Report of an Amnesty International Mission to the Socialist Republic of Viet Nam

10 ~ 21 December 1979

including memoranda exchanged between the government and Amnesty International

an amnesty international publication

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REPORT OF AN AMNESTY INTERNATIONAL MISSION TO THE SOCIALIST REPUBLIC OF VIET NAM

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PREFACE

This report is the result of an Amnesty International mission that visited the Socialist Republic of Viet Nam from 11 to 21 December 1979 and of Amnesty International's long-standing concern about the country. After the end of hostilities in Viet Nam in April 1975 there were important political changes. The fall of the former government of Nguyen Van Thieu led to the assumption of power by the Provisional Revolutionary Government of South Vietnam, and, after elections on 2 July 1976, to the reunification of the country, which then took the name, Socialist Republic of Viet Nam.

During that period, tens of thousands of former members of the armed forces and administration of the Republic of Vietnam (South Vietnam) were detained without charge or trial for "re-education". Many of those detained were soon released, but Amnesty International became increasingly worried in 1977 and 1978 when it became clear that the thousands of people in the "re-education" camps would still be in them after three years had elapsed.

Amnesty International also received reports of the arrest on political grounds of individuals who had had no connection with the former Thieu government or with the United States presence in Viet Nam. There appeared to be a lack of legal safeguards for those detained on such grounds.

It was against this background that in 1978 Amnesty International formally asked the Vietnamese Government for permission to send a mission to Viet Nam. Between 10 December and 21 December 1979 a delegation from Amnesty International consisting of Thomas Hammarberg, Secretary General designate of Amnesty International; Suriya Wickremasinghe, Vice-Chairperson of the International Executive Committee of Amnesty International; Michael Williams, Lecturer in Politics at the University of East Anglia; and Arlette Laduguie, a member of the Asia Research Department of the International Secretariat of Amnesty International, visited the Socialist Republic of Viet Nam at the invitation of Prime Minister Pham Van Dong.

At the end of their visit Thomas Hammarberg, on behalf of the delegation, informed Prime Minister Pham Van Dong that Amnesty International would submit a memorandum to the Vietnamese Government arising from the mission about its concerns and recommendations.

While in Viet Nam the delegation had long discussions with the Vietnamese Lawyers' Association. In Ho Chi Minh City, the delegation was received by Le Quang Chanh, Vice-President of the People's Committee of Ho Chi Minh City, by Nguyen Ngoc Dung, a senior judge in Ho Chi Minh City and by members of the Fatherland Front of Ho Chi Minh City. The delegation also visited three "re-education" camps: Hatay Camp (52 ATD 63/HT) in Ha Son Binh Province; Nam Ha Camp (25 ATD 63/NH) in Ha Nam Ninh Province; Ham Tan Camp (Z30D) in Thuan Hai Province and Chi Hoa Prison in Ho Chi Minh City, and talked to several prisoners. The delegation also had discussions with the directors of these institutions.

- the indefinite detention without charge or trial of personnel of the former South Vietnamese Govermnent in "re-education" camps;

- the arrest and detention of individuals for alleged opposition activities against either the Provisional Revolutionary Government of South Vietnam, or, since 2 July 1976, against the Socialist Republic of Viet Nam;

- the arrest and detention of individuals for attempting to leave Viet Nam illegally; and

- legal safeguards against ill-treatment of detained people.

II. Personnel of the Former South Vietnamese Government detained in "Re-education" Camps since 1975

The policy of the Provisional Revolutionary Government of South Vietnam, which ruled from the end of April 1975 until the reunification of the country on 2 July 1976, towards personnel of the former regime was outlined in a policy statement of 25 May 1976 - No. 02/CS/76.* This document outlines the government's policy of "re-education" and groups the personnel of the former government in three categories:

(a) "those who have rendered services to the revolution." This group would be rewarded by the new authorities;

(b) "those who have behaved well during the political course". Depending on their cases, this group would have their rights restored after short-term 'on-the-spot reform courses', or they would be placed under surveillance for six to 12 months;

(c) "those who must continue their 're-education' course or who must be brought to trial".

According to the policy, soldiers, non-commissioned officers and officers of all the armed forces, as well as members of the former civil administration, who do not fall into categories (a) and (b) must spend three years in a "re-education" centre. Those who make progress during their period of "re-education" will, however, be allowed to return home and recover their civil rights before the three-year term is up.

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* Full text was published in Vietnam Courier, No. 50, July 1976, and reprinted in With Firm Steps: Southern Vietnam Since Liberation 1975-77, Foreign Languages Publishing House, Hanoi, 1978, pp. 246-251.

The statement further stipulates that those "die-hard agents of the former regime who have committed numerous crimes against the people" will be brought to trial in due course before people's tribunals.

In the preamble to the above-mentioned Policy Statement, the following clarification is also given:

> "The former Saigon army and administration were instruments in the service of US neo-colonialism. And in most cases, the soldiers, non-commissioned officers and ordinary administrative personnel, were either duped by the Americans and chieftains of the puppets or compelled by the necessity to earn their living to serve the US puppets or take arms against the civil population or thrived on war."

Thus, the new authorities clearly state that no blame is to be attached to the many tens of thousands of individuals who merely served the former administration and army of the Republic of South Vietnam as ordinary citizens of the territory ruled by that government.

The exact number of people who have undergone "re-education" since 1975 is not clear to Amnesty International. The government had previously stated on several occasions that approximately one million people have undergone "re-education" during the months which followed the change of government in South Vietnam in April 1975. The figure obviously refers to individuals in both categories (b) and (c), thus includes large numbers of people released after attending short-term "re-education" courses. According to information provided by the government to the Amnesty International mission, several thousand people who were detained for longer periods have also now been released. The Amnesty International delegation was informed in Hanoi in December 1979 that 26,000 people remain in detention and that 14,000 have been released since 1975. Amnesty International was told that the 40,000 detained for "re-education" since 1975 included "29,000 puppet military personnel, 7,000 civilian officials, 3,000 policemen and security officials and 900 members of reactionary parties and organizations". However, it remains to be clarified whether these four categories covered all people placed in "re-education" camps in 1975 and also people brought to those camps afterwards.

The fact that large numbers of people remain in detention without charge or trial nearly five years after the end of the war has been the cause of growing concern to Amnesty International. Article 9 of Policy Statement No. 02/CS/76 states that category (c) people "must attend collective re-education courses for three years starting from the day they enter a camp". The statement continues: "those who have committed many crimes against the people and dangerous evil-doers who have incurred many blood debts to their compatriots" (Article 9), "those who were in the ranks of the resistance and betrayed the country" (Article 10), and "those who have not submitted to the revolutionary administration, who refuse to report to the administration for re-education courses" will be brought to trial in due course (Article 11). Policy Statement No. 02/CS/76 is therefore quite clear that "re-education" will last three years and that those individuals who would be charged with criminal acts will be tried.

In its discussions with the Vietnamese authorities and legal representatives, the Amnesty International delegation was therefore keen to establish why the Vietnamese Government continues to detain large numbers of people without charge or trial for far in excess of the three-year period. Amnesty International was informed that since the unification of Vietnam on 2 July 1976, the law of what was formerly the Democratic Republic of Vietnam (North Vietnam) now applies to the whole country. Although decrees of the Provisional Revolutionary Government were still valid, the existing law of the Democratic Republic of Vietnam was paramount. In particular, the Vietnamese authorities referred the Amnesty International delegation to Resolution 49-NQ/TVQH of the National Assembly of 1961. This resolution provides for "re-education" for two categories of people: (a) "obstinate counter-revolutionary elements who threaten public security" and (b) "all professional scoundrels". There are no provisions in Resolution 49 of 1961 that those individuals sent for "re-education" be brought before a court or sentenced. Although the period of "re-education" mentioned is three years, the resolution also allows for the period of detention to be extended -- something for which the Provisional Revolutionary Government Policy Statement of May 1976 did not provide. Amnesty International is concerned therefore that the Vietnamese Government now states that Resolution 49 of 1961 applies to those individuals held after the cessation of hostilities in 1975.

The Amnesty International delegation was informed that the Provisional Revolutionary Government of South Vietnam faced in May 1975 the problem of disarming a hostile armed force of 1,300,000 and that the policy of "re-education" in these circumstances was introduced in an attempt to achieve national reconciliation instead of seeking vengeance. Whatever the original intention behind the policy, the continued detention of large numbers of people in "re-education" camps in 1980, long beyond the three-year period earlier set, has since become akin to administrative detention without trial.

Although the system of detention in "re-education" camps in Viet Nam may not have been conceived of as administrative detention without trial, it appears that the element of "re-education" has now receded considerably. The Amnesty International delegation was told during its visit that new and unexpected security considerations have arisen during the past two years which have made it impossible to release all detainees in "re-education" camps within the time period first envisaged; in particular reference was made to the situation in Kampuchea and to Viet Nam's relations with the People's Republic of China. Grounds for the continued detention of these people, therefore, seems to have shifted from past misdeeds and present behaviour to the external situation, namely national security. These prisoners are therefore being held in what is usually termed administrative detention without trial.

The effect of this new policy is that thousands of people who had expected to be released after three years are still kept in detention without charge or trial and without knowing when they will be released, which results in severe hardship for them and their families.

Amnesty International has consistently opposed prolonged administrative detention without trial throughout the world. It is deeply concerned about the ensuing curtailment of civil liberties and the deviations from normal procedural safeguards such detention always entails. The International Covenant on Civil and Political Rights provides in Article 9 that anyone arrested shall be promptly informed of any charges against him or her and that anyone detained on a criminal charge shall be entitled to a trial within a reasonable time or to release. Prolonged indefinite detention without trial is incompatible with internationally recognized standards of human rights and basic principles of justice.

If in times of national emergency states do resort to preventive detention without trial, it is of critical importance that detainees should at least have the right to question the grounds of their detention and have their cases reviewed by an independent body. Such review, when it does not lead to an immediate release, should be repeated after a fairly short interval. In Viet Nam detainees apparently do not have the right to question the grounds of their detention or to appeal to an independent body.

Procedures for release appear to have evolved in the context of "re-education" and are less relevant to a system of administrative detention. According to information supplied to Amnesty International by the Vietnamese authorities, detainees in "re-education" camps meet at least every three months to hold discussions and examine each other's progress. They then make recommendations to the official supervising the group. These officials in turn make their own recommendations to the camp directorate, which examines them and makes further recommendations to the Ministry of Internal Affairs. This means that throughout this procedure no independent authority is involved in determining whether an individual should be released. The whole process is in the hands of the officials who have been responsible for the person during detention.

It is important to clarify the distinction between different types of detention and the principles that should apply to each of them. These may be summarized as follows.

- There is detention before trial or during trial. Any fair legal system will have mechanisms to safeguard against unnecessary or unduly prolonged detention of this kind. (This is dealt with in Section IV of this memorandum.)

- There is detention as a means of dealing with offenders for the purpose of punishment or reform. This detention should be imposed only after a person is proved, by means of a fair trial in accordance with internationally recognized norms, to be guilty of an offence. Compulsory "re-education" in an institution comes under this category of imprisonment because although the aim is said to be reform rather than punishment it involves forcible deprivation of liberty. Therefore Amnesty International is deeply concerned when this treatment is given to people who have not been proved - in a fair trial - to have committed criminal acts. This is also

in contradiction to Article 9 of the International Covenant on Civil and Political Rights.*

- There is "administrative detention" or "preventive detention", which is outside the normal penal law. This is detention of people without charge or trial, not for something they have done or are alleged to have done, but for what the authorities fear they may do if left at liberty. Governments resort to this form of detention under emergency legislation during time of war or other grave crises

The International Covenant on Civil and Political Rights countenances derogations from some of the basic human rights at times of national emergency when the life of the nation is threatened and the government makes a formal declaration to this effect to the Secretary-General of the United Nations, but it is careful to specify that these derogations should be limited to the extent strictly required by the exigencies of the situation.** Other rights, for example the right to life itself, the right not to be tortured, cannot be abrogated under any circumstances.

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* Article 9 of the International Covenant on Civil and Political Rights states:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of judgement.

**Article 4, section 3, International Covenant on Civil and Political Rights.

Amnesty International is of the opinion that minimum safeguards are necessary to mitigate the harshness of the very exceptional measure of administrative detention which can cause grave suffering to innocent people through no fault of their own. There must be a system of regular review of each case by an independent body to decide whether continuation of the detention is justified. Regular review by a body separate from that responsible for the original detention is also necessary to ensure that cases are given continual attention and do not get forgotten. Amnesty International's experience is that this is a real danger in the case of mass long-term detentions. Detainees must be told the grounds on which it is decided to detain them, so that they may have an opportunity to contest the facts alleged. Such inquiries can, for instance, bring to light cases of mistaken identity, or wrong information given to the authorities, or abuse of power by corrupt officials.

The position of Amnesty International is that compulsory detention without trial for the sake of "re-education" violates basic principles of justice, and this remains the concern of Amnesty International even after the delegation received the explanation regarding threats to the national security of Viet Nam. There has been no clear statement or recognition by the Vietnamese Government that a system of administrative detention has been established; nor have the safeguards listed above - for example, a regular review by an independent body - been introduced into the present system. Therefore, Amnesty International recommends that the Vietnamese Government consider the abolition of the present system of compulsory detention without trial.

III. Other Categories of People Detained in "Re-education" Camps and Prisons

Amnesty International has been seriously concerned about reports which it has received in recent years of the arrest of individuals in Viet Nam who quite clearly had had no connection with the former government of the Republic of South Vietnam led by Nguyen Van Thieu and who appear to have been arrested for non-violent opposition to the present government. The exact number of people involved in these arrests is not clear. Most of the arrests seem to have taken place in the Ho Chi Minh City area between 1977 and 1978. It is not always clear under what legal provision these people are detained.

A case in point is that of Ho Huu Tuong, a veteran nationalist politician, scholar and writer, now aged 70, who spent many years in prison under the French colonial regime and who was sentenced to death by the Diem government in 1957 -- a sentence which was later commuted to life imprisonment. Between 1957 and 1963 he spent six years in the notorious Con Son Island prison and as a result his health is now believed to be

poor. Ho Huu Tuong was arrested by the present government in Ho Chi Minh City in November 1977 and was first detained in Vo Tanh Prison but was later transferred to a "re-education" camp in Xuyen Moc, Dong Nai Province. He has now been in detention for two years, apparently without charge or trial.*

Of similar concern to Amnesty International are those people reported to have been arrested or detained for attempting to leave Viet Nam illegally.

In Viet Nam, the Amnesty International delegation was informed that the authorities had adopted a variety of measures to deal with those attempting to leave the country illegally.

(1) Many would merely be detained for a short period for interrogation and "re-education" before being released.

(2) The following, however, would be tried in court:

- those organizing illegal departures;
- those profiting financially from organization of illegal departures;
- those guilty of hijacking ships or of stealing state property;
- those who have committed "desertion".**

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* Ho Huu Tuong was one of 13 prisoners whom Amnesty International, in a letter to the Vietnamese Embassy in London on 28 November 1979, had asked to meet. The delegation visited six of them, and was able to talk at length to another six prisoners and more briefly to eight to 10 others. Out of the seven who, despite requests, were not seen, the delegation was told in Viet Nam that two had been released, two transferred, one reportedly did not want to meet an international delegation and two - Ho Huu Tuong and Duyen Anh - were in a camp outside Ho Chi Minh City. These last could not be visited in the camp, as it was in a security area, but it should have been possible to have arranged to meet them in the city. However, when in Ho Chi Minh City, the delegation was informed that this was not possible because of lack of transport.

** For example, Ho Dac Dang, a 36-year-old doctor who was arrested on 2 June 1979 at Rach Gia, Kien Giang Province with a group of 93 people who had tried to flee the country by boat. After spending one and a half months in a detention centre at Rach Gia, Ho Dac Dang and three other members of the group were transferred to Chi Hoa Prison in Ho Chi Minh City. In November 1979, Ho Dac Dang was charged with three others with "deserting his office" and was brought to trial on this charge on 15 November. He was sentenced to two years' imprisonment by Ho Chi Minh Municipal People's Court. After the mission, Amnesty International received information that Ho Dac Dang and the three others had been released.

(3) Former personnel of the government of South Vietnam who did not report for "re-education" in 1975 and were apprehended in the process of attempting to leave Viet Nam illegally would be sent for terms of "re-education".

It must be underlined that the right to leave one's country is guaranteed by Article 13 of the Universal Declaration of Human Rights and by Article 12, section 2 of the International Covenant on Civil and Political Rights.*

Amnesty International is concerned also about people held in detention for prolonged periods pending investigation. The law governing arrest and detention in Viet Nam was set out in the Provisional Revolutionary Government Decree on Arrests, Detention and Searches, Decree No. 02/SL/76 of 23 March 1976.** Under Article 5 of the decree the security authorities must within three days of arrest conduct an investigation to decide whether to free, temporarily release the detainee or remand the detainee to the People's Procuracy (referred to in the Vietnamese Government's reply as "Procuratorate") for consideration for further detention. The People's Procuracy is able to authorize a period of temporary detention. In cases of offences punishable by five years' imprisonment or less, that period of detention must not exceed two months. In cases involving political security or other offences punishable by more than five years' imprisonment, the period of temporary detention can be up to four months. This period of temporary detention may be extended once or twice if the security authorities deem it necessary for the purposes of completing investigation. According to the decree, in complex cases calling for lengthy investigation, such extensions must be approved by the People's Procuracy. Thus, in political cases, security authorities, with the approval of the People's Procuracy, may detain an individual for up to 12 months for interrogation without formal charge or trial. Nor is the detainee during this period protected by adequate legal safeguards.

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* Article 13, section 2 of the Universal Declaration of Human Rights states:

"Everyone has the right to leave any country, including his own, and to return to his country."

Article 12, section 2 of the International Covenant on Civil and Political Rights states:

"Everyone shall be free to leave any country, including his own."

** This decree follows closely a law of what was formerly the Democratic Republic of Vietnam (North Vietnam) of 27 January 1957, and which was implemented by Regulation No. 103-SL/L 005 of 20 May 1957.

Amnesty International has received evidence that would seem to indicate that even these long periods of detention for purposes of investigation and interrogation have been exceeded by the Vietnamese security authorities. For example, seven Buddhist monks of the An Quang Pagoda were held for 20 months in solitary confinement following their arrest in April 1977 before their case was brought before a tribunal for trial in December 1978. At the subsequent trial a number of monks were acquitted of the charges against them or were given suspended sentences.

Another such case is that of Nguyen Tran Huyen, also known as Cao Giao, whom the Amnesty International delegation met in Chi Hoa Prison, Ho Chi Minh City in December 1979. He is a distinguished writer and journalist who was formerly imprisoned by the Diem government in the 1950s on suspicion of being a communist. Nguyen Tran Huyen was arrested in June 1978 and has been held ever since without formal charge or trial. According to the information which Amnesty International has received about his case he has not been charged or tried although his period of detention has now far exceeded the formal maximum period allowed for detention and interrogation under Vietnamese law.

Following the period of interrogation, the Amnesty International delegation was informed, there are three possible consuquences. Detainees may be released after being given a formal warning. They may be tried, or, if the authorities do not consider that they have committed specific crimes according to Vietnamese law, then they may be dealt with under Resolution 49 of 1961. Under this resolution the detained person may be sent for "re-education" for a period of up to three years, which may be extended. The decision to send an individual for "re-education" is taken by the People's Committee at city or district level. No judicial bodies are involved in making this decision.

This last provision, as mentioned in Section II of this memorandum, is not compatible with accepted standards of human rights because it provides for a person to be deprived of liberty without any judicial proceedings and without being proved guilty of any offence. To the extent that it can be used against people because of their expressions of belief or non-violent opposition to the government, it comes directly within the particular sphere of human rights in which Amnesty International operates. The existence of this provision in the Socialist Republic of Viet Nam is a matter of grave concern to Amnesty International.

IV. Legal Safeguards against Ill-Treatment of Detained People

The law and the legal profession have a role not only in creating laws and prosecuting offenders but also in the defence of individuals suspected of having infringed the law. Amnesty International notes that torture and corporal punishment were expressly prohibited by Article 7 of the Provisional Revolutionary Government's Decree No. 103-SL/L 005 of 20 May 1957. It is understood that such a prohibition may feature in the new constitution now being prepared.

The inclusion of such a provision in constitutions and in other laws is of great importance. By itself however it is only a preliminary measure. Further very specific provisions are needed to ensure that the principle is maintained. The experience of Amnesty International is that certain circumstances create the conditions in which torture or other ill-treatment is likely to take place. The basic safeguard is to ensure that such conditions do not exist. As torture normally takes place in secret, complaints can be difficult to prove or to disprove. The existence of adequate safeguards is thus a protection not only for prisoners but also for the authorities involved in their arrest and detention.

Some circumstances that are conducive to torture or ill-treatment, and the appropriate safeguards, are listed below.

(a) If a person's family is not told about his or her arrest or where he or she is being held, interrogators may feel more confident that they can ill-treat the suspect without being found out; if the prisoner happens to die it is easier to cover up this fact.

Families should be informed promptly about arrests and places of detention. This should be provided for by law and not left to administrative practice.

(b) If visits by family or a lawyer are not allowed, an officer may feel secure when ill-treating a prisoner, knowing that no one concerned about the prisoner's interests will see him or her soon and notice any signs of physical or mental deterioration.

Frequent family visits should be allowed during the period of interrogation, and visits by lawyers also should be allowed within a short time after arrest. This is in any event a basic right for a person who is only a suspect and may turn out to be innocent. It is quite possible to arrange such visits so that they do not endanger security or hinder the investigation.

(c) Where there is no adequate provision for regular medical examinations, or stipulation calling for an independent inquiry in the case of those who die in custody, it is difficult to keep a check on a prisoner's treatment or to investigate subsequent allegations of ill-treatment.

The law must provide for regular medical examinations plus the keeping of detailed records and for an inquiry directed by a judicial body if a prisoner is found to be injured. The medical personnel should work under the direction of the health authorities and not the prison or investigating authorities.

There should be provision also for a public judicial inquiry into every case of death in detention, to determine the cause of death.

(d) The experience of Amnesty International has shown that it is particularly dangerous for detainees to be in the custody of their interrogators, because there is a natural tendency for interrogators

to bring extra pressure to bear on suspects to obtain information. The situation to avoid is one in which the officer who decides when a person shall eat, sleep and see relatives is also concerned with finding out what the person has done and has to say. Experience has shown also that ill-treatment does not necessarily happen as a result of deliberate cruelty by investigating officers, who may believe that they are just doing their job and getting results.

Arrested people should be kept in the custody of the police or other investigating authorities only for the minimum length of time before they can be taken to a place of detention. Places of detention should be under the direction and control of a separate administrative department from the investigating bodies. The responsibility of those controlling the detention should be solely to keep the people securely (so that they do not escape) and to see that they receive adequate food and have reasonable living conditions. Interrogation by the investigating officers should normally be in the place of detention in the presence of prison officers. If it is necessary to take the prisoners elsewhere for questioning they should be accompanied by prison guards and brought back at night.

(e) Where there are no rules and regulations governing the conditions of detention and interrogation of people under investigation, the possibility of ill-treatment is enhanced.

Regular places of detention should always have rules about conditions of detention and prisoners' rights. It is important that these be well publicized and the prisoners be informed of them. There should also be rules about interrogation. For instance, interrogation should normally take place during working hours with adequate breaks for meals and rest for the prisoner.

(f) Where there is no independent machinery to supervise interrogation methods and conditions of detention and to investigate complaints, there is also the risk of violations. Amnesty International notes that provision exists under Article 16 of the decree for the prosecution of officers guilty of misdemeanours during interrogation and investigation. It is also important that such offences are brought to light.

Provision should be made for a separate authority to supervise interrogation and investigate complaints by prisoners or their families. Whenever cases of officers who misuse their powers are discovered, appropriate action should be taken against them, and this should be duly publicized. Publicity is important for three reasons:

(1) to act as a deterrent to other officers who might be tempted to commit the same error;

(2) to give prisoners confidence so that they can safely complain if they are ill-treated;

(3) to create public confidence in the system.

(g) Another circumstance relevant to the likelihood of torture is the value placed by a legal system on confessions. If a confession can later be used to prove a person guilty in court then an over-enthusiastic investigator could be tempted to use improper pressure. False confessions occur when prisoners decide that they must respond to the request to "cooperate" with the investigator and say what they think is expected of them. This can end with everybody - the investigator, the court and the public - misled. Examples are not lacking of people who have confessed to crimes they never committed. Safeguards against ill-treatment in custody therefore are also safeguards against false confessions and against the investigative process producing wrong information.

The best safeguard, which exists in several legal systems, is to ensure that all confessions made to an investigating officer, or given in custody, unless to a judge, are inadmissible in evidence. If this is not done then, at least there must be carefully worked out safeguards, for instance: that the confession must have been made to a senior officer; that the suspects must have been warned that they are not obliged to make a statement and that if a statement is made it may be used against them; that the court look carefully into the conditions under which the confession was obtained and that the court cannot act on the basis of the confession alone but must see that there is other evidence.

V. Conditions in "Re-education" Camps and Prisons

During its stay in Viet Nam the Amnesty International delegation had the opportunity to visit three "re-education" camps and one prison. The delegation did not undertake these visits in order to make a general assessment of camp conditions. Amnesty International is not professionally equipped to carry out prison visits in the manner that the International Committee of the Red Cross (ICRC) can. Thorough camp inspections necessitate lengthier visits to more camps and would require medical expertise among the inspection team. This should be borne in mind in regard to the following observations, which among other things do not cover the more positive aspects of what the delegation was shown in these institutions.

It has long been a recognized principle of the international community that in all countries there should be detailed rules and regulations governing the conditions of detained people. In 1955 the United Nations Economic and Social Council (ECOSOC) adopted minimum standards in this field: the United Nations Standard Minimum Rules for the Treatment of Prisoners. These were amended by ECOSOC in 1977 to apply to prisoners held without charge or trial.

Amnesty International is aware that rules and regulations governing the conditions of detainees exist in Viet Nam, and its delegation was provided with those rules pertaining to prisoners transferred from "re-education" camps in the south to the north of the country (No. 66 KH 6/P4 - 10 January 1977). Amnesty International is aware also that

Viet Nam's present economic hardships may have an adverse effect on the material provision for prisoners. Nevertheless the organization submits that it would be of great importance to establish a more detailed, exhaustive set of rules and regulations on conditions in "re-education" camps and prisons, particularly as it understands the Vietnamese authorities are at present reviewing penal legislation. The Standard Minimum Rules are of great interest and value in this context and should, as Article 2 states, "serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations".

When new rules and regulations governing conditions in places of detention are enacted it is of great importance that they be communicated to all responsible personnel as well as to the detainees themselves and their families. They should also be published in the press.

As regards camp and prison conditions, Amnesty International is concerned that the detainees' rights to visits and correspondence should be regarded as basic and inviolable, except in cases of serious violations of camp discipline and then only for a limited period. It is important, too, that these basic rights to visits and correspondence should not depend on detainees' progress in "re-education" and general good conduct as would seem to be the case now. These rights should be seen as minimum standards and all detainees should be entitled to them without discrimination. The present regulations specify that detainees in a "re-education" camp have the right to receive visits by their immediate family once every three months. In addition, they may send one letter a month and receive unlimited correspondence. Amnesty International urges the Vietnamese authorities to consider improving these conditions at an early date. Visits should be frequent when prisoners live close to their place of detention and should be of longer duration when they are held far away. When families often have to travel great distances, for example from Ho Chi Minh City to Hanoi, visitors should be allowed to stay for a minimum of two days. Amnesty International further recommends that the location of detainees should be reviewed to facilitate wherever possible their being near their family home.

In all three detention camps visited, Amnesty International was shown the dispensary and sick bay. Since the delegation did not include a medical practitioner it cannot give a professional opinion on these facilities. Amnesty International is aware that in many camps, including two of those visited by the delegation, part of the medical service is provided by doctors or orderlies who are themselves detainees. Although it is desirable that those detainees who are professionally qualified be given an opportunity to practise, Amnesty International is concerned that the health care system in "re-education" camps should not become dependent on the inmates themselves.

The Amnesty International delegation was disturbed to learn that the only outside people with the right to visit the "re-education" camps were officials of the Ministry of Internal Affairs, which is responsible for administering the camps. Amnesty International believes it to be of paramount importance that all places of detention are inspected at regular

intervals by some independent body that should include lawyers and medical practitioners. Prisoners should have the right to speak to members of this independent body privately, and its recommendations should be made directly to senior officials of the Ministry of the Interior, the Procuracy or other appropriate authority.

VI. The Death Penalty

The death penalty exists in Viet Nam, although the delegation was informed that few executions take place.

Amnesty International is opposed to the death penalty in all cases. This position is based not only on the consideration that the death penalty is irreconcilable with respect to the right to life (Universal Declaration of Human Rights, Article 3) but also in that it constitutes the ultimate form of cruel, inhuman or degrading punishment (Article 5).

The United Nations General Assembly adopted in 1971 a resolution whereby it affirmed that "in order fully to guarantee the right to life, provided for in Article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed with a view to the desirability of abolishing this punishment in all countries" (General Assembly Resolution 2857 (XXVI) of 20 December 1971). This position was reaffirmed by the General Assembly in its Resolution 32/61 of 8 December 1977.

Amnesty International therefore recommends that the Socialist Republic of Viet Nam give serious consideration to the possibility of totally abolishing the death penalty.

VII. International Standards

Amnesty International bases its work on international standards laid down in particular by the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948. Since then a number of other instruments in the field of human rights of significance to Amnesty International have been adopted also.

The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the latter covenant, which, together with the Universal Declaration of Human Rights, comprise what the United Nations calls The International Bill of Human Rights.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in 1957 and amended by it in 1977, have been recommended to governments by the General Assembly with a view to their implementation.

The Declaration on the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment was

adopted by the General Assembly of the United Nations on 9 December 1975 (Resolution 3452 (XXX)).

The Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly on 17 December 1979 (Resolution 34/169), is addressed directly to each law enforcement official in order to oppose and prevent torture and other cruel, inhuman or degrading treatment.

Amnesty International recommends that the Government of the Socialist Republic of Viet Nam ratify the International Covenants and the Optional Protocol as well as draw the attention of relevant members of its penitentiary and law enforcement authorities to the Declaration on Torture, the Standard Minimum Rules and the Code of Conduct.

CONCLUSIONS AND RECOMMENDATIONS

I. Long Term Detention without Trial

(i) According to information given to the Amnesty International delegation by the Vietnamese Government in December 1979, some 26,000 people, former personnel of the Republic of South Vietnam, are at present detained in "re-education" camps. They have been in custody without charge or trial for nearly five years. This is despite official statements that no detainee would be held for longer than three years, except in cases where the government would bring individual charges. Amnesty International considers that such compulsory and indefinite detention without trial amounts to prolonged administrative detention without trial and is unacceptable under internationally recognized standards of fundamental human rights.

Recommendation: that the Vietnamese Government abolish the present system of compulsory detention without trial for the purpose of "re-education".

Recommendation: that as a first and urgent step an independent commission be established with full power to examine the grounds of detention in each case. Where it is found that grounds do not exist for specific criminal charges, the individual should be immediately released. The decisions of the commission should be binding.

(ii) Under a decree of 1961, Resolution 49-NQ/TVQH of the National Assembly, two categories of people may be sent for "re-education": (a) "obstinate counter-revolutionary elements" and (b) "professional scoundrels". The period of "re-education" specified in this resolution is three years, but it may be extended for a longer indefinite period. Individuals sent for "re-education" under this decree are neither brought before a court nor sentenced. Amnesty International is concerned that under this decree people may be detained for the expression of their non-violent opposition to the government.

Recommendation: that Resolution 49 be repealed and that offenders be dealt with only by normal trial procedures.

(iii) Although the Vietnamese Government informed the Amnesty International delegation in December 1979 that 26,000 personnel of the former Republic of South Vietnam were still in detention, figures have not been made available for other categories in detention, such as those mentioned in Section II of this memorandum. The absence of detailed and regularly updated figures has led to concern and speculation about the total number of detainees in "re-education" camps and prisons. This should be rectified and full clarity about the number of detainees should be established.

Recommendation: that the Vietnamese Government publish without further delay a list of all "re-education" camps and other places of detention in Viet Nam together with detailed figures on individuals and categories of those still imprisoned.

II. Detention for the Purpose of Investigation

(iv) The Vietnamese laws governing arrest and detention (Decree No. 103-SL/L 005 of 20 May 1957 and Provisional Revolutionary Government Decree No. 02/SL/76 of 23 March 1976) provide that those suspected of political offences may be detained for up to 12 months before the authorities have to decide whether they should be tried. These measures are extreme and do not conform with Article 9, section 3, and with Article 14, section 3(a), (b) and (c) of the International Covenant on Civil and Political Rights. However, Amnesty International has received reports of individuals being detained even longer than the 12 months allowed by the law for purposes of interrogation.

Recommendation: that as a matter of urgency the Vietnamese Government should limit the period allowed for interrogation of people suspected of political offences.

III. Safeguards against Ill-Treatment of Individuals in Custody

(v) The experience of Amnesty International has shown that there are certain circumstances that create the conditions in which torture or ill-treatment of prisoners is likely to occur, and that the only effective safeguard is to ensure that these conditions are not permitted to exist.

Recommendation: that the Vietnamese Government introduce procedural guarantees into its own constitutional and legal system that are consonant with the provisions of Articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights.

Recommendation: that legal provision be made for the families of detainees to be immediately informed of arrest and that each detainee be guaranteed visits by family and legal counsel as soon as possible after arrest, and in no case more than one week later, as well as regularly thereafter.

Recommendation: that provision be made for each detainee to have an independent medical examination by a doctor as soon after arrest as is possible and regularly thereafter.

Recommendation: that places of detention be administered by a department separate and independent from the investigation bodies and supervised in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners; and that a separate authority be made responsible for supervising, interrogating and investigating complaints by prisoners or their families.

Recommendation: that actions be taken against any officers found to misuse their powers and that such actions should be made public.

Recommendation: that legal provisions be made for detailed and publicized regulations on conditions of detention and rules governing interrogation, as well as for limitations on the use and value of confessions and for public inquiry in cases of death in custody.

IV. Conditions in "Re-education" Camps and Prisons

(vi) The need for rigorous rules and regulations regarding the care of people in detention has been stressed in Section V of this memorandum.

Recommendation: that rules and regulations regarding conditions in detention centres be revised where they do not measure up to the United Nations Standard Minimum Rules for the Treatment of Prisoners as amended in 1977.

Recommendation: that such new rules be fully communicated to all personnel in places of detention and made available to all detainees and their families.

Recommendation: that a system be established for regular inspection of prisons and camps by an independent body. Visits by specialized international bodies, such as the International Committee of the Red Cross, would also be of great importance.

(vii) The importance of family visits for detained people is recognized in all countries. Amnesty International considers the provision allowing detainees in "re-education" camps visits once every three months to be inadequate. It is also concerned that in the "re-education" camps rights such as these are dependent upon a prisoner's good conduct and "progress in re-education".

Recommendation: that a prisoner's rights to visits and correspondence should be inviolable and in no way conditional, except in cases of serious violations of camp discipline and then only for a limited period. Present regulations should also be reviewed in accordance with recommendations made in Section V of this memorandum.

V. Release of Detainees

(viii) It is important that all released prisoners of conscience be ensured the same rights as any other citizen of the Socialist Republic of Viet Nam, including the right to participate in the family reunion scheme arranged between the Vietnamese Government and the United Nations High Commissioner for Refugees in May 1979.

It has been recommended above that the system of "re-education" without trial be abolished and that detainees against whom there are no charges be released. Some detainees could be freed immediately on humanitarian grounds and in the light of Article 7 of the Provisional Revolutionary Government Policy Statement on Re-education (No. 02/CS/76). This states that those detainees "who are old, weak or who suffer from serious diseases, or whose health is declining seriously, pregnant women close to delivery and women whose children are under three years of age, and people having retired before liberation, will be allowed to return to their families with the latters' guarantee".

Recommendation: that detainees now old, weak or suffering from serious diseases should be released immediately in accordance with the Provisional Revolutionary Government Policy Statement on Re-education.

VI. The Death Penalty

(ix) The death penalty is a violation of the right to life and constitutes a cruel, inhuman and degrading punishment.

Recommendation: that the total abolition of the death penalty be considered by the Vietnamese authorities.

VII. Further Protection and Promotion of Human Rights

(x) The International Human Rights Covenants and Optional Protocol are now in force. They are fundamental instruments for the protection of human rights.

Recommendation: that the Vietnamese Government consider early ratification of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights.

WRITTEN REPLY OF THE VIETNAMESE GOVERNMENT TO AMNESTY INTERNATIONAL'S MEMORANDUM, SEPTEMBER 1980

I

First of all, we want to make clear our general viewpoint on humanitarianism.

1) The problem of human rights is now of particular concern to public opinion, and constitutes a burning issue of our time. The Vietnamese people who have undergone 30 years of struggle for independence have been fighting precisely for the legitimate rights of the man in Vietnam.

After national liberation, the Vietnamese Government and people would like to devote all their strength to building Vietnam into a prosperous country, thereby enabling all Vietnamese to really enjoy their full rights to freedom, to work, to study and to rest. They wished to entertain good relations of friendship with all peoples in the world. However, those legitimate aspirations of the Vietnamese people have met with tremendous obstacles, especially with the danger of foreign aggression threatening our national security.

In his talk to the Amnesty International delegation, our Prime Minister has expressed his deep confidence in the cause of struggle for human rights and has stressed the importance of law with regard to society and to the man. The Vietnamese people are resolved to follow the path of building a society of justice and humanitarianism that will bring happiness to all Vietnamese on the basis of law.

2) As a reflection of its deep confidence in the man, and desirous to deal with those who have committed crimes in a humanitarian way, the Vietnamese Government has implemented a policy of leniency and generosity towards those Vietnamese who had collaborated with the enemy; it has prohibited reprisals and has not allowed a bloodbath to take place in the days following April 30, 1975.

The Vietnamese Government wishes to patiently reeducate those who had committed serious crimes against the people and the countries. It is confident that national feelings and the national cause will succeed in awakening them and helping them soon realize the fact that their own happiness should go hand in hand with national independence. It is hoped that they will endeavour to reeducate themselves so as to be able to go back as normal citizens to the midst of the national community.

This viewpoint of the Vietnamese State on humanitarianism has found expression in Resolution 49 made public in 1961 by the Standing Committee of the National Assembly of the Democratic Republic of Vietnam, and the 12-point policy statement of the PRG of the Republic of South Vietnam

dated May 25, 1976 with regard to the personnel of the Saigon regime. The Socialist Republic of Vietnam is thinking about measures to encourage those of the former regime who are still in camps to actively reform and reeducate themselves, it is thinking about measures to open ways for those who would show real repentance to go back to their families and to society

3) Vietnamese law related to the man springs from a fundamental principle of our State, which is respect for human dignity, including freedom of belief, and the development of capabilities and talents of all Vietnamese, irrespective of political tendencies, religious beliefs, ethnic origins, whether they are intellectuals or manual labourers, to enable every one of them to take part in the building of a prosperous and happy Fatherland.

II

Now, we will elaborate on a number of specific problems.

As is well known, the Vietnamese Government and people have always practised a policy of broad national union, which has made an important contribution to Vietnam's victory over foreign aggressors. Broad national union is a concept which, by itself, implies the idea of humanitarianism, because without a humanitarian spirit - let alone a spirit of mutual affection - in relations between people of same country, how could broad national union be achieved? Vietnam has shown generosity and humanitarianism towards those French and American, and more recently Chinese, aggressors who fell into their hands in the course of wars against Vietnam; consequently a humanitarian policy vis-à-vis Vietnamese is quite easy to understand.

Amnesty International has indeed grasped - though not fully - this humanitarian spirit when it noted that "the cessation of hostilities in Vietnam in April 1975 and the subsequent transfer of power that took place from the former Republic of Vietnam led by Nguyen Van Thieu to the Provisional Revolutionary Government of South Vietnam occurred without resort to a policy of summary trials and executions". As a matter of fact, no "bloodbath" took place in South Vietnam on the liberation day in April 1975, which was an eloquent dismissal of the wicked propaganda mounted by the imperialists at that time. Amnesty International has also noted that according to the Vietnamese Government, approximately one million persons attended short-term re-education courses and enjoyed freedom, and that only 40,000 persons were detained for long-term re-education. It should be stressed that this figure of 40,000 includes <u>all</u> persons detained in re-education camps since 1975.

It should also be emphasized that compared with the 1,300,000-odd persons serving in the puppet administration and army and reactionary parties and organizations set up under the US imperialist yoke, this figure of 40,000 represents only 3 per cent.

Who are those 40,000 persons? The 12-point policy indicates that those are mainly army officers, and civilian officials of an equivalent rank, and persons with comparatively high responsibility in reactionary parties and organizations. They are not ordinary soldiers, non-commissioned officers or civil servants or ordinary members of reactionary parties and organizations. With their positions in the former society, they are all guilty of national treason - a crime mentioned in the Democratic Republic of Vietnam October 30, 1967 ordinance punishing counter-revolutionary crimes, and the PRG March 15, 1976 decree No. 03-SL/76 defining the crimes and punishments - and this crime would be punished by a minimum of 20 years' imprisonment, or even by life imprisonment or a death sentence.

Either of the two texts - the 12-point policy or Resolution 49 - can be applied against them (Resolution 49 was taken at a time when puppet elements under the French had resumed their anti-national activities with U.S. assistance), both are still valid and spring from the same principle as has been explained above.

Amnesty International considers this as a system of "administrative detention" with a "preventative" character. But there is here a misunderstanding. The English translation of Resolution 49 in the Amnesty International memorandum is indeed not correct when it says that Resolution 49 provides for re-education for "obstinate counter-revolutionary elements who threaten public security". The right translation should be "obstinate counter-revolutionary elements who <u>have committed acts</u> detrimental to public security". Army officers and persons of an equivalent rank who have to undergo re-education have actually committed acts detrimental to public security, namely acts of national treason punished by law.

In the Vietnamese people's view, re-education without judiciary condemnation is an extremely humanitarian system which is very advantageous to them, compared with the usual system of trials before Court. The Amnesty International delegation, while in Viet Nam, was explained by the Vietnamese side in detail on this subject, and it is regretted that the explanation was not reflected in the Amnesty International memorandum.

In Vietnamese psychology the absence of judiciary condemnation spares the person concerned a tarnished judiciary record (casier judiciare) which may adversely influence his whole life and that of his children, especially in matters related with his professional activities: for instance, an imprisoned curate can not deliver sermons after his release. The regime in re-education camps differs from that in prisons, and the duration for his loss of freedom is also shorter (these points will be examined in subsequent paragraphs).

In its memorandum, Amnesty International is of the opinion that after the 3-year period for the re-education of members of the puppet army and administration, the education element has considerably receded, and grounds for continued detention "seem to have shifted from past misdeeds and present behaviour to the external situation, namely national security". Vietnamese representatives in Hanoi made it a point to acquaint the Amnesty International delegation with the new threat to Vietnam's security represented

by the Peking hegemonists, and we think that any State has to give top priority to the problem of security. But it would be wrong to oppose re-education to security. There exists indeed a dialectical relationship between those two elements. Fruitful re-education is a contribution to strengthening national security.

In short, there may be different conceptions of humanitarianism and human rights. Ours is this: Respect for human rights, in the case of members of the puppet army and administration, should include re-education so as to bring them back to society, and we believe that this is feasible without resorting to trials. We trust that our conception is a right one. However we would not object to other conceptions of humanitarianism and human rights.

A principle in international relations is that there should be mutual respect and non-interference in each other's internal affairs. Moreover, there have been endeavours from both Vietnam and Amnesty International to establish good-willed relationship between them. In this context, the Amnesty International recommendation that "the Vietnamese Government abolish the present system of compulsory detention without trial for the purpose of re-education" and that "Resolution 49 be repealed" seems to be irrelevant. We think that, as we have said in Hanoi, in the present circumstances, taking into account the differences in conceptions among nations, an efficient method of work for Amnesty International is to acquaint the Vietnamese side with experiences from the world, and the Vietnamese side will eventually take a decision on the matter. In our opinion, the form of "presentation of experiences" is much more preferable than the form of "recommendation", since the Amnesty International delegation had come to Vietnam at the invitation of the Prime Minister of Vietnam, on a friendly visit, and not for the purpose of investigation.

III

Apart from that main point, the Amnesty International memorandum contains a number of points which reflect an amount of misunderstanding that also contributes to the formulation of the unfortunate recommendation

The memorandum gives the impression that arrestation and detention of people in Vietnam on political grounds falls within the exclusive competency of security services, namely the Home Ministry. However, there exists in our country a body separate from the Government, and that is the People's Procuratorate (it should be translated word by word from the Vietnamese into: the People's Institution for Control and Supervision). Article 105 of the 1959 Constitution stipulates: "The People's Procuratorate controls and supervises the observance of law by departments under the Government Council, by local State organs, by State officials and by citizens". The law on the Organization of the People's Procuratorate passed on July 15, 1960 by the National Assembly makes it clearer: "The arrestation of any citizen must be ratified by the People's Procuratorate except in case it is ordered by people's tribunals (article 14), and: "The People's Procuratorate is empowered to ask the security service and other investigation services to provide it with documents

necessary to the ascertainment of crimes or penalties committed by the convicted; if evidences are not clear enough, it may return them to the security service or the other investigation services; it may take a direct part in investigation work, and if necessary it may conduct investigation by itself"

Article 5 of Resolution 49 also stresses the role of the People's Procuratorate in the re-education system: "The People's Procuratorate has the responsibility to control and supervise the observance of law by the Administrative Committees, the security service and the service entrusted with detaining and re-educating (the persons concerned)".

Therefore while the 12-point system gives Administrative Committees of district level, and Resolution 49 gives those of provincial level, the right to examine cases of detention for re-education, proposals by Administrative Committees have to be ratified by the Government Council, and the whole process has to be controlled and supervised by the People's Procuratorate.

Likewise, the Law on the Organization of the People's Procuratorate entrusts the latter with "controlling and supervising regulations connected with arrestation and detention, to ensure that no innocent citizen is arrested and detained and that all formalities and regimes of arrestation and detention are correctly implemented" (art 20); "The People's Procuratorate can examine all documents and files related to arrestation and detention, and can directly ask questions to the detainees" (art. 21); "the authorities of detention establishments have to forward complaints and requests from detainees to the People's Procuratorate within 24 hours. The People's Procuratorate has the responsibility to examine those complaints and requests and give replies to the persons concerned" (art. 22).

The Central People's Procuratorate has under it a special department for the control and supervision of all detention institutions, with a number of inspectors whose presence at those detention institutions is a guarantee against misuses of, and contraventions to, law, and gives confidence to the detainees.

The above-quoted article 22 of the Law on the Organization of the People's Procuratorate is reflective of the detainees' right to make complaints and to ask for the reasons of their detention, etc... Moreover, the "Inner Rules" of re-education camps (those rules have to be brought to the knowledge of detainees within ten days of their arrival at the camps) also stipulate that they have the right "to expound their worries and aspirations to the camp authorities and to other competent services at all levels of the Party and the State" (article 4 of the Inner Rules).

On the other hand, the People's Procuratorate at central and local levels often receives letters and complaints sent by families of detainees - either to plead innocence, or to ask for generosity, or to protest against bad behaviour by some responsible cadre of the camp, etc...

Those letters and complaints must receive due consideration and treatment.

On the duration of detention, Resolution 49 mentions a 3-year period but that is only a sort of "milestone", as the period may be shortened if the person concerned has performed good re-education - and there are many cases of release ahead of schedule (for both puppet elements and other counter-revolutionary elements). The 3-year period may be prolonged, in which case a new 3-year period is announced to the person concerned. A new "milestone" is set, and often the detainee is released before the new term (take the case of Bui Tuong Huan for instance).

So facts have shown that there exists no indefinite detention. The overwhelming majority of those detained in the sixties under Resolution 49 (approved in 1961) were released after one or two three-year periods, and at present no one among them stays in detention institutions.

Since 1975, the total number of persons undergoing re-education is 40,000. By December 1979, we had released 14,000, and later on, up to now, we have released more than 6,000 other persons. As we have said above, the Socialist Republic of Vietnam is thinking about measures to encourage those of the former regime who are still in camps to actively reform and re-educate themselves, it is thinking about measures to open ways for those who would show real repentance to go back to their families and to society.

It should be mentioned that intermediary forms have been adopted which ensure both humanitarianism and national security. The Amnesty International delegation has visited Father Nguyen Van Thuan who was put under "résidence surveillée" at a village 20 km west of Hanoi and was given freedom within certain limits. There also exists a plan to set up "new economic zones" where detainees would be transferred to live with their families, far from big cities or places of national security interest.

Are released people authorized to go and live abroad? In general, detainees, after being released, have to spend from half-year to one year in their place of residence to be watched by the local authorities. After that, they would recover their full rights as citizens, and are entitled to enjoy the facilities mentioned in the agreement between the Vietnamese Government and the UNHCR.

As regards the humanitarian character of life in re-education camps, the Amnesty International delegation may have seen it for itself. Mention should also be made for instance of Article 5 of the Inner Rules: "The detainees have to attend various classes - political, cultural, scientific and technical, professional - and have to learn a profession which will help them earn their living after release".

On the other hand, it is also stipulated that the detainees "should not behave in a degrading way". The Amnesty International delegation may have noticed that relations between camp inmates and their guards are on an equal footing. The Amnesty International delegation is mindful of the economic difficulties now prevailing in Vietnam which affect the material conditions in re-education camps, but they may have noted that there is not much difference in the material conditions of living of the detainees and their guards.

It is hoped that Amnesty International will reexamine all its remarks in the memorandum to make them more consonant with what has been expounded above. For the sake of objectivity, the memorandum should reflect the special aspects of detention for the purpose of re-education in Vietnam. Failure to do so would create a wrong impression on what is going on in Vietnam

The memorandum has indeed created a wrong impression to the effect that arrestations in Vietnam are very arbitrary, that everything falls within the sole competency of the security services, that detainees have no right whatsoever, etc. . People would also believe that Resolution 49 serves as an instrument of repression against political dissidents, especially against religious people and intellectuals. In this respect, it should be stressed that the Vietnamese Constitution and law fully guarantee freedom of belief and highly value the role of intellectuals, technicians and scientists, since Vietnam considers science and technology as the keystone to national reconstruction. A few intellectuals and religious people have been detained only because of their law-breaking acts.

IV

We would not say that everything is perfect in Vietnam in legal matters. Owing to war conditions we have not yet, for instance, a penal code or a penal procedure code - we have only scattered texts of law. Likewise the implementation of law is still far from perfect, and the role of the People's Procuratorate is precisely to control and supervise the observance of law by State services, including the Government Council.

In this spirit, we appreciate Amnesty International suggestions which, after study, we may find suitable to the improvement of our law system, for instance some suggestions related to conditions in re-education camps and detention institutions. We will also examine seriously the problem of ratification of international covenants suggested by Amnesty International.

On the death penalty, our legal system still maintains it, but seldom resorts to it.

On measures for the prevention of ill-treatment of detainees, we affirm that Vietnamese law strictly prohibits torture and physical punishments. The Amnesty International delegation was free to contact re-education camp inmates and might have noticed that nobody complained about ill-treatment. On the other hand, some of the Amnesty International suggestions cover things already practised in Vietnam, for instance, the principle that the authorities responsible for detention should be separate from those responsible for investigation. Anyhow we will take into due consideration the whole of the Amnesty International suggestions and will put into practice all those found to be relevant.

As far as illegal emigrants are concerned, we reaffirm our adherence to the statement on 12 January 1979 by the Socialist Republic of Vietnam Government and the Agreement with the UNHCR to the effect of allowing legal and orderly departures.

DECEMBER 1980

AIDE MEMOIRE SUBMITTED TO THE GOVERNMENT OF THE

SOCIALIST REPUBLIC OF VIET NAM

Amnesty International wishes to record its appreciation to the Vietnamese Government for its written reply to the memorandum submitted by Amnesty International in May 1980. The organization also appreciated the opportunity afforded to it by the presence in London of a representative of the Vietnamese Government, Hoang Nguyen, to discuss at length Amnesty International's concerns with regard to Viet Nam.

The Secretary General of Amnesty International, Thomas Hammarberg, together with three members of the staff of the International Secretariat, Michael Williams, Arlette Laduguie and Nigel Rodley, were able to meet Hoang Nguyen and Ambassador Tran Hoan on three occasions.[1] These talks were conducted in an open and frank manner and clarified a number of matters raised by Amnesty International in its memorandum to the Vietnamese Government. As a result of the talks, it was agreed that a further aide mémoire would be submitted by Amnesty International outlining its continuing concerns in the light of the written reply from the Vietnamese Government.

Amnesty International appreciates the renewed assurances given by the Vietnamese Government of its adherence to the principles of freedom of belief and respect for human dignity. More specifically, Amnesty International warmly welcomes the news that, since a delegation from the organization visited the Socialist Republic of Viet Nam in December 1979, 6,000 detainees in "re-education" camps have been released and allowed to return to their families. In this context, the announcement by the Vietnamese Government, in its reply to the Amnesty International memorandum, that it was seriously considering measures regarding those remaining in detention with a view to their early reunification with their families and society generally is also an important step. It has often been the experience of Amnesty International that countries which have, for one reason or another, resorted to detention without trial have discovered that the problem of the eventual release of the prisoners does not become less intractable over time. On the contrary, there is a danger that for both prisoner and society the problem becomes more difficult to solve. A public announcement from the Vietnamese Government that it wished to see an early solution of the problem of detention without trial in Viet Nam might contribute to dispelling unease both in Viet Nam and abroad and would also contribute to ending an unhappy chapter in the history of the Vietnamese people. The issue of the remaining 20,000 detainees in "re-education" camps will be returned to later in this aide mémoire.

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[1] These meetings took place at the Embassy of the Socialist Republic of Viet Nam in London on 23 and 30 September and 2 October 1980.

The repeated affirmation by the Vietnamese Government, in its reply to the Amnesty International memorandum, and in the subsequent talks at the Vietnamese Embassy in London that torture and ill-treatment of detainees is strictly prohibited is noted by Amnesty International, which appreciates too the willingness of the Vietnamese Government to consider actively the implementation of some of the recommendations in its original memorandum relating to conditions in "re-education" camps and detention institutions.

Amnesty International also wishes to record its appreciation that its recommendations to the Vietnamese Government regarding the international human rights covenants are being examined by the Vietnamese Government with a view to possible ratification. It would be an important step if Viet Nam, with its long history of striving for national independence, were to join the growing group of nations that have ratified the covenants

Amnesty International notes too the assurance given by the Vietnamese Government that the death penalty, although still retained in the Vietnamese legal system, is seldom resorted to. It remains the opinion of Amnesty International, however, that this punishment should be abolished, and it is its sincere hope that in the near future the Vietnamese Government will be able to consider this matter and, in the meantime, to refrain from imposing the penalty. Abolition of the death penalty would be in keeping with the abandonment of the attitude of vengeance and in keeping with the modern and humanitarian concept of rehabilitation of offenders which already features in Vietnamese policy. This is a field in which Amnesty International believes that the Socialist Republic of Viet Nam has a special contribution to make.

Amnesty International appreciates the frankness with which the Vietnamese Government has acknowledged shortcomings in its existing legal system. Unquestionably, the long and still recent history of war and foreign intervention has played an important role in impeding Viet Nam from fully developing its legal system.

Finally, Amnesty International is grateful for the clarification of a number of points raised in its memorandum of May 1980. It notes the mistranslation of the 1961 text on "re-education"[2] and also that the Vietnam Courier did not carry a full text of the Provisional Revolutionary Government (PRG) Decree No. 02/CS/76 of 25 May 1976 in its issue of July 1976. The question of the term "Procuracy" or "People's Procurator" in English and of the supervisory role over local state bodies and the

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[2] In discussing Resolution 49-NQ/TVQH of the National Assembly of the Democratic Republic of Vietnam of 1961, the Amnesty International memorandum (page 4) notes that it "provides for 're-education' for two categories of people: a) obstinate counter-revolutionary elements who threaten public security and b) 'all professional scoundrels'". The full translation of this should read: "obstinate counter-revolutionary elements who have committed acts detrimental to public security and b) 'all professional scoundrels'".

observance of law by government departments accorded this body by Article 105 of the 1959 Constitution of the Socialist Republic of Viet Nam is also acknowledged by Amnesty International.

II

In its written reply to the Amnesty International memorandum, the Vietnamese Government raised a number of important points that will now be taken up. Some of these matters were discussed in the meetings at the Vietnamese Embassy in London with Hoang Nguyen and Ambassador Tran Hoan, but Amnesty International wishes to take this opportunity of providing the Vietnamese authorities with written comments on their considered reply.

In its memorandum of May 1980 Amnesty International drew attention to the fact that the Policy Statement of the PRG of 25 May 1976, No. 02/CS/76, in its Preamble noted that no blame was attached to the many thousands of people who served in the former administration and armed forces of the Republic of South Vietnam. In this context too Amnesty International is mindful that the vast majority of people who have undergone "re-education" have done so for comparatively short periods. According to the Vietnamese Government's own figures, some 40,000 people were detained for long-term "re-education", 20,000 of whom are still in detention (September 1980). The point needs to be made, however, that these individuals have now been detained for some five and a half years, in all cases without charge or trial.

It is said by the Vietnamese Government in its written reply that these 20,000 people are all senior army officers or officials of the former Saigon administration. Moreover, it is stated that "they are all guilty of national treason" (page 23). The attention of Amnesty International was drawn to the provisions of an ordinance of the Democratic Republic of Vietnam of 30 October 1967 on the repression of counter-revolutionary crimes, which prescribes severe penalties, including the death sentence. According to the Vietnamese Government's written reply, all of those at present held in "re-education" camps could be tried under the provisions of this ordinance.

However, it remains Amnesty International's position that an individual should not be detained indefinitely merely because of his or her rank or position in the former administration. Nor can it be said that all those who formerly held certain positions are ipso facto "guilty of national treason". This is particularly so given that many of the cases known to Amnesty International cannot be said to concern individuals whose positions involved them in the prosecution of the war.

It might be helpful at this juncture to cite a number of individual cases in order to give more concrete expression to the discussion. Buu Huong is a former diplomat and civil servant, now aged 60, who has been

detained since June 1975. The last 20 years of his career were, to the knowledge of Amnesty International, spent entirely in the financial branch of the Foreign Service of the former Republic of South Vietnam. Another prisoner whose case has been brought to the attention of Amnesty International and who has been adopted by the organization as a prisoner of conscience is Vu Quoc Thong, the former Dean of the Faculty of Law at Saigon University. To the best of Amnesty International's knowledge, Dr Vu Quoc Thong, now aged 64, never occupied any public position in the former administration of Nguyen Van Thieu. Indeed he is reported to have taken a critical stance towards that government. He also has been in detention since July 1975 and has been adopted by Amnesty International as a prisoner of conscience.

These two cases indicate why Amnesty International is concerned because some of the 20,000 people still detained in "re-education" camps in fact had little or no connection with the former administration in power in Saigon. In any system of detention without trial there is bound to be a considerable degree of arbitrariness. Indeed this was recognized recently by the distinguished Vietnamese jurist and member of the National Assembly, Ngo Ba Thanh, in an interview[3]. The well-known Vietnamese historian and writer, Nguyen Khac Vien, also has said that "there may be errors of judgment" in certain cases[4].

Amnesty International cannot accept that those individuals at present detained in "re-education" camps are "all guilty of national treason" as defined by the ordinance of the Democratic Republic of Vietnam of 30 October 1967. This would deprive detainees of the right to presumption of innocence. In practice it would seem that detainees have to accept the need for their own "re-education" as a pre-condition for their release. Insofar as the detainees concerned are individuals who have not been convicted by a court of any offence, such an approach cannot be reconciled with respect for the right to be presumed innocent until proved guilty, which is proclaimed in Article 11 of the Universal Declaration of Human Rights and guaranteed in Article 14, paragraph 2 of the International Covenant on Civil and Political Rights[5].

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[3] Le Monde, 3 May 1980.

[4] Vietnam 1980 Foreign Language Press, Hanoi 1980, page 14.

[5] Article 11 of the Universal Declaration of Human Rights states: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

"No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."

Article 14, paragraph 2 of the International Covenant on Civil and Political Rights states: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

It is an important principle of international law that no one should be penalized for an act which was not designated a crime at the time he or she committed it. This principle finds clear expression in Article 11 of the Universal Declaration of Human Rights.

Amnesty International is aware of the specificity of Vietnam's historical development. The Democratic Republic of Vietnam, when it proclaimed its independence in August 1945, claimed jurisdiction over all the former French colonies that constituted Vietnam, namely Tonkin, Annam and Cochin-China. This declaration of independence was contested by the former imperial power, France, and a war of independence ensued. This was not an unusual experience. When peace returned to Vietnam in 1954, however, the country was arbitrarily divided in two. The Geneva Peace Accords of 1954 did call for the early reunification of the country and for national elections within 18 months. These did not take place. It is a commonly held view that the reason for this was foreign intervention in South Vietnamese affairs. It is outside Amnesty International's terms of reference to go into such matters, but it is clear that the de facto division of Vietnam was sealed for nearly 20 years and Vietnam joined that small group of nations, together with Germany and Korea, that found themselves divided in the post-Second World War era.

Amnesty International is acutely conscious of this peculiar context in which the evolution of Vietnam took place. Despite this, Amnesty International contends that the application of a law restroactively, in this case the 1967 ordinance on counter-revolutionary crimes, is an unfair measure on the part of the Vietnamese authorities. Given that two Vietnams had de facto if not de jure appeared, it is Amnesty International's belief that it is not reasonable to expect those Vietnamese who found themselves, willingly or unwillingly, within the jurisdiction of the Saigon administration to observe the legislation of both the former Republic of South Vietnam and the Democratic Republic of Vietnam. It is evident that de facto large numbers of Vietnamese living in the South were under the effective jurisdiction of another government, a government whose violations of human rights Amnesty International repeatedly denounced. It would, therefore, be difficult for Amnesty International to accept the view that people under the jurisdiction of those exercising authority in the southern part of Vietnam should be held retrospectively to have been subject to the laws adopted by the Democratic Republic of Vietnam.

In its written reply the Vietnamese Government goes on to state that in addition to the 1967 ordinance there is Decree No. 03/SL/76 of 15 March 1976 of the Provisional Revolutionary Government of South Vietnam on crimes and punishments. It is difficult, however, to understand how this decree would apply to acts committed before it was issued. Amnesty International is aware that many of those still detained may have used violence as members of the armed forces of the former administration. Indeed, it is possible that some detainees, as has been pointed out by the Vietnamese authorities, may have been guilty of genuine war crimes, for example torture. As has been stated in previous communications, Amnesty International in its statutory definition of prisoner of conscience excludes people whose imprisonment is attributable to their having used or advocated violence. Nevertheless, it has to be acknowledged that such acts,

where they did not involve deliberate violence towards or ill-treatment of the civil population or prisoners, took place in a context of armed hostilities. This being so, according to Article 11 of the Universal Declaration of Human Rights and Article 15 of the International Covenant on Civil and Political Rights[6], they would not in themselves, in such a context (that is, war), constitute criminal offences under national or international law at the time when they were committed.

In its memorandum, submitted to the Vietnamese Government in May 1980, Amnesty International cited at length the original text explaining the policy of the Provisional Revolutionary Government of South Vietnam towards personnel of the former administration - Decree No. 02/CS/76 of 25 May 1976. This policy statement, as Amnesty International pointed out, stated quite explicitly that "re-education" would last three years and that those individuals who had committed criminal acts would be charged and tried (Article 9).[7] At the time of its mission to the Socialist Republic of Viet Nam in December 1979, the Amnesty International delegation was referred also to Resolution 49-NQ/TVQH of 1961 of the National Assembly of the Democratic Republic of Vietnam. Again, in its written reply to the Amnesty International memorandum the Vietnamese Government took the position that either of the two texts - the 12-point Policy Statement of the Provisional Revolutionary Government of South Vietnam of May 1976 or the National Assembly Resolution 49 of 1961 - applied to those still in "re-education" camps.

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[6] Article 15 of the International Covenant on Civil and Political Rights states: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby."

[7] Decree No. 02/CS/76 of 25 May 1976, Article 9 states: "In order that they may strive to become good citizens of the new regime, troops, NCOs and officers in the various armed branches, including para-military organizations, security, intelligence, psychological warfare and the various police services, and personnel at various echelons of the administrative apparatus of the former regime, if they do not come under any of the above-mentioned provisions, must attend collective re-education courses for three years, starting from the day they enter a camp.

"Those who wholeheartedly make efforts in their re-education, achieve real progress, admit their crimes and score merits may be considered for return to their families sooner than stipulated and for the restoration of their citizenship.

"Those who have committed many crimes against the people and dangerous chief evildoers who have incurred many blood debts to their compatriots, who make no significant progress and who are still stubborn will be brought to trial by the revolutionary administration for appropriate punishment."

Amnesty International notes the view of the Vietnamese Government that "re-education" without judicial conviction (casier judiciaire) is a humanitarian system which leaves the individual without the tarnish of a criminal record. Nevertheless, as Amnesty International pointed out in its memorandum, Resolution 49 of 1961 differed from the PRG Policy Statement of 1976 in two crucial respects:

1) the PRG Policy Statement is clear that "re-education" will last for three years, while Resolution 49 of 1961, although mentioning a period of three years' detention, allows for this to be renewed;

2) there are no provisions in Resolution 49 of 1961 that those individuals sent for "re-education" be brought before a court or tried.

Inasmuch as some prisoners have now been detained since the beginning of the "re-education" detentions in June 1975, it is clear that Resolution 49 of 1961 has been given precedence over the PRG Decree of 1976.

Moreover it is worth recalling the context in which and the historical moment when the two decrees were framed. The National Assembly Resolution 49 of 1961 was enacted at a time of growing tension in Vietnam, when the threat of external intervention was real. The PRG Decree of 1976, however, dealt with a specific problem that had arisen as a result of the conclusion of the war and the collapse of the old administration in Saigon. "Re-education" was introduced as one solution to the problem of demobilizing the massive armed forces of the former Republic of South Vietnam and incorporating their members into Vietnamese society. But it is Amnesty International's belief that this policy should have stipulated maximum periods of detention, as the PRG Decree did, and that the Vietnamese Government should abide by the stipulations of that decree. Amnesty International believes that the detainees too understood that their detention would be for a maximum of three years. Indeed to the best of Amnesty International's knowledge, no public statement has ever been forthcoming from the Vietnamese authorities that the provisions of Resolution 49 of 1961 had now replaced those of the PRG Decree of May 1976. The latter decree's provisions are clearly lighter. In this context, Amnesty International would like once again to refer to Article 15, paragraph 1 of the International Covenant on Civil and Political Rights which provides that: "If subsequent to the commission of the offence provision is made by law for the lighter penalty, the offender shall benefit thereby".

Amnesty International is aware that unforeseen international developments since 1978 have created enormous difficulties for the Socialist Republic of Viet Nam. The Vietnamese Government, in its reply to the Amnesty International memorandum, points out that any state has to

give a high priority to its security. This threat to security, however, is external to Viet Nam and should not be used as a justification for the continued detention of individuals interned for "re-education" in June 1975. This is especially the case when those individuals are detained without charge or trial and when it was their and their families' expectation that detention would not last longer than three years. To leave the detainees and their families in continuous uncertainty regarding the length of their detention is unjust and inhumane. For this reason Amnesty International is pleased to learn that the Vietnamese Government is actively looking at ways of achieving an early and final solution to this problem.

In its memorandum of May 1980, Amnesty International acknowledged the absence of a policy of summary executions and tribunals following the collapse of the former Republic of South Vietnam in May 1975. In revolutionary contexts elsewhere newly installed authorities have sometimes sought to wreak violent revenge on their former opponents. Amnesty International recognizes that this was not the spirit that guided first the Provisional Revolutionary Government of South Vietnam, nor, following reunification of Viet Nam on 2 July 1976, the Socialist Republic of Viet Nam. The "re-education" program, as Amnesty International understands it, was specifically framed with a view to seeking the early reintegration of those who underwent it into Vietnamese society.

In its written reply to Amnesty International's memorandum, the Vietnamese Government notes that out of a total of more than one million people who reported for "re-education", some 40,000 were subjected to long-term detention. Of this number, exactly half (20,000) have been freed and allowed to rejoin their families and society. The remainder (a further 20,000) are still in detention despite the fact that they have now been detained for more than five years. Amnesty International respectfully recommends that in view of the hardships that the prisoners and their families have had to endure, the Vietnamese Government should give high priority to releasing from detention as speedily as possible all prisoners in whose cases there are no grounds for bringing specific criminal charges.

III

Amnesty International is grateful to the Vietnamese authorities for clarifying the position regarding the number of individuals undergoing long-term "re-education". In its written reply to the Amnesty International memorandum, the Vietnamese Government notes: "It should be stressed that this figure of 40,000 includes all [emphasis in original] persons detained in re-education camps since 1975." Of this number, 20,000 remain in detention (September 1980).

Although Amnesty International understands that this number relates to the total number of people undergoing long-term "re-education", the organization is gravely concerned that this number includes an

indeterminate number of people whom it believes to be prisoners of conscience, that is, individuals who have been imprisoned for the expression of their conscientiously held beliefs. It should be made clear here that many of those whom Amnesty International considers prisoners of conscience had no connection, to its knowledge, with the former administration in the South nor were they arrested in 1975.

A number of cases may be cited to illustrate this point. Trieu Ba Thiep is a lawyer by profession who was arrested in 1977. Reportedly his arrest followed his signing a declaration criticizing the Vietnamese Government's policy on various human rights matters. It should be stressed that his opposition to the government was non-violent and reflected his conscientiously held beliefs. Trieu Ba Thiep was a political prisoner during the period of the Diem government in the early 1960s.

Duyen Anh is a writer of children's stories and former editor of two weeklies, Chi Trai and Cong Ong. Now aged 45, he has written more than 30 books, many reflecting the hardships and poverty of his youth as a street urchin in Saigon. Although Amnesty International understands that the Vietnamese authorities consider much of his work "reactionary", which would seem to be a political judgment, no charges have been preferred against him since his arrest in April 1976. He is detained in Xuyen Moc detention camp in southern Vietnam.

Pham Van Tam is a journalist and former senator during the period of the Thieu government. He maintained a critical attitude towards that government and was Secretary-General of the Vietnamese League of Human Rights. As far as Amnesty International is aware no charges have been brought against him.

Another case is that of Nguyen Tran Huyen, known also as Cao Giao. He was one of a number of prisoners whom the Amnesty International delegation met in Chi Hoa Prison, Ho Chi Minh City in December 1979. During the period when the Thieu government was in power he worked as a journalist and as an assistant to foreign reporters in Vietnam. Reportedly he also assisted political prisoners held by the Thieu government. After the end of hostilities in April 1975 he continued to live in Saigon until his arrest in June 1978.

The case of Cao Giao was raised by Amnesty International in talks at the Vietnamese Embassy in London on 2 October 1980. Amnesty International has expressed its concern that Cao Giao, like Pham Van Tam, Duyen Anh and Trieu Ba Thiep, has been held without charge or trial. For Cao Giao this now means he has been held for two and a half years without charge or trial despite the fact that the Provisional Revolutionary Government Decree of 23 March 1976 (No. 02/SL/76) on Arrests and Detention stipulates that no one may be detained without charge or trial for longer than 12 months. Leaving aside the exceptional length of this period of interrogation allowed for by the decree, which has been commented on in the earlier Amnesty International memorandum, in all the four cases cited above the maximum period of detention does not appear to have been respected by the authorities.

The fact that all four of these prisoners -- and others like them -- were arrested well after the fall of the Thieu government would seem to indicate that their arrest is not attributable to activities in connection with that government.

In the light of the above facts, Amnesty International appeals to the Vietnamese Government to examine these cases and those of others against whom no charges have been preferred with a view to considering their early release. Amnesty International also respectfully submits to the Vietnamese Government that its earlier recommendations on arrest and detention (see memorandum, pages 17 to 20) be examined and considered for early implementation.

Finally Amnesty International wishes to express its concern to the Vietnamese Government regarding reports it has received of deteriorating medical conditions for some detainees in "re-education" camps. Amnesty International is fully aware that Viet Nam faces acute shortages of both medical personnel and drugs. However, it believes that the Vietnamese Government has a duty to ensure that medical conditions in "re-education" camps at least match those recommended in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Sections 22-25). In particular Amnesty International respectfully draws the attention of the Vietnamese Government to Section 22 (2):

> "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitably trained officers."

Amnesty International has received reports of prisoners who have been detained in "re-education" camps despite the fact that the prison authorities knew they were suffering from terminal diseases. One example is Truong Van Truoc, who died in August 1980 of stomach cancer in a detention camp, 90A TD 63/TC, Doi 11, Thanh Hoa. Such cases should not occur, particularly since Article 7 of the Provisional Revolutionary Government Policy Statement on Re-education (No. 02/CS/76) states explicitly that sick prisoners should be released:

> "... who are now old, weak or suffer from serious diseases, or whose health is declining seriously, pregnant women whose time of delivery is approaching and women whose children are under three years of age; and people retired before liberation, will be allowed to return to their families, with the latters' guarantee."

Another death that has caused Amnesty International much concern is that of the writer Ho Huu Tuong, whose case was raised with the Vietnamese Government by the Amnesty International mission and again in its memorandum of May 1980. Ho Huu Tuong was transferred from the Xuyen Moc "re-education" camp to the hospital of Ham Tan in Minh Hai province on 2 June 1980. He died only three weeks later, just after he was finally given permission to return to his family in Ho Chi Minh City.

It should be pointed out that both Truong Van Truoc and Ho Huu Tuong died, not of sudden illnesses, but after having been chronically sick for several months. In the light of these cases Amnesty International respectfully submits that the Vietnamese Government undertake an urgent review of medical conditions in all "re-education" camps and of the cases of all sick prisoners.

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DECEMBER 1980

COMMENTS OF THE GOVERNMENT OF THE SOCIALIST

REPUBLIC OF VIET NAM ON THE DECEMBER 1980

AIDE MEMOIRE BY AMNESTY INTERNATIONAL

We take note of the fact that Amnesty International, through its December 1980 Aide Memoire, has made efforts to put into practice the principles governing relations between the two parties: mutual respect for sovereignty, friendship, mutual understanding and exchange of experiences.

We also note that Amnesty International has shown a better understanding of the humanitarian policy and re-education system as practised in Vietnam (see pp. 5, 13, 14, 15, 16 of the Aide Memoire).

There is no doubt that the direct exchange of views which took place in London in October 1980 has contributed to that understanding.

Of course, it cannot be expected that differences in viewpoints should disappear as a result of that short exchange of views.

In the following comments sent to Amnesty International at a moment when it is prepared to make public the documents exchanged between the two parties, the Vietnamese side deems it necessary to highlight, in a few lines, its views on a number of main points, in order to shed more light on its policy.

In its December 1980 Aide Memoire, Amnesty International still holds that high-ranking members of the former Saigon administration and army should be presumed to be innocent, that to apply to them legal texts adopted after they committed acts found to be criminal is at variance with the principle of non-retroactivity, and that it would also be irrelevant to apply to them legal texts of the Democratic Republic of Vietnam since Vietnam had undergone de facto partition.

National Treason is a crime condemned and punished by moral codes in all countries and at all times. Experiences gathered in both zones of Vietnam-North and South-led to the definition, in the October 10, 1967 DRV ordinance punishing counter-revolutionary crimes, of that crime as one consisting in - "opposing the homeland, undermining the cause of anti-US patriotic resistance to defend the North, liberate the South and achieve national reunification". The above-said ordinance provided for the "severe punishment of heads and ring-leaders stubbornly opposing the revolution" the high-ranking members of the former Saigon administration and army are those very persons who had drawn up, and directed the implementation of, or taken a direct part and to a substantial extent in the implementation of, plans "aimed at opposing the anti-US patriotic resistance to defend the North, liberate the South and achieve national reunification" so as to serve the US war of aggression. They had shown faithfulness to the US aggressors and diligence in committing criminal acts, as a result of which

they were promoted to high positions which they were able to keep. Their criminal acts were committed consciously, because in the course of the twenty years of US neo-colonialist rule in South Vietnam, in view in particular of the war crimes perpetrated by the US in both zones of Vietnam, everybody, unless they kept their eyes closed, should have realized that the former Saigon administration was just a tool in the hands of the aggressors, the personnel in question carried out their criminal acts in an obstinate way, because the war of resistance was a long one, and conditions were sufficient for the policy of the Democratic Republic of Vietnam and the Republic of South Vietnam to come to the knowledge of those who collaborated with the enemy. For the above-mentioned reasons, the high-ranking members of the former Saigon administration and army come under the category of heads and ring-leaders stubbornly opposing the revolution". They should be severely punished as such.

No argument, no juridical principle can allow anyone to invoke the principle of non-retroactivity to protect those guilty of crimes condemned by moral codes and laws in all continents. The Nuremberg international tribunal sitting at the end of World War 2 has also decided that Nazi criminals could not enjoy the protection of the principle of non-retroactivity. The maxim "nullum crimen sine lege" cannot be invoked here, for, as the verdict of the tribunal stressed, regarding those crimes punished by all nations at all times", (the guilty) must know that he is doing wrong, and so, far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished". This viewpoint was adopted by the verdict of the Tokyo international tribunal of 1948. Likewise, at the Jerusalem district court for the trial of the Nazi criminal Adolf Eichmann in 1961, the application of the maxim "nullum crimen sine lege" was discarded, and Eichmann was punished. At this tribunal it was recalled that dozens of countries had not applied the principle of non-retroactivity to those kinds of crimes

The decision of the Nuremberg tribunal was warmly welcomed by world opinion as a step forward in the history of international penal law. In connection with the Nuremberg verdict, the well-known American columnist Walter Lippmann wrote: "The principle of non-retroactivity was edicted with a view to protecting the innocent. To invoke it for the protection of the guilty would be to commit a denial of justice".

In this spirit and in accordance with the precedent of the Nuremberg international tribunal, laws punishing counter-revolutionary crimes should have a retroactive effect in Vietnam.

The application of DRV laws against those Vietnamese in the South who collaborated with the enemy with a view to consciously betraying their homeland is both legitimate and legal. Partition of Vietnam caused by foreign aggression runs counter to facts of history, to the aspirations of the whole people of Vietnam and to the 1954 Geneva Agreements. Until the Republic of South Vietnam Provisional Revolutionary Government was set up, the Government of the Democratic Republic of Vietnam had exerted its authority on all Vietnamese living in the whole territory of Vietnam, and after its establishment, the SV PRG exerted its authority on all Vietnamese living in the South.

High-ranking members of the former Saigon administration and army are clearly offenders of Vietnamese laws.

Moreover, in all cases of people being sent to re-education camps, the competent Vietnamese authorities have established files recording the criminal acts committed by the people concerned. It goes without saying that in some specific cases, the state, basing itself on the requirements of national security may not make public those criminal acts

We would like to suggest in this connection that Amnesty International re-examine its sponsorship of a number of Vietnamese described as "prisoners of conscience" - which in fact is a sponsorship of persons guilty of national treason. This might be understood as an interference with our country's sovereignty and security.

We wish to reaffirm that persons sent to re-education camps in Vietnam are offenders of Vietnamese laws. Vietnam would have full authority and sufficient grounds to try them before a court and to mete out severe punishments in accordance with its laws and regulations But that has not been done, for humanitarian reasons already explained. The system of re-education without trial as applied in Vietnam is the most humanitarian system, and the most advantageous one for law offenders. It is also in accordance with the tradition of generosity and humanitarianism of the Vietnamese nation and the loftiest ideals of mankind.

As national security has of late been strengthened and the persons undergoing re-education have made progress, the Vietnamese government has stepped up the tempo of releases in favour of those persons. Faithful to the Vietnamese people's humanitarian spirit and to its proclaimed policy, the Socialist Republic of Vietnam has taken and is taking measures to encourage those of the former regime who are still in camps to actively reform and re-educate themselves as well as measures to open ways for those who would show real repentance to return to their families and to society at an early date.

March 1981.

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