**Washington DC, 05/06/2014**

**RECOMMENDATIONS**

**Regarding ending human rights violations in Vietnam**

As a Vietnamese citizen who was sentenced to seven years of imprisonment for “propaganda against the State of the Socialist Republic of Vietnam” under Article 88 of Vietnam’s Penal Code, I have the following recommendations with a view to end human rights violations in Vietnam.

Specifically, in the context of the U.S. – Vietnam human rights dialogue, the U.S. government should demand the Vietnamese government to:

1. Repeal all law provisions that violate human rights, and unconditionally release all prisoners of conscience;
2. Estalbish a legal framework to implement the UN Convention Against Torture.
3. **Repeal Articles 88, 258 and 79 in the Penal Codes of Vietnam, and unconditionally and immediately release all dissidents sentenced to prison terms under these articles**

#### All countries have laws criminalizing acts of overthrowing the government, meaning the use of violence and force to end the existence of a government. Vietnam’s Penal Code already has a specific article for that purpose: Article 82 on "Crimes of violence" (conducting armed activities or organized violence against the people's government). However, under its dictatorial regime, the Vietnamese State considers all peaceful expression of political views and all activities in accordance with such views as a threat to its survival. The government has therefore come up with the crime of “propaganda against the State of the Socialist Republic of Vietnam” (Article 88) and the crime of “taking advantage of the rights to democratic freedoms” (Article 258) to deal with individual dissidents, and the crime of “acting to overthrow the people’s government” (Article 79) to persecute dissidents who organize themselves – not only political parties but all organizations viewed as in political competition with the Vietnamese Communist Party are targets of Article 79.

Up until now the U.S. government in particular and Western governments in general views Vietnam’s release of prisoners of conscience as an indicator of improving human rights conditions. However, this approach does not solve the problem of prisoners of conscience at its roots for as long as Articles 88, 258 and 79 of Vietnam’s Penal Code remain in effect. Reality has shown that the Vietnamese government releases a number of prisoners of conscience but uses these law provisions to imprison many other dissidents. Just yesterday, the Vietnamese government arrested Nguyen Huu Vinh, aka Blogger Anh Ba Sam, and his collaborator Nguyen Thi Minh Thuy.

The U.S. government should therefore request that the Vietnamese government repeals three specific law provisions that violate the International Covenant on Civil and Political Rights (ICCPR) to which Vietnam is a party and Vietnam’s own Constitution as I will demonstrate below.

**Article 88: Propaganda against the State of the Socialist Republic of Vietnam**

* Clause 1 of Article 19 of the ICCPR states: "Everyone shall have the right to hold opinions without interference," which means no one may be harassed or persecuted, much less arrested or jailed by the State because of political views contrary to the views of the State.

Article 12 of Vietnam’s 2013 Constitution stipulates: "The Socialist Republic of Vietnam complies with the UN Charter and international treaties which the Socialist Republic of Vietnam is a party to."

Clause 1 of Article 6 of Vietnam’s “law on signing, accession to and implementation of international treaties” stipulates: "In the case where legal documents and treaties to which the Socialist Republic of Vietnam is a party differ in the same matter, then the provisions of international treaties apply."

* Clause 2 of Article 16 of Vietnam’s 2013 Constitution provides: "No person shall be discriminated against in political life", which means that no one may be harassed or persecuted, much less arrested or jailed by the State because of political views contrary to the views of the State.

**Article 258: Taking advantage of the right to democratic freedoms in order to violate the interests of the State, the lawful interests of organizations and citizens.**

* Clause 2 of Article 14 of Vietnam’s 2013 Constitution specifies: "Human rights, civil rights may only be limited in accordance with the law where necessary for reasons of national defense, national security, social order and security, social ethics." Clause 4 of Article 15 of the 2013 Constitution states: "The exercise of human rights and civil rights may not infringe upon the interests of the state and the nation, and the lawful rights and interests of others." Thus according to Vietnam’s Constitution, citizens either may or may not exercise their human rights and civil rights according to specific laws; there is no such thing as "taking advantage" of one’s rights.
* Clause 1 of Article 119 of the 2013 Constitution states: "The Constitution is the fundamental law of the Socialist Republic of Vietnam, with the highest legal effect. All other laws must conform to the Constitution." Since the amended Constitution expressly excluded the notion of “taking advantage of human rights, civil rights,” Article 258 is implicitly invalidated.

**Article 79: Acts aiming at overthrowing the people’s government**

First, all Vietnamese citizens may form or join organizations on the following legal basis:

* Clause 1 of Article 22 of the ICCPR, which states: "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”
* Article 25 of Vietnam’s 2013 Constitution states that “all citizens have the right to form organizations.”

Then, Article 19 of the ICCPR guarantees freedoms of opinion and of expression, and Clause 2 of Article 16 of Vietmam’s 2013 Constitution provides that associations/organizations of Vietnamese citizens have the right to express their political opinions no matter how contrary they may be to the views of the government.

Therefore, Vietnamese citizens’ activities in forming or joining an organization for political struggle in peaceful manners are protected by the Constitution and therefore completely legal, and cannot be characterized as an act aiming to overthrow the government.

In conclusion, because they are in violation of internatinonal law on human rights and also in violation of Vietnam’s 2013 Constitution, the Vietnamese government must repeal immediately Articles 88, 258 and 79 of its Penal Code and release, immediately and unconditionally, all prisoners of conscience charged under these anti-human rights provisions.

**II. Etablish Legal Framework to Impmlement the UN Convention Against Torture**

On November 7, 2013 the Vietnamese government signed the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Soon afterwards, on November 28, 2013, the Vietnamese National Assembly adopted a new Constitution, which recognizes the basic contents of this UN Convention. Clause 1 of Article 20 of the Constitution stipulates: "Everyone has the right to the inviolability of one’s body; the protection by the law of one’s health, honor and dignity; freedom from torture, violence, coercion, corporal punishment or any other form of treatment that abuses one’s body or health, or offends one’s honor or dignity."

In fact, Vietnam became a party to the ICCPR in 1982. Article 7 of the ICCPR states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” Also, the Penal Code of Vietnam has provisions against the use of torture: Article 298 - Crime of corporal punishment, and Article 299 – Crime of forcing confession. Nevertheless, torture and violence by government or government-sponsored agents have been on the rise – and so does the number of deaths caused by torture, because measures to deter, prevent and mitigate torture have not been sufficiently and specifically incorporated into the country’s legal framework. Therefore the U.S. should demand that the Vietnamese government urgently incorporates CAT and Clause 1 of Article 20 of Vietnam’s 2013 Constitution into its laws, including:

1. Criminalizing all acts of torture as specified in CAT by expanding provisions in the Penal Code on crime of corporal punishment and crime of forcing confession;
2. Promulgating law to ensure legal counsels unhindered access to persons who are arrested, detained, investigated, prosecuted, tried, or serving prison sentences; and
3. Promulgating law about compensations for victims of torture.

Only when the Vietnamese government has repealed all laws that are being used to send peaceful dissidents to prison, set free all prisoners of conscience and established a legal framework to outlaw torture, will Vitenam be able to fulfill its role in the UN Human Rights Council and the Vietnamese people to see true democracy.

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