, landmines and unexploded shells.

The war continued until an agreement was concluded in Paris in 1973, which provided for the withdrawal of the US and its allies and notionally provided for the security of South Vietnam. However, this security was not enforced and in 1975 North Vietnam overtook Saigon and renamed it Ho Chi Minh City. Vietnam was formally reunified on 2 July 1976 and the Socialist Republic of Vietnam was founded. The CPV was founded in December 1976.

There were a number of disputes and tensions between Vietnam and China from the 1970s over a range of issues, including border disputes, the plight of Chinese living in south Vietnam, China's support for the Pol Pot regime in Cambodia and Vietnam's alignment with the USSR. Tensions continue today with disputes over claims in the South China Sea, however the relationship appears to be improving with a land border treaty being signed in 1999 and a maritime boundary agreement signed in 2000.<sup>6</sup>

### **Political overview**

Vietnam is a one party state, which is ruled and controlled by the CPV. The CPV has a constitutionally mandated role in the government of Vietnam. This combined with all senior government positions being held by CPV members enables the CPV to broadly determine the national policy of Vietnam.

The CPV has authority over the implementation of social, economic, labour, defence, security and foreign policy.

In 1986, the CPV implemented a program of limited market-based economic reforms, known as "doi moi" (renovation) to address the country's desperate economic conditions and changing global circumstances with the

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<sup>6</sup> DFAT, July 2004, op. cit., p.4.

end of the Cold War. The objective of the reforms was to move Vietnam towards a market economy with a socialist orientation. These reforms provided for some limited privatisation and decentralisation of economic planning which allowed for market forces to play a greater influence in determining prices and production. Foreign investment was encouraged and agriculture deregulated. The reforms contributed to the increase in economic growth in Vietnam.

The CPV presently faces a number of difficult social and economic issues with the overriding concern being how to ensure that its existence continues in a more open economic environment.

In this new environment, there has been an increasing tendency for the general public as well as members of the CPV to express dissent. There are signs that the CPV is attempting to deal with some issues by introducing reforms of the CPV to improve efficiency and reduce corruption and channelling more benefits of economic reform to rural areas. There have also been some signs of greater political openness, including the release of a number of political dissidents imprisoned for peaceful expression of their political or religious beliefs in 1998 and 2000. However, as discussed below, there are clearly limits to this reform.

### **Governance and legal overview**

The National Assembly is the highest representative of the people and State power. It exercises supreme supervisory power over the implementation of the Constitution and laws. It has constitutional and legislative power to decide the fundamental domestic and foreign policy, socio-economic issues as well as defence and security issues.

The National Assembly approved the first Constitution on 9 November 1946. The Vietnamese regime is based on the key ideology of the 1946 Constitution that:

All the powers in the Democratic Republic of Vietnam belong to the people who make use of State power through the agency of the National Assembly and the People's Council elected by the people and accountable to the people.

The National Assembly remains subject to the direction of the CPV. Its members are elected but candidates are vetted by the CPV's Vietnam Fatherland Front. However, the National Assembly is playing an increasingly independent role as the organisation which receives concerns and raises them with the Government. It has also been a critic of government corruption and inefficiency, and has also made progress in the improvement of the transparency of the legal and regulatory systems.

The President is the Head of State and represents Vietnam internally and externally. The National Assembly elects the President from its members. The President is responsible and reports to the National Assembly.

The Government is the executive body of the National Assembly and carries out the overall management of the government. The Government is composed of the Prime Minister, the Deputy Prime Minister, Cabinet Ministers and other members. Other than the Prime Minister, the members do not have to be members of the National Assembly. The Government is accountable, and reports, to the National Assembly.

The judiciary remains subject to the influence of the CPV and the Government. Although the Constitution provides for the independence of the judiciary, in practice the CPV controls the judiciary by selecting judges and maintaining a strong influence in high profile cases, particularly those involving allegations that might harm the CPV or the international reputation of Vietnam. The National Assembly controls the judiciary's budget and the State President appoints the judges from those selected by the CPV. The Supreme

People's Court, the Local People's Court, Military Tribunals and other tribunals established by law are the judicial bodies of Vietnam. The Supreme People's Court supervises and directs all judicial work. The President of the Supreme People's Court is responsible and reports to the National Assembly.

The Ministry of Public Security is primarily responsible for internal security; it controls the police and enforces laws and regulations, however the military has retained responsibility in remote areas.

### **Current political and human rights challenges**

The marriage of political socialism and economic capitalism poses a number of challenges for the Vietnamese Government and the people of Vietnam. The move away from a centrally planned economy to a market-based economy has a significant impact on the uniform distribution of wealth and has the tendency to create real differences in the benefits provided to the people. The difference in benefits and ultimately welfare, is a social issue which the Government has to manage.

As has been experienced in other countries, the move towards a more liberal market-based economy away from a centrally-planned and controlled economy, as well as the increase in foreign influence resulting from the increase in foreign investment, contributes to an environment which encourages public dissension.

The fact that the Government is almost entirely controlled by members from the dominant Vietnamese ethnic group and minority groups have little or no voice in the Government, leaves the minority groups with little option but to voice their issues publicly by demonstrations or on the Internet.

The Government has responded to these challenges in a number of ways, some

constructive, however there are others which raise serious human rights concerns.

The positive ways in which the Government has responded include the introduction of reform of the CPV to improve efficiency and reduce corruption, and the development of ways to ensure rural areas receive the benefits of economic reforms.

However, the Government has also attempted to reign in the dissension from ethnic, religious and political minorities through force and coercive ceremonies which require the minorities to renounce their beliefs and swear allegiance to the Government and the CPV. The Government has maintained media censorship, restricted freedom of expression through the regulation of Internet usage. The Government's ability to act in this way has been made possible by the nature and structure of the Vietnamese legal system. The Government also has not done enough to alleviate discrimination against women and children.

Vietnam has ratified the International Covenant on Civil and Political Rights (ICCPR)<sup>7</sup> and has complied with its reporting obligations as a party to the ICCPR, however it appears that many of the fundamental rights guaranteed under the ICCPR are not upheld in Vietnam. This is primarily because either the fundamental rights have not been incorporated into the domestic law of Vietnam, or where the rights have been incorporated into domestic laws, in practice the laws are not enforced.

Amnesty International reviewed and reported to the United Nations Human Rights Committee ("the Committee") on the second periodic report under the ICCPR by the Vietnamese Government. Amnesty International welcomed Vietnam's compliance with the reporting process but

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<sup>7</sup> Vietnam acceded to the ICCPR on 24 December 1982.

believes that Vietnam has failed to fully respect its obligations under the ICCPR.<sup>8</sup> Amnesty International identified that the failure to uphold the fundamental guarantees of the ICCPR is most evident in discrimination based on religion, ethnicity or politics, media censorship, discrimination against women and children, and the inadequacies of the judicial and legal system.

### *Discrimination on basis of religion or ethnicity*

Article 18 of the ICCPR provides the right to freedom of thought, conscience and religion. There is, however, a significant gap between the rights guaranteed by this Article and Article 70 of the Vietnamese Constitution. Article 70 provides:

The citizen shall enjoy freedom of belief or religion; he can follow any religion or none. All religions are equal before the law. The places of worship of all faiths and religions are protected by the law. No one can violate freedom of belief and of religion; nor can anyone misuse belief and religion to contravene the law and State policies.

Article 70 fails to provide the people of Vietnam with the same rights guaranteed by Article 18 of the ICCPR as the words "nor can anyone misuse belief and religion to contravene the law and State policies" provide significant scope for the Government to control all aspects of religion, including which religions may be practised and the way they may be practised. This is an example of where the Government 'gives with one hand and takes with the other'. The first part of the Article gives some positive rights in respect of freedom of religion, while the last part of the Article takes them away in certain circumstances by saying the rights will only apply provided they are not misused and it

is up to the Government to determine whether or not they are being misused.

Furthermore, the limited rights granted by Article 70 are not enforced in practice. Not all religions are equal before the law. Only religions that have been officially recognised have legal rights. To be authorised, the group must obtain Government approval of its leadership and overall scope of its activities. Failure to comply leads to persecution. The Government retains supervisory control of authorised religions. All religious organisations have to be affiliated with the CPV and an organisation called the Patriotic Front.<sup>9</sup> Government permission is required for many religious practices, including general meetings, charitable activities, operation of schools and ordination and promotion of clergy and travel outside the country. Religious training must be approved by the State and must promote the policy of "socialism". State approved churches are also required to promote Government policies on a wide range of issues.

Any person who practices religion in a way regarded as hostile to the State is liable to arbitrary arrest and detention for long periods of time.

### *Repression of the Montagnards*

#### *The 2001 unrest*

In February 2001, thousands of Montagnards held protests. Their grievances included the confiscation by the Vietnamese Government of their ancestral forest homelands, Vietnamese lowland settlers taking their agricultural land, lack of freedom of worship (many are members of unauthorised evangelical Protestant

<sup>8</sup> Amnesty International, *Socialist Republic of Vietnam, A human rights review based on the International Covenant on Civil and Political Rights*, 1 October 2002.

<sup>9</sup> The Patriotic Front is the umbrella organisation and liaison body for the CPV, the various social groupings within Vietnam (such as the ethnic minorities), Vietnamese living abroad and all the religious communities in the country.

churches) and denial of basic rights including education in native languages. Some also called for independence of the Central Highlands region.

The Vietnamese Government quickly closed off the area. There were a number of arrests and reports of torture and other abuses. At least 1,500 Montagnards sought asylum in Cambodia. Despite talks between the Governments of Vietnam and Cambodia and the UNHCR, Vietnam and Cambodia eventually commenced repatriating the asylum seekers in ways that fell short of the UNHCR approved practices and procedures, including forcibly deporting asylum seekers.

At least 38 Montagnards were sentenced in Vietnam to between 3 and 12 years' imprisonment for their involvement in the 2001 unrest. Unconfirmed reports indicate that probably hundreds more were arrested.

In 2002, reports suggested that the Vietnamese Government was continuing to target those accused of organising the 2001 protests as well those with links to expatriate Montagnard groups advocating independence and influential figures in the unofficial Protestant churches.<sup>10</sup>

It has been suggested by Amnesty International that the crack down resulted from concern about the increasing number of converts to the Protestant church.<sup>11</sup> Converts have increased from 12,000 in 1975 to nearly 100,000 in 1996.<sup>12</sup> The Government has criticised the church as being a political organisation which is aimed at sabotaging unity among ethnic groups in the Central Highlands, sowing division within the Protestant Church in

Vietnam, and creating political instability in the Central Highlands.<sup>13</sup>

### *The 2003 unrest*

The repression of the Montagnards escalated in 2003. In February 2003, the Government issued new directives forcing Montagnard villages to "swear brotherhood" with local party cadres. The directives also instructed local officials to coordinate activities with hamlet and village leaders, the CPV Fatherland Front and all departments to "eradicate out-dated and backward ways and eradicate all illegal religious organizations".<sup>14</sup> The purpose of these directives appears to be to rein in members of the Montagnard ethnic groups by force (arrest and detention) or coercive ceremonies that require them to renounce Christianity and swear allegiance to the Government and CPV. The directives further the Government's desire to "better manage religion" and achieve the goal of "great national unity" which the Government appears to believe is the solution to the problems of land, religion and ethnicity in the Central Highlands.<sup>15</sup>

In support of the new directives, the Vietnamese Government arrested a number of Montagnard Christians and those suspected as wanting to flee Vietnam or for supporting the US based Montagnard Foundation, Inc – an indigenous rights organisation. This followed a number of arrests and church closures at the end of 2002.

A number of abuses appear to be continuing and include:

- closure and ransacking of churches;
- official prohibitions on nighttime gatherings and travel outside villages without permission;

<sup>10</sup> Amnesty International, *Socialist Republic of Vietnam/Kingdom of Cambodia. No sanctuary: The plight of the Montagnard minority*, 18 December 2002.

<sup>11</sup> Amnesty International, December 2002, op cit.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Human Rights Watch, *Vietnam: New Documents Reveal Escalating Repression*, A Human Rights Watch Briefing Paper, April 2003.

<sup>15</sup> Ibid.

- confiscation and/or destruction of villagers' farmland;
- interrogations and physical abuses; and
- posting police officers inside Christian homes to monitor activities and prevent the residents from freely observing their religion at home.<sup>16</sup>

The repression of the Montagnards has led to an increase in the flow of Montagnards seeking asylum in Cambodia. At least dozens, but perhaps hundreds, have tried and failed to obtain asylum protection from the UNHCR in Cambodia. In the first 3 months of 2003, more than 100 Montagnards were forcibly returned from Cambodia to Vietnam.<sup>17</sup> Human Rights Watch has documented the fact that many Montagnards have been beaten, detained or sentenced to long prison terms on return to Vietnam.<sup>18</sup>

The Cambodian Government announced in early April 2003 that it would close the refugee transit centre operated by the UNHCR in Phnom Penh as soon as the final 42 refugees had been resettled. The failure by the Cambodian Government to offer protection to the asylum seekers and means by which claims are assessed seriously undermines the UNHCR's ability to protect and screen any asylum seekers, including any new Montagnard asylum seekers and is likely to lead to an increase in the number of asylum seekers seeking refuge in countries outside the UNHCR process.

#### *The 2004 Easter protests*

On 10 and 11 April 2004, there were large scale protests in the Central Highlands involving as many as 30,000 Montagnards. Montagnard activists say that the protests were peaceful and aimed at pressing for religious freedom and the return of ancestral lands in the Central Highlands.

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

Reports from eyewitnesses obtained by Human Rights Watch indicate that hundreds of demonstrators were wounded and many killed by security forces and men in civilian clothes armed with clubs and metal bars.<sup>19</sup> The reports also indicate that since the protests there has been a massive increase in the number of soldiers and police in the region. Security forces have apparently been conducting extensive searches of villages and surrounding areas to arrest Montagnards who fled their villages to prevent them from seeking asylum in Cambodia. Police have also allegedly been arresting people with relatives in the US and Church leaders, regardless of whether they were involved in the protests. Human Rights Watch suggests that this may be to prevent them from informing people outside Vietnam about the atrocities.<sup>20</sup>

Some Montagnards have attempted to cross the border to Cambodia to claim asylum but apparently this has been difficult because of the increased security presence on both sides of the border and that Cambodia has continued to forcibly return Montagnard asylum seekers. In July, the Cambodian Foreign Minister, Hor Namhong, supported previous statements by Cambodian authorities that the Montagnards were illegal economic migrants not legitimate asylum seekers.<sup>21</sup>

However, as a result of intense international pressure, Cambodia finally allowed UNHCR to access the Ratanakiri north eastern province of Cambodia where a number of Montagnard asylum seekers were apparently hiding. The UNHCR airlifted 198 Montagnards to a safe house in Phnom Penh where their claims for asylum are being processed.<sup>22</sup> It has been reported

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<sup>19</sup> Human Rights Watch, *Vietnam: Independent Investigation of Easter Week Atrocities Needed Now*, 27 May 2004, p.7.

<sup>20</sup> Ibid., p.3.

<sup>21</sup> Ibid., p.4.

<sup>22</sup> VOA, Voice of America News, 28 July 2004; and Go Asia Pacific, 31 July 2004 and 4 August 2004.

that 42 Montagnards remain in hiding in Cambodia's north eastern jungles.

Among the articles about religious freedom and prospects for growth in the Central Highlands on the *Voice of Vietnam* website are a number of articles about the henchmen of Ksor Ksor being responsible for the "social disorder in the Central Highlands on April 10-11". Ksor Ksor is the leader of an alleged terrorist organisation in exile in the US. The articles explain that the henchmen responsible for the "social disorder" openly made "their confessions in front of local people and vowed not to commit crimes again".

The Foreign Ministry has accused Ksor Ksor and the US-backed Montagnard Foundation Inc of carrying out terrorist acts, seriously violating Vietnam's laws and threatening Vietnam's security and territorial integrity.<sup>23</sup>

### *Repression of Hmong Protestants*

There have been reports that Hmong Protestants in several north western villages are suffering severe abuses, including detention and imprisonment for practising their faith.<sup>24</sup> The authorities have justified their actions on the basis that the religion was illegal because its purpose was to oppose the Government.<sup>25</sup> There are also reports of a systematic campaign on the part of local authorities to force the ethnic minorities into renouncing their faith under threat of physical abuse or confiscation of property and that some have been beaten and killed for failing to renounce their faith.<sup>26</sup> Officials reportedly ordered many non-authorized Protestant gatherings to cease, prohibited children of Protestant families from attending school beyond the

third grade, and soldiers reportedly moved into homes to interfere with their ability to worship. The Government charged persons with practising religion illegally by using provisions of the Criminal Code which allow the Government to impose gaol terms of up to 3 years for abusing freedom of speech, press or religion. The Code also allows the Government to impose penalties for those attempting to undermine national unity by promoting division between religious believers and non-believers.

### *Detention of Buddhist monks*

Prior to 1975, the Unified Buddhist Church of Vietnam (UBCV) was a major religious force in South Vietnam. The UBCV has not been authorised by the State and its monks have been detained by being confined to their pagodas and remain cut off from the outside world. In March 2003, the Supreme Patriarch of the UBCV, Most Venerable Thich Huyen Quang, was released from house arrest where he had resided since 1982. However, by the end of 2003, it appeared that several leaders of UBCV, including the Supreme Patriarch, resided only in their pagodas and appeared to be allowed to travel only with the permission of security authorities. A number of other UBCV monks have recently been sentenced for 2 years administrative detention and compulsory surveillance.

Thich Tri Luc, a former Buddhist monk has been persecuted for many years for being a member of the UBCV, for protesting against the treatment of Buddhists, and for calling for the respect of religious freedom. He has been imprisoned on numerous occasions in the past decade on charges including "taking advantage of freedom and democratic rights to infringe upon the interests of the state, social organizations, and citizens". He fled to Cambodia and was granted refugee status by the UNCHR in June 2002. However, on 25 July 2002 he was abducted by Vietnamese and Cambodian authorities and forcibly

<sup>23</sup> Voice of Vietnam News, July 2004, [www.vov.org.vn](http://www.vov.org.vn)

<sup>24</sup> Section 2c of the US Department of State, *Country Report on Human Rights Practices, Vietnam, 2003*

<sup>25</sup> Human Rights Watch, May 2004, op. cit.

<sup>26</sup> Sections 1a and 2b of the US Department of State, 2003, op. cit.

returned to Vietnam where he "disappeared" for more than a year. It has subsequently been revealed that he was detained on charges of "fleeing abroad or defecting to stay overseas with a view to opposing the People's administration". On 12 March 2004, the People's Court of Ho Chi Minh City sentenced Thich Tri Luc to 20 months' prison on charges of distorting "the government's policies on national unity" and for contacting "hostile groups to undermine the government's internal security and foreign affairs". In late June he was finally permitted to leave Vietnam and now resides in Scandinavia.<sup>27</sup>

Other examples of tensions between religious groups and the Government include the October 2000 clashes between Hoa Hao followers and authorities in the An Giang province. The clash related to the conviction of a number of Hoa Hao followers for defamation of the Government and abuses of democracy.

### *New Ordinance affecting religion*

An Ordinance on belief and religion<sup>28</sup> was signed on 18 June 2004 and will take effect on 15 November 2004. The Vietnam News Agency<sup>29</sup> reports that the Ordinance provides a legal basis to ensure people's basic rights to belief and religious freedom provided by the Constitution and reinforces the Government's management in this area. The Ordinance institutionalises the CPV and the Government policies and guidelines on belief and religion, including which religions may be practiced, the authorisation of monks and clerics, and the places where religions may be practised.

Of particular concern are the provisions of the Ordinance which ban the use of the right to religious freedom to: undermine peace, independence and national unity; incite violence; wage war; disseminate information against laws; sow division among people, ethnic groups and religion; cause public disorder; harm other people's lives, health, dignity, honour and property; hinder people from exercising their rights; and spread superstitious practices or to breach the law. The Ordinance also bans individuals and organisations from conducting religious activities that affect the country's security and public order or which harm national unity, people's livelihood or the environment.

### *Discrimination on basis of political belief*

The rights guaranteed by Article 19 of the ICCPR to the freedom of opinion and expression are not protected in Vietnam. The Vietnamese Constitution provides that all citizens are equal before the law (Article 52) but does not go as far as guaranteeing that all individuals should enjoy the rights of the ICCPR without distinction. Specially, Vietnamese law does not contain the duty to ensure that no distinction is made on the basis of political or other belief and, in reality, many individuals are imprisoned on the basis of political or other belief.

Amnesty International is concerned that Vietnamese laws are drafted to criminalise the right to freedom of expression, which means that anyone with a different political view to the CPV and dares to say so will be held to have committed a crime in Vietnam.<sup>30</sup> The official *Voice of Vietnam* website<sup>31</sup> stated on 25 October 2001:

Taking advantage of the information super highway, reactionaries in Vietnam transferred incorrect information on democracy in Vietnam abroad. As a

<sup>27</sup> Human Rights Watch, *Vietnam: Buddhist Dissident Forced to Flee*, 23 June 2004.

<sup>28</sup> See the translation of Ordinance Regarding Religious Belief and Religious Organisations, No. 21/2004/PL-UBTVQH11 of 18 June 2004, [www.freedomhouse.org/religion/country/vietnam/Ordinance%20on%20Religion.pdf](http://www.freedomhouse.org/religion/country/vietnam/Ordinance%20on%20Religion.pdf)

<sup>29</sup> VNA, [www.vnagency.com.vn](http://www.vnagency.com.vn)

<sup>30</sup> Amnesty International, October 2002, op. cit.

<sup>31</sup> [www.vov.org.vn](http://www.vov.org.vn).

result, anti Vietnam forums and organizations' evidence of Vietnamese violations of democracy is nothing but a hoax, revealing their intentions to impose western-style freedom of democracy and a US attitude towards religious and human rights issues. The goal in spreading doctrines of freedom of democracy, ideas unfamiliar to the history and culture of Vietnam and the socialist nature of the country is to erode local Vietnamese people's confidence in the socialist path and ruin belief in the homeland's future for more than two million overseas Vietnamese. Some overseas organizations and anti-Vietnam media agencies praised certain agitators as 'democracy supporters', their discordant voices represent nobody but themselves.

Critics of the Vietnamese Government or CPV continue to face persecution, arbitrary arrest and indefinite detention. For example, in January 2002, the Vietnamese Government ordered the seizure and destruction of publications of retired former senior CPV official, General Tran Do, and physicist, Nguyen Thanh Giang, pursuant to the new directive which allows for the destruction of publications which are not authorised by the CPV.

Four members of a democracy group formed in August 2002 to bring domestic laws into line with the ICCPR have been arrested, Nguyen Vu Binh, Pham Hong Son, Nguyen Khac Toan and Le Chi Quang. They have each been imprisoned after very short trials for periods of between 4 and 12 years on charges including espionage and committing offences against the State.

In recent months a number of political dissidents have been imprisoned on the basis of charges of "abusing democratic freedoms to infringe upon the interests of the state". Dr Nguyen Dan Que, a physician who has already spent nearly 20 years in prison for his public appeals for a multiparty political system and an end to censorship, was sentenced to a further two and a half years prison for writing and publishing on the Internet an essay about state censorship of information and the media. Pham Que Duong, a prominent military historian and former army colonel and Tran Khue, a sociologist and professor

at the University of Ho Chi Minh City were both convicted for 19 months' prison after they established an anti-corruption organisation and signed a petition to Vietnam's National Assembly calling for democratic reforms.<sup>32</sup>

Members of ethnic minority groups in the Central Highlands who disagree with the Government on how their region should be governed have been sent to prison for up to five years for "distributing propaganda and inciting the local ethnic minority to cause social unrest".<sup>33</sup>

The right of assembly is restricted by law and the Government restricts and monitors all forms of public protest. Permits are required in order to gather in a group and members of groups which are perceived as having some political purpose are routinely denied permits. This power is also used by the Government to restrict religious gatherings.

### *Media censorship and control of Internet use*

Not only is the right to freedom of opinion and expression guaranteed by Article 19 of the ICCPR not protected in Vietnam, it is treated like a crime. Individuals are subjected to harassment, detention and imprisonment for expressing their opinions even peacefully.

The media is state controlled and access to information (including on the Internet) is subject to legal restrictions. Journalists practice self-censorship within the guidelines of the CPV and Government. The guidelines are "enforced" by the Culture and Ideology Commission of the CPV and Ministry of Culture and Information, which monitors the media. The Ministry of Police has recently released "Decision 71", which requires that any

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<sup>32</sup> Human Rights Watch, *News: Elderly Dissidents Convicted*, 30 July 2004.

<sup>33</sup> Amnesty International, December 2002, op. cit.

person wishing to use the Internet to present their identification and write names in a logbook. The Decision also limits the use of the Internet at cafes or Internet shops to Vietnamese citizens.

### *Status of women and children in Vietnam*

Vietnamese laws cover domestic violence, however it appears that authorities do not enforce the laws.

The Vietnamese Criminal Code makes illegal the use of violence, threatening violence, taking advantage of a victim who is unable to act in self-defence, or resorting to trickery to have sexual intercourse with a victim against that person's will. This appears to criminalise rape and possible spousal rape and sexual harassment, but there have been no known instances of prosecution for spousal rape.<sup>34</sup>

Problems remain with women being forced into prostitution as well as trafficking in women for the purpose of sexual exploitation, both domestically and internationally. Social discrimination against women continues.

Children continue to be at risk of economic exploitation and wide spread poverty has contributed to child prostitution and trafficking in children for the purposes of sexual exploitation. This is despite the trafficking of women and children being prohibited by the Penal Code.<sup>35</sup>

### *Inconsistencies between the rights guaranteed by ICCPR and the Vietnamese judicial and legal system*

There are a number of ways in which the Vietnamese legal system fails to provide the same guaranteed rights as provided by the ICCPR.

### *Failure to prosecute for torture and other such behaviour*

Article 71 of the Vietnamese Constitution provides that:

the citizen shall enjoy inviolability of the person and protection of the law with regard to life, health, honour and dignity. ... It is strictly forbidden to us all forms of harassment and coercion, torture, violation of his honour and dignity, against a citizen.

However, the provisions to uphold these rights are weak and torture is not a specific offence under the Vietnamese Criminal Code. Despite evidence of torture or cruel and inhuman or degrading treatment, particularly of political and religious dissidents, Amnesty International is not aware of any person being tried and convicted for this type of behaviour.<sup>36</sup>

There are also unverified reports of torture and ill-treatment of those arrested as a result of the unrest in the Central Highlands in 2001. The reported conduct violates the ICCPR as well as Vietnamese domestic laws.

### *Criminalisation of fundamental ICCPR rights*

Certain Vietnamese laws criminalise some fundamental rights guaranteed by the ICCPR, including sowing division between people and the people's administration or social organisations; sowing division between religious people; and undermining the implementation of policies for international solidarity. These rights are used by the Vietnamese Government to criminalise political and religious dissent from Government policy and have led to arbitrary arrests, detention and imprisonment of those who oppose Government policy.

<sup>34</sup> Section 5 of the US Department of State, 2003, op. cit.

<sup>35</sup> Section 6f of *ibid*.

<sup>36</sup> Amnesty International, October 2002, op. cit.

*Death penalty*

Vietnam has retained the death penalty as judicial punishment, which is inconsistent with the right to life guarantee in Article 6 of the ICCPR. Executions are by firing squad and often take place in public which is contrary to the UN *Safeguards guaranteeing protection of the rights of those facing the death penalty* which requires capital punishment where it occurs, to be carried out so as to inflict the minimum possible suffering.

Concerns about the use of the death penalty are increased by the unfair nature of trials and the failings of the Vietnamese judicial and legal system.

*Failure to guarantee fair trials*

Article 14 of the ICCPR is regularly breached in Vietnam. Specifically, the following rights are not guaranteed: the right to a fair and public hearing by a competent, independent and impartial tribunal; the right to be presumed innocent until proven guilty; the right to have adequate time and facilities for the preparation of a defence and to communicate with counsel of one's choosing; and the right to call and question witnesses. Defendants often only meet their lawyers on the first day of their trial and defence lawyers are sometimes only permitted to plead for clemency rather than defend the defendant and are often only permitted to question the defendant with the agreement of the investigator.

Whilst there are provisions for the role of defenders and the presumption of innocence, these laws are not observed in practice particularly for people detained because of political activities.

Many trials for crimes attracting long sentences last only hours and politically sensitive trials are held in secret.

*Arbitrary detention and condition of detainees*

The Committee was also concerned about the weakness and lack of independence of the judiciary and lack of safeguards for detainees. The Committee said in its report:<sup>37</sup>

The Committee is concerned that the judicial system remains weak due to the scarce number of qualified professionally trained lawyers, lack of resources for the judiciary and their susceptibility to political pressure.

Amnesty International has expressed concern about the conditions of detainees in many prisons and the prolonged use of solitary confinement reportedly used in some detention facilities.<sup>38</sup>

The Vietnamese Government also uses administrative detention which allows people to be kept under house arrest for up to 2 years without intervention of a judge or judicial officer.

**Can Australia help promote human rights in Vietnam?**

The recent conduct of the Vietnamese authorities in persecuting minority groups on the basis of preventing activities which undermine "national unity", or "taking advantage of freedom and democratic rights to infringe upon the interests of the state, social organisations and citizens", and the conduct of the Vietnamese and Cambodian Governments in dealing with the Montagnards fleeing persecution from Vietnamese authorities, raises serious human rights concerns.

The particular failure of the Cambodian Government to provide protection to asylum seekers is a clear example of the type of response from a country looking after its own self-interests to the detriment

<sup>37</sup> UN Human Rights Committee, Concluding observations of the Human Rights Committee: Vietnam, CCPR/CO/75/VNM, 26 July 2002, para.9.

<sup>38</sup> Amnesty International, October 2002, op. cit., section 2.5.

of universal human rights norms and regional and multilateral mechanisms.

These issues are international issues with particular implications for our region and need to be addressed by regional partners like Australia. Australia has the capacity to develop a strong and mature relationship with Vietnam not just as a means of pursuing positive trade outcomes but also of promoting better political and civil rights practices in the country.

In recent years, Vietnam has been increasingly willing to discuss human rights issues, particularly those relating to technical and training issues with the United Nations and countries, including Australia. This has led to the commencement of an annual dialogue between Australia and Vietnam on human rights, which have been taking place since May 2002, with the most recent meeting taking place in Hanoi on 24 June 2004.

While the current direction of Australia/Vietnam relationship provides the best opportunity for Australia to raise human rights matters with Vietnam, the question of Australia's authority on human rights issues as well as the sensitivities about Australia's role in the Asia Pacific region, its close relationship with the US, the complexity of the US/Vietnamese relationship and the ideological differences between Australia and Vietnam, means that Australia needs to exercise caution in any discussion with Vietnam on substantive human rights issues. Before Australia could really play any influential role in addressing these issues, it must ensure that its own human rights records are blameless if the dialogue process is to have any real impact. Specifically:

- a number of Australian laws undermine the fundamental human rights assured by international conventions to which Australia is a signatory, with the only justification being that it is in the "national interest" to do so. In particular, Australia needs to address the

failings of the laws relating to the treatment of Australia's indigenous people and asylum seekers as well as the recently enacted anti-terrorism laws. The laws of Vietnam are an example of how dangerous it can be for human rights if significant discretion is reserved to the Government, which allows the Government to prefer the national interest over individual human rights. Thankfully, although our laws in Australia provide some discretion to the Government, our Government is elected democratically so the people of Australia have a greater say, compared to the Vietnamese, if they disagree with the approach taken by the Government; and

- Australia should also examine the way in which its laws are applied, particularly the laws underpinning Australia's "Pacific Solution" and the way these laws impact on other countries in our region. Australia's current approach to border protection and migration is that Australia's interests should be protected even if this is done in a way which undermines fundamental human rights and causes detriment to our neighbours. Australia will have no influence in this region until it adopts a regional approach rather than a self-interested approach to issues relating to asylum seekers. This does not mean that Australia has to forgo its own interests but that its laws take account of both its own interests as well as the interests of the region.

Australia's relatively small population, geographic isolation and the fact that it does not receive a large number of asylum applications places it in a unique position to adopt policies which provide protection for fundamental human rights guaranteed by international conventions. These laws could then be used as an important starting point for Australia to engage with our countries in the region on how the human rights challenges outlined in this paper could be addressed.

## Internet resources

Amnesty International, [www.amnesty.org](http://www.amnesty.org)

Australian Department of Foreign Affairs and Trade, *Vietnam Country Brief*, July 2004, [www.dfat.gov.au](http://www.dfat.gov.au)

BBC, *Country Profile: Vietnam*, [news.bbc.co.uk](http://news.bbc.co.uk)

ABC Radio, *Go Asia Pacific*, [www.goasiapacific.com](http://www.goasiapacific.com)

Humans Rights Watch, [www.hrw.org](http://www.hrw.org)

Reporters sans Frontières, Vietnam Press Releases, [http://www.rsf.org/article.php3?id\\_article=8623](http://www.rsf.org/article.php3?id_article=8623)

UNHCHR, *Status of Ratification of Principal Human Rights Treaties*, 2 November 2003, accessed 3 June 2003, [www.unhchr.ch/pdf/report.pdf](http://www.unhchr.ch/pdf/report.pdf)

United States Department of State, *Vietnam Country Report on Human Rights Practices*, 2003, <http://www.state.gov/g/drl/rls/hrrpt/2003/27794.htm>

Vietnamese Embassy in Australia, [www.vietnamembassy.org.au](http://www.vietnamembassy.org.au)

Vietnamese National Assembly, [www.na.gov.vn](http://www.na.gov.vn)

VOA, Voice of Vietnam News, [www.voanews.com](http://www.voanews.com)

Vietnam News Agency, [www.vnagency.com.vn](http://www.vnagency.com.vn)

Voice of Vietnam, [www.vov.org.vn](http://www.vov.org.vn)

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