Twenty-three monks and lay Buddhists have been arrested since the end of October 1994 by the Vietnamese authorities and several others have been called in for questioning on more than one occasion. These arrests and the events leading to them, as described below, show the continuing repression of Buddhists in Viet Nam and are in flagrant contradiction to the Vietnamese Government’s assertion of freedom of religion. Amnesty International believes that two of those arrested are prisoners of conscience, detained solely for exercising their rights to freedom of expression and religion, and is calling for their immediate and unconditional release. Amnesty International believes that the others arrested are probably prisoners of conscience, but is not yet able to make an accurate assessment because of lack of information. It believes that the Vietnamese Government should undertake an independent review of their cases and release them immediately if they are found to be held solely for exercising their rights to freedom of expression and religion.

The first arrest was made on 29 October when Thích Long Tri, Abbot of Vien Giac Temple, Hoi An arrived in Ho Chi Minh City in order to head a relief mission for the victims of floods in the Mekong Delta where over 400 people died and thousands of others were made homeless. The Unified Buddhist Church of Vietnam (UBCV), a religious organization banned in 1981, organized a relief convoy which was to depart from Ho Chi Minh City on 5 November, but the authorities deemed the relief mission to be "subversive" and detrimental to "religion and national solidarity". Thích Long Tri was held for a day before being expelled from Ho Chi Minh City and is now in detention.

On 5 November, leaders of the mission were allegedly warned to call off the operation: 60 monks and nuns and over 300 lay Buddhists were prevented from carrying out the relief mission and the following day three monks and two civilians were arrested. Thích Nhat Ban, Thích Khong Tanh (Abbot of Lien Tri Temple, Ho Chi Minh City), Thích Tri Luc (Thien Mu Pagoda, Huế), Pham Van Xua (Buddhist name: Nhat Thuong) and Mrs Nguyen Thi Em (Dong Ngoc) are held in Ho Chi Minh City and are not allowed to have
to members and supporters of the UBCV as politically-motivated trouble-makers who disrupt public order or aim to overthrow the government.

Discontent among Buddhists is not restricted to outlawed organizations but is also mounting among members of the officially approved Vietnam Buddhist Church (VBC). Disturbances erupted in Huế on 27 November 1994 when several monks and students disrupted the opening ceremony of the Buddhist Elementary School held at Bao Quoc Pagoda. The protestors claimed that they had come peacefully to hand in a petition protesting at the political content of the school’s curriculum and the discriminatory enrolment criteria. Several people were injured in the ensuing confrontation and the police soon announced they would be filing charges against those involved under Article 198 of the Criminal Code. Article 198 provides for up to seven years’ imprisonment for the “crime of disrupting public order”. Two monks involved in the incident, Thich Thai Hung and Thich Hanh Duc, were arrested in December.

In a related incident, Thich Nhu Dat, member of the Thua Thien - Huế VBC Executive Board, and 12 novices were called for “working sessions” at Security Police Headquarters on 7 December and are still detained today. In an eight-page letter Thich Nhu Dat had complained about the enrolment policy of the school and the “civic studies” to be taught together with Buddhist scriptures. Complaints such as these reflect the general discontent over the strict control that the authorities exert over religious practice, whether Buddhist or Christian. According to guidelines published by the Government in December 1993, religious bodies have to inform the authorities about the enrolment or ordination of clergy. "The principal criteria for the choice of the candidates is their good performance of their civic duties. The course of civic education must be integrated into the programs of the schools ... and considered as a major subject" (No500HD/TGCP, 4 December 1993). Strict rules also control the publication of religious texts.

Freedom of expression and freedom of religion are guaranteed by Articles 69 and 70 of the 1992 Constitution. Despite these guarantees the Vietnamese Government continues to arrest and detain monks and lay Buddhists solely for peacefully exercising their rights. To Amnesty International’s knowledge there are currently at least 36 Buddhists in detention, including the 23 described above. Some monks have been detained since the late 1970s and early 1980s. Amnesty International calls on the Vietnamese Government to respect the right of all its citizens to practice the religion of their choice as enshrined in its Constitution and in international law.
AGAINST THE TIDE
The Death Penalty in Southeast Asia

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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM
As the 21st century approaches, an increasing number of countries from widely different regions and cultural traditions are moving to abolish the death penalty. Over half the countries in the world are now abolitionist in law or in practice. Since 1989 more than twenty countries and territories have abolished the death penalty for ordinary crimes or for all crimes. They include countries and territories in Asia, Africa, Latin America and Europe. The nations of ASEAN (Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam) are a notable exception to this trend. All retain the death penalty for a wide variety of crimes and in some countries - notably Singapore and Vietnam - the number of executions is believed to have risen sharply in recent years.

ASEAN governments do not release adequate information about judicial executions carried out in their countries. In several of the countries executions have been carried out in secret. The lack of official statistics means that the true number of executions remains unknown. There is also very little public information about prisoners currently on death row in the majority of the countries.

This document describes how people have been sentenced to death after unfair trials and how some of those executed may have been innocent of the crimes for which they were convicted. Many of those executed were poorer, less educated and more vulnerable than average. Amnesty international urges the ASEAN governments to call a halt to further executions and to work towards abolition of the death penalty. This document includes studies on each of the ASEAN countries and outlines Amnesty International’s recommendations to the ASEAN governments.
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AGAINST THE TIDE
The death penalty in Southeast Asia

INTRODUCTION
As the 21st century approaches, an increasing number of countries from widely different regions and cultural traditions are moving to abolish the death penalty. Over half the countries in the world are now abolitionist in law or in practice. Since 1989 more than twenty countries and territories have abolished the death penalty for ordinary crimes or for all crimes. They include countries and territories in Asia (Cambodia, Hong Kong), Africa (Angola, Mauritius, Mozambique, South Africa) and Latin America (Paraguay). The nations of ASEAN\(^1\) are a notable exception to this trend. All retain the death penalty for a wide variety of crimes and in some countries - notably Singapore and Viet Nam - the number of executions is believed to have risen sharply in recent years.

Although there are known to have been high numbers of executions in some of the ASEAN countries, two have not carried out any executions for many years. Brunei Darussalam is not known to have executed any prisoners since 1957, leading observers to consider it abolitionist de facto. In the Philippines there have been no executions since 1976, although since 1994 more than 200 people have been sentenced to death and there are fears that executions may resume in 1997.

Other neighbouring countries have followed the worldwide trend towards abolition. Australia and New Zealand, both members of the ASEAN Regional Forum, abolished the death penalty in 1985 and 1989 respectively. Both countries have also acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), a binding international agreement to abolish the death penalty. Cambodia abolished the death penalty in April 1989. Seven countries in the Pacific have abolished the death penalty for all crimes, one has abolished it for common crimes and three are abolitionist de facto.

A factor contributing to concern about the death penalty in ASEAN is the failure of ASEAN governments to release information about judicial executions carried out in their countries. In several of the countries executions have been carried out in secret. The lack of official statistics means that the true number of executions remains unknown. There is also very little public information about prisoners currently on death row in the majority of the countries.

\(^1\)ASEAN - the Association of Southeast Asian Nations - was established in 1967 with three main objectives: (1) to promote the economic, cultural and social development of the region (2) to safeguard regional peace and stability and (3) to serve as a forum for the resolution of intra-regional differences. The five original members are Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei Darussalam joined on gaining independence in 1984 and Viet Nam became the seventh member in July 1995

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Nationals of ASEAN member states have been executed or are currently under sentence of death in neighbouring ASEAN countries, a situation which has often caused an increase in the number of ASEAN voices - both government and non-government - against the death penalty. One prominent case was the execution in Singapore of Flor Contemplacion, a Filipino domestic worker and mother of four children, who was convicted of murder. She was hanged in March 1995 despite international concern about the fairness of her trial and a last-minute appeal by President Ramos of the Philippines for clemency. Her execution caused public outrage in the Philippines and sparked a diplomatic row between Singapore and the Philippines, leading to both countries withdrawing their ambassadors for several months. In other cases, however, interventions by government officials on behalf of nationals of their state have been successful. A number of Indonesians sentenced to death in Malaysia, for example, have reportedly had their sentences commuted to prison terms following pressure from the Indonesian Government.

The tension created by the possible execution of each others’ nationals prompted the Attorneys General of the ASEAN states to discuss this at a meeting in July 1995. Following the meeting the Attorneys General signed an ASEAN statement known as the Jakarta Consensus on Cooperation in the Legal Field, in which they agreed inter alia to exchange information on ASEAN nationals under sentence of death in each others’ countries. Amnesty International welcomes this new forum for discussion of the death penalty but hopes that it will lead not only to greater openness about all ASEAN nationals on death row in ASEAN countries, but also to debate about the use of the death penalty in the region.

Many people in Southeast Asia point to rising crime rates as a compelling reason to impose the death penalty. Indeed public anger at examples of the most heinous of crimes, such as the rape and murder of children, have fuelled support for punishment by execution, in countries such as the Philippines. There is justifiable concern within ASEAN about increasing drug addiction and drug-related crimes. Yet there is no convincing evidence to support the assertion that the death penalty deters crime more effectively than any other punishment. A survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 1996, concluded that “research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment and such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis.”

Despite an array of harsh legislation and a high number of executions in the region for drug offences, both the supply of drugs and the level of addiction have continued to rise. Those executed for drugs offences tend to be at the lower levels of the narcotics trade and comprise mostly small-time addicts and individual couriers who are often ill-educated.

young or economically vulnerable, while those who organize and profit from the crimes frequently escape capture and prosecution.

Another major concern is that some ASEAN countries have enacted laws which undermine international norms for a fair trial, including for people who face the death penalty. In Malaysia and Singapore, for example, the presumption of innocence is weakened by the provision in certain laws that the possession of drugs shall be taken as evidence of trafficking unless the contrary is proved. Furthermore, in a number of the ASEAN countries there are mandatory death sentences for certain crimes which provide no leeway at all for mitigating circumstances. Foreigners, including nationals of other ASEAN states, may be tried for offences which carry the death penalty, but in some of the countries facilities for courtroom interpretation are inadequate or totally lacking, often in contravention of that country’s own legal procedures.

No criminal justice system in the world is completely immune to errors. Yet a single mistake which leads to the execution of an innocent person represents a shocking failure of justice. The risk of such failures may be heightened when justice systems are vulnerable to political pressure or to undue influence by the powerful or wealthy. The death penalty is often imposed on those with fewer resources available for their defence, or whose social status has made them vulnerable to unfair conviction. In some cases in the region, Amnesty International has recorded instances of executions of people who may well have been completely innocent of the crime for which they had been convicted.

The country studies which follow serve to outline the use of the death penalty in ASEAN. As the countries of the region become economically vibrant it is likely that they will also become increasingly assertive in seeking to influence international opinion. The tendency for increased use of the death penalty in the region is a growing source of concern for Amnesty International and all those working in support of the United Nations General Assembly’s position that it is desirable to abolish the death penalty in all countries and that the crimes to which it applies should be progressively reduced. Amnesty International urges the ASEAN countries to call a halt to any further executions and to work towards abolition of the death penalty.

AMNESTY INTERNATIONAL AND ITS WORK AGAINST THE DEATH PENALTY

Amnesty International is a worldwide voluntary movement that works to prevent some of the gravest violations by governments of people’s fundamental human rights. The organization has more than one million members in 192 different countries and territories, including in ASEAN countries. Amnesty International is impartial and is independent of any government, political persuasion or religious creed. It does not support or oppose any
government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the protection of the human rights involved in each case.

Amnesty International opposes the death penalty in all cases as the ultimate cruel, inhuman and degrading punishment and a violation of one of the most fundamental of human rights - the right to life. Amnesty International does not condone the crimes for which people may be sentenced to death and it recognizes the suffering of the victims of crime and their families. The organization believes however that the death penalty is an inherently unjust and arbitrary punishment, however heinous the crime for which it is provided.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE ASEAN GOVERNMENTS

The death penalty is not proven to be a uniquely effective deterrent against crime. As this document shows, those sentenced to death or executed in ASEAN countries are often poorer, less educated and more vulnerable than average. In many capital cases there are serious concerns that the trial proceedings were unfair. Amnesty International calls on the ASEAN governments to abolish the death penalty for all crimes. Pending total abolition, the organization urges the ASEAN governments to:

- Address within the Jakarta Consensus on Cooperation in the Legal Field shortcomings in legislation and trial procedures, so that any individual facing the death penalty is tried in accordance with international human rights standards for fair trial;
- Ensure that no ASEAN state has legal provisions under which the onus is put on the defendant to prove their innocence;
- Work towards the abolition throughout ASEAN of legal provisions which make the death penalty mandatory for certain offences;
- Reduce the number of crimes for which the death penalty may be imposed;
- Ensure that there are adequate government records which are publicly available about individuals sentenced to death.
BRUNEI DARUSSALAM

FACTS AND FIGURES AT A GLANCE

<table>
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<tr>
<th>Capital offences</th>
<th>The death penalty is mandatory for murder, unlawful possession of firearms and explosives, and drug trafficking.</th>
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<tbody>
<tr>
<td>Appeals procedure</td>
<td>Appeals are heard by the President of the Court of Appeal. The Sultan of Brunei is empowered to commute death sentences to terms of imprisonment.</td>
</tr>
<tr>
<td>Number of prisoners under sentence of death</td>
<td>Not known</td>
</tr>
<tr>
<td>Number of executions carried out</td>
<td>No executions are known to have been carried out since 1957.</td>
</tr>
<tr>
<td>Method of execution</td>
<td>Hanging</td>
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</tbody>
</table>

The Sultanate of Brunei became a British protectorate in 1888 but took control of internal matters in 1959. Since an abortive rebellion in December 1962 the Sultanate has been ruled by emergency legislation which has been extended every two years. The Sultanate became fully independent in January 1984 under the new name of Brunei Darussalam, but emergency legislation remains in force.

The number of offences punishable by death has increased since 1979 with the introduction of new legislation or amendments to existing laws. The death penalty is provided for by the Penal Code; the Internal Security Enactment 1982; and the Public Order Enactment 1982. However, in December 1982 the death penalty for drug offences was introduced and is embodied in the Second Schedule to the Misuse of Drugs Enactment 1978, as amended by the Emergency (Misuse of Drugs) Amendments Order 1984. This order provides for the death penalty as a mandatory punishment for the unauthorized trafficking, import or export of over 15 grams of morphine or heroin, possession of over 30 grams of morphine or heroin for the purpose of unauthorized trafficking; and unauthorized manufacture of morphine or heroin. According to news reports, the death penalty was extended in July 1992 to cover possession of more than 200 grams of cannabis or opium.

Amnesty International is only aware of three death sentences having been passed in Brunei Darussalam since 1967. The first occasion was in 1987, when a 44-year-old farm...
labourer was reportedly sentenced to death for murder and firearms possession. The following year, on 29 August 1988, Bruneian Sanli bin Sunggoh, 26 years old, and Omar Usman Mohammad alias Majid bin Amara, a 22-year-old Filipino, were convicted of murdering and robbing Ong Hong King, a fishmonger, on 15 October 1987. The two men were sentenced to death by the Brunei High Court.

The outcome of the two preceding cases is not known. No executions are known to have been carried out in Brunei Darussalam since 1957.
INDONESIA

<table>
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<tr>
<th>FACTS AND FIGURES AT A GLANCE</th>
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</thead>
<tbody>
<tr>
<td>Capital offences</td>
<td>Crimes against state security, assassination of senior state officials, murder, theft resulting in murder, piracy, drug offences.</td>
</tr>
<tr>
<td>Appeals procedure</td>
<td>Prisoners sentenced to death by civilian and military courts have the right to appeal to the relevant high court and then the Supreme Court. A request for Presidential Clemency can be made any time after the initial sentence, but is usually made if the death sentence has been upheld in the courts.</td>
</tr>
<tr>
<td>Number of prisoners under sentence of death</td>
<td>At least 26, five of whom are political prisoners who have been on death row for over 20 years. The remaining prisoners are mainly convicted of murder or drug trafficking offences.</td>
</tr>
<tr>
<td>Number of executions carried out</td>
<td>39 people have been executed since 1978. Of these, 30 were political prisoners.</td>
</tr>
<tr>
<td>Method of execution</td>
<td>Shooting by firing squad</td>
</tr>
</tbody>
</table>

The death penalty in Indonesia is used to punish both political and criminal offences. Apart from the inherent cruelty of the death penalty, there are elements within the trial and appeal procedures in Indonesia which further exacerbate the cruelty of this form of punishment and heighten the risk that an innocent person may be executed. In particular, Amnesty International is concerned that corruption and a lack of judicial independence sharply increase the risk of wrongful execution; that non-Indonesian defendants facing the death penalty do not have access to adequate translation facilities during both trial and appeals; and that delays in the appeal process result in prolonged confinement under sentence of death.

In the seven years from 1985 to 1992 there were 30 executions compared to four in the previous decade. Between December 1992 and the beginning of 1995 there were no executions, which led many observers to believe that Indonesia may have been moving towards at least de facto abolition of the death penalty. Indeed, some government and
judicial authorities appeared sensitive to arguments against the death penalty. In an unprecedented decision taken in 1988, the Indonesian Supreme Court ruled that the death penalty was inconsistent with the state ideology - Pancasila. However, three executions were carried out in early 1995 raising concerns again that other prisoners on death row may now be at increased risk of execution.

Chan Ting Chong (alias Steven Chong) - one of those executed in 1995 - had been on death row for nine years prior to his execution. Sentenced to death in 1986 by the District Court in West Jakarta, Malaysian national Chan Ting Chong was the first person to be executed in Indonesia for drug-related offences. Chan Ting Chong always claimed he was innocent and that he had been set-up. In 1990 he asked for his trial to be reviewed after another Malaysian involved in the case withdrew his statement which accused Chan Ting Chong of being the owner of the heroin. Previous appeals to both the High and Supreme Courts had also failed, as did his request for presidential clemency in 1991. As is generally the case in Indonesia, little or no warning was given before Chan Ting Chong was executed.

At least 26 people are currently on death row in Indonesia. This number includes at least five people, all non-Indonesians, under sentence of death for drug offences and 15 for murder. There are also five political prisoners on death row - Asep Suryaman, Sukatno, Bungkus, Nataneal Marsudi and Isnanto. All five were sentenced to death for their alleged role in the 1965 coup or for membership of the Communist Party of Indonesia (PKI) and have been on death row for between 21 and 28 years.

Twenty-two people have been executed since 1985 for their alleged links with the coup attempt. The threat that the remaining five will be executed remains very real. In August 1995, the Minister of Justice, Utoyo Usman announced that two political prisoners in Cipinang Prison, Jakarta, would be executed imminently. The names of the two were not given but they were widely believed to be Bungkus and Nataneal Marsudi. In the end the executions did not take place. However, the threat that all five men may be executed has not been lifted since all but Isnanto are believed to have had their appeals for presidential clemency rejected, the last legal obstacle before the sentence is carried out.

At least four of the five remaining prisoners sentenced to death in connection with the 1965 alleged coup attempt are believed to be in poor health and many others have already died in prison from old-age and illness. One, Ruslan Wijayasasstra, arrested in 1968 and sentenced to death six years later, died in April 1995. Prior to his death, he had become partially paralysed, almost blind and unable to walk. One Indonesia human rights activist commented on Ruslan’s death that, “[t]hey gave him a death sentence - but they saved on the bullet”

A major concern on the use of the death penalty is the lack of an independent judiciary in Indonesia. The courts are administered by the Ministry of Justice. Judges, court
officials and public prosecutors are therefore dependent on the executive branch for their salaries, promotions and other benefits. All government employees, including judges, must be members of the sole civil servants’ organization, KORPRI, which operates under the auspices of the powerful Ministry of Home Affairs. The President may intervene directly in judicial matters, by indicating cases which he wishes to see pursued.

Those facing the death penalty are often powerless to challenge the prosecution. One example is the trial of Kamjai Khong Thavorn, a Thai seaman, who was arrested in August 1987 in Samarinda, East Kalimantan, after Indonesian customs officials found 17.76 kilograms of heroin in his cabin. Kamjai Khong Thavorn’s original trial, as well as subsequent appeals and legal procedures, were conducted in Indonesian, which he could neither speak or understand at the time. There have also been suggestions that some of the prosecution evidence may have been falsified. In addition, some stages of the appeals process appear to have been carried out without the knowledge or agreement of either the defendant or his lawyers. Evidence emerged after the trial that strongly suggests that Kamjai Khong Thavorn is innocent or else a very minor actor in a large drugs smuggling operation. Despite this, Kamjai Khong Thavorn’s appeals to the High and Supreme Court have been turned down as has his request for presidential clemency. There is now no legal obstacle to prevent his sentence from being carried out.

Cases involving offences punishable by death are tried either in regular criminal courts, or, if the accused is a member of the armed forces or police, in a military court. The Criminal Procedure Code requires that defence counsel is provided in all cases where the death penalty may be imposed. An individual sentenced to death in either a military or civilian court may appeal to the relevant high court and then to the Supreme Court. Delays in the appeals process are often lengthy. One man allegedly involved in the 1965 coup attempt, Norbertus (Noor) Rohayan, was sentenced to death by a Regional Military Court in Jakarta. He appealed immediately, but heard nothing about the status of his appeal until 3 February 1987 (18 years later), when he was told that his appeal had been made too late. Norbertus Rohayan’s appeal for presidential clemency was turned down in the same year and he was executed in February 1990.

A prisoner may request clemency from the President at any stage after the initial sentence, but clemency appears to be granted rarely. Some prisoners refuse to request presidential clemency fearing that if it is refused then there is nothing preventing the sentence from being carried out. Sukatno, another of the 1965 prisoners and a member of parliament prior to the alleged coup who was sentenced to death in 1971 has consistently refused to request clemency. Pressure was exerted on him by military and prison authorities to make the request or to state in writing that he does not wish to do so. It later became known that the District Court of Central Jakarta had requested clemency in 1986 without Sukatno’s knowledge. The request was formally rejected on 13 May 1992. Sukatno, now
aged 67, remains on death row at Cipinang Prison Jakarta and is said to be seriously ill both physically and mentally.
Despite the mandatory use of the death penalty for those convicted of drug trafficking, drug addiction has increased in Singapore. In October 1994 the Minister of Home Affairs reportedly stated that between December 1990 and December 1993 the total addict population in Singapore’s five drug rehabilitation centres rose by 30 percent to 7,400. According to Ho Peng Kee, senior parliamentary secretary for Law and Home Affairs, by 1994 the average daily population in the rehabilitation centres reached a record high of 8,700. Furthermore, due to the fact that possession of certain amounts of drugs is legally considered to be trafficking, unless proven otherwise, addicts are frequently executed while those behind the crime of drug trafficking escape prosecution.

On 29 September 1995, Thai national Navarat Maykha was executed after having been found guilty of drug trafficking. The 32-year-old uneducated mother of two claimed that she was tricked into carrying drugs by a Nigerian acquaintance in Bangkok. He reportedly told her that he was in the garments business and persuaded her to carry what she believed was just a bag of clothes to Singapore. She was arrested at Changi Airport when officials discovered 3.2 kg of heroin concealed inside the lining of the bag. Navarat Maykha continued to maintain her innocence, even after her petition for clemency was rejected by the President of Singapore.

On 15 March 1996, Thai migrant workers Prawit Yaowbutr, Manit Wangjaisuk, Panya Marmontree, Prasong Bunsom and Panya Amphawa were hanged at dawn after having been convicted of the murder of two Indian nationals and a Burmese national. Singapore police stated that the men were part of a gang that had staged robberies at a series of work-sites.

Appeals for clemency by Thai non-governmental groups and representations by Thai officials failed to halt the executions. Although funds were raised in Thailand to enable the families of the condemned men to visit Singapore, the hangings took place before relatives of three of the men arrived.

In 1995, the United Nations (UN) Special Rapporteur on extrajudicial, summary or arbitrary executions named Singapore as one of 19 countries on which reports were received of death sentences imposed on defendants who did not fully benefit from the rights and guarantees for a fair trial provided by international instruments. Amnesty International is concerned that the death penalty in Singapore and other countries is often imposed on those with few resources for their defence, or those whose social or migrant status makes them vulnerable to instances of unfair conviction. Furthermore, there is a grave danger that the Singapore Government’s pursuit of judicial “efficiency” at the expense of internationally accepted norms on the right to fair trial and the use of the death penalty may result in more frequent miscarriages of justice.

\*UN Economic and Social Council, E/CN.4/195/61, para. 376
Amnesty International is seriously concerned by the continuing high rate of executions in Singapore, especially in light of the fact that the small city-state has a population of only about three million.

In recent years there has been a sharp increase in the number of executions. Since 1994 well over 150 people, including many foreigners, have been executed, mostly for drugs-related offences. There are fears that the total figure may be significantly higher, as many executions are not publicised.

The death penalty was employed in Singapore during the colonial period and was retained after the country became an independent republic in August 1965. Singapore’s Penal Code provided for a discretionary death sentence for seven different offences and a mandatory death sentence for murder and offences against the President’s person. However, in 1975 the Misuse of Drugs Act, introduced two years earlier, was amended to provide a mandatory sentence of death for any person convicted of importing, exporting or trafficking in certain amounts of drugs (see above chart). Furthermore, under Section 15 of the Act, “Any person who is proved or presumed to have had in his possession” the amounts of the drugs listed above “shall, until the contrary is proved, be presumed to have had such controlled drug in his possession for the purpose of trafficking therein”.

Subsequently the Arms Offences Act was also amended to provide for an automatic death sentence for anyone found guilty of using a firearm or explosive in the course of a crime, and anyone who is an accomplice to such a crime - even if the crime resulted in no deaths. In 1993, the Arms Offences Act was amended so that the prosecution no longer had to prove any intent to cause injury to people or property - anyone who uses or attempts to use arms during a crime, and any accomplice present at the scene who fails to “take all reasonable steps to prevent” their use, is presumed to intend injury unless it can be proved otherwise, and therefore faces death.

The trend of extending the scope of the death penalty to new offences not previously considered capital crimes in Singapore is inconsistent with the UN General Assembly’s determination that the main objective in the field of capital punishment is the reduction in the number of offences carrying the death penalty, with a view to its abolition. Amnesty International is particularly concerned about the extension of the use of the mandatory death sentence - by removing the right of judges to distinguish between dissimilar cases and take mitigating circumstances into account, mandatory death sentences deny defendants the equal protection of the law.

Many of those executed have been foreigners, including people from other ASEAN countries. Three Malaysian workers, Muhammad Hazani Ghan, Zulkifli Awang Kachik and Pauzi Abdul Kadir, were hanged at Changi Prison in the early morning of 20 September 1996 for drug trafficking.
**SINGAPORE**

<table>
<thead>
<tr>
<th>FACTS AND FIGURES AT A GLANCE</th>
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<tbody>
<tr>
<td><strong>Capital offences</strong></td>
<td>Singapore has a discretionary death sentence for seven different offences, and a mandatory death sentence for murder, treason, certain firearms offences and trafficking in certain drugs. Anyone over 18 found in possession of more than 15 grams of heroin, 30 grams of morphine or cocaine, or 500 grams of cannabis is presumed, unless the contrary can be proved, to be trafficking in the drug and faces a mandatory death sentence.</td>
</tr>
<tr>
<td><strong>Appeals procedure</strong></td>
<td>Appeals may be made to the Court of Criminal Appeal. Death penalty convicts may also submit a petition for clemency to the President, but it is extremely rare for clemency to be granted.</td>
</tr>
<tr>
<td><strong>Number of prisoners under sentence of death</strong></td>
<td>Not known. Amnesty International is aware of at least 34 death sentences passed in 1995, and at least 16 so far in 1996. However, the figures are likely to be far higher, as many death sentences are not publicised.</td>
</tr>
<tr>
<td><strong>Number of executions carried out</strong></td>
<td>Amnesty International is aware of at least 50 executions which took place in 1995, and at least 32 which have taken place in 1996. However, the organization fears that the real figure may be far higher as many executions are not publicized. According to the Ministry of Information, 76 people were executed in 1994.</td>
</tr>
<tr>
<td><strong>Method of execution</strong></td>
<td>Hanging</td>
</tr>
</tbody>
</table>
ruling that the prosecution had failed to prove its case beyond reasonable doubt. To Amnesty International’s knowledge no further death sentences have been confirmed.

Amnesty International fears that the first execution may take place in mid-1997.
A recent study of death penalty convicts by the Free Legal Assistance Group (FLAG) - a leading Philippine association of human rights lawyers - shows that the death penalty in the Philippines has frequently been imposed on the poor and uneducated. Furthermore, as the study points out, English is the language of the courts in the Philippines and it is doubtful that poorly educated people accused of capital crimes can understand the proceedings against them. FLAG also expressed its concern that trials are often prejudiced by the fact that the poor are unlikely to be able to afford to hire an experienced lawyer.

In 1989, amidst the debate on whether to restore the death penalty, Amnesty International published a report examining how the death penalty was applied in the Philippines prior to abolition. The report documented cases of innocent people sentenced to death, many of whom spent more than ten years awaiting the outcome of appeals before eventually being acquitted by the Supreme Court. In one case in 1976 the execution of an innocent man, Felipe Santos, was halted just five minutes before he was due to be sent to the electric chair. The report also described a high incidence of people being sentenced to death on the basis of forced “confessions” or other testimony extracted under duress. Amnesty International remains concerned that the risk of innocent people being sentenced to death remains high today.

In March 1996 President Ramos signed into law Republic Act 8177 which provides for execution by lethal injection. Supporters of lethal injection in the Philippines have claimed that it is both the cheapest and most “humane” method of execution. The Department of Justice has subsequently been instructed to start building an execution chamber.

In June 1996 the Supreme Court confirmed the death sentence passed on Leo Pilo Echegaray. This was the first death sentence to be confirmed since the death penalty was re-introduced. Leo Pilo Echegaray, a 35-year-old house painter, had been convicted in 1994 of the rape of his step-daughter. Appeals against the sentence have been lodged by his lawyer and by FLAG, who have argued *inter alia* that the fairness of his trial was prejudiced due to the judge’s alleged lack of impartiality. The judge concerned has gained notoriety in the Philippines for founding an organization known as the “Guillotine Club” whose members are all reported to be judges who have passed death sentences. Members of the organization are perceived to be strong advocates of the death penalty. FLAG is further arguing that the death penalty is an excessive and disproportionate punishment for rape and other crimes which do not lead to the death of the victim.

The Supreme Court has considered a number of other cases so far, commuting at least two death sentences to life imprisonment and sending several other cases back to the lower courts for re-trial. In one case the Supreme Court acquitted a man convicted of rape,

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"See Philippines: Case studies in the use of the death penalty. AI Index: ASA 35/08/89."

AI Index: ASA 03/01/97

Amnesty International January 1997
The new constitution and the ratification of international treaties signalled a new era of hope for a greater respect for human rights. At the time of abolition of the death penalty over 500 prisoners were reported to be under sentence of death and President Aquino announced that their sentences would be commuted to life imprisonment.

Within six months of abolition members of the armed forces began lobbying for the death penalty to be restored. General Fidel Ramos, then Chief of Staff of the Armed Forces of the Philippines (later elected President of the Philippines in 1992) was among those who called publicly for its reintroduction.

Widespread public alarm about an increase in serious crime - particularly murder, drugs offences and kidnappings for ransom - led to an intense debate, both in the Philippine Congress and in the media, about the reintroduction of the death penalty. At the same time, local human rights groups and the Roman Catholic Church mounted a sustained campaign against its reintroduction. The official Commission on Human Rights also expressed its opposition to the death penalty, stating: "The Commission is not fully convinced that the death penalty is the answer to rising criminality. The proper response to criminality lies in effective law enforcement, the quick and impartial delivery of justice, and a responsive penal system... The administration of justice in this country needs a stronger foundation, not in terms of the restoration of the death penalty, but in the strict implementation of penal laws and the equitable administration of justice, in accordance with international human rights laws". Despite the efforts of abolitionist groups, in a retrograde step for human rights the death penalty was finally restored in December 1993. Since its reintroduction, however, there has been no indication of a decrease in crime.

Since 1994 more than 200 people, including three women, have been sentenced to death. Around half of those on death row have been convicted of rape. The rate of new sentences passed has increased steadily to an average of 12 each month in the first six months of 1996. Death penalty convicts are held in extremely cramped conditions in the National Penitentiary in Metro Manila. Female convicts are held in a separate women's prison, also in Metro Manila. All those on death row are believed to be of Filipino nationality apart from one Japanese national, Hideshi Suzuki who was sentenced to death in December 1994 for possession of 1.9 kilograms of marijuana. Hideshi Suzuki has claimed that he is innocent. Amnesty International is concerned that his trial may have been prejudiced by the fact that he does not speak or read English. It is believed that he was interrogated without an interpreter and was required to sign documents that he could not understand.

PHILIPPINES

<table>
<thead>
<tr>
<th>FACTS AND FIGURES AT A GLANCE</th>
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<tbody>
<tr>
<td>Capital offences</td>
<td>The death penalty may be imposed for a wide range of “heinous crimes”: treason, piracy, bribery, murder, infanticide, kidnapping and serious illegal detention, robbery with violence, arson, rape, plunder, certain drugs offences, theft of a vehicle with rape or murder. Under certain aggravating circumstances a mandatory death penalty is stipulated. The death penalty cannot be imposed on those aged under 18 or over 70 at the time of the crime.</td>
</tr>
<tr>
<td>Appeals procedure</td>
<td>Death sentences are automatically reviewed by the Supreme Court. Executions are to be carried out no earlier than one year and no later than 18 months following confirmation of the sentence. Death penalty convicts may also submit a petition for clemency to the President.</td>
</tr>
<tr>
<td>Number of prisoners under sentence of death</td>
<td>202 as of October 1996. About half have been convicted of rape.</td>
</tr>
<tr>
<td>Number of executions carried out</td>
<td>52 people were executed between Philippine independence in 1946 and 1976, when the last execution took place. It is feared that executions may resume again in mid-1997.</td>
</tr>
<tr>
<td>Method of execution</td>
<td>Lethal injection</td>
</tr>
</tbody>
</table>

The last execution in the Philippines was carried out by electrocution in 1976. In 1986, when President Corazon Aquino came into office following the “People’s Power Revolution” against then President Ferdinand Marcos, a new constitution was drawn up which included a Bill of Rights and provided for abolition of the death penalty. In the same year the Philippines ratified two important international human rights standards: the UN Convention against Torture and the International Covenant on Civil and Political Rights.
In 1993 another Filipino national, Hassim Escandar, was convicted of drug-trafficking under the Dangerous Drugs Act on the basis of two keys which were allegedly found in his possession. The keys fitted the padlock of a bag containing about five kilograms of cannabis which was discovered under the seat of the conductor of the bus in which Hassim Escandar was travelling. Hassim Escandar always maintained his innocence, but was hanged for drug-trafficking in April 1993.

Five Indonesians are currently under sentence of death in Malaysia for crimes ranging from drug-trafficking to murder. A number of other Indonesians are reported to have had their sentences commuted to prison terms following pressure from the Indonesian Government.

In the last two years Amnesty International has recorded several commutations of death sentences to life imprisonment. The majority were cases in which charges were reduced on appeal from trafficking in drugs, which carries a mandatory death sentence, to possession of drugs, which is not a capital offence. In a number of reported cases prisoners previously sentenced to death were released on appeal. In July 1996, S. Arulpragasan, a 28-year-old Malaysian lorry driver, was acquitted on appeal by the Supreme Court. He had been sentenced to death by the Penang High Court in December 1992 for trafficking in just over one kilogram of cannabis. In his appeal his lawyer submitted that the trial judge had "seriously misdirected himself in law" and that the prosecution had failed to prove the case beyond reasonable doubt.

Amnesty International is gravely concerned by the risk that other innocent people sentenced to death may already have been executed, or at the very least, have spent years on death row before being acquitted.
In 1992 a total of 39 people were executed, the highest figure recorded for any one year. Since then the figure has declined steadily (29 executions in 1993, ten in 1994, five in 1995 and three in the first few months of 1996). Amnesty International welcomes this decline and hopes that the trend towards fewer executions will continue.

Drug abuse is a major issue of concern in Malaysia, partly due to the country's proximity to the opium-producing countries of Laos, Myanmar (Burma) and Thailand, known as the “Golden Triangle”. The International Narcotics Control Board in its 1994 report commented that the increasing availability of heroin has contributed to the growing demand for the drug in Malaysia. It is becoming increasingly apparent that imposition of the death penalty is not having a deterrent effect on drug-trafficking or drug abuse in the country; the number of drug addicts is reported to have risen by more than 18 percent in 1995. According to police records there are more than 207,000 drug addicts in the country. In June 1996 the Minister of Health announced that those found guilty of trafficking in the drug Ecstasy would also be sentenced to death.

The Dangerous Drugs Act stipulates a mandatory death sentence for drug trafficking and places the onus on the accused to prove their innocence rather than on the State to prove their guilt. This contravenes a basic principle of Malaysian jurisprudence as well as international legal safeguards which stipulate that the accused has the right to be presumed innocent until proven guilty. In its 1995 report the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions urges the Malaysian Government to review its anti-drug-trafficking legislation, expressing particular concern about the provisions contained in the Dangerous Drugs Act which lay the burden of proof upon the defendant. The Special Rapporteur also expressed concern that under the Act evidence provided by agents provocateurs - who may be police or customs officers - is admissible and rewards are authorized to be paid for such evidence.

In the early 1990s five young Filipinos were sentenced to death under the Dangerous Drugs Act. Basar Jikirie, Assidin Itting, Kullah Lawari, Roger Anang and Rudy Jamjali were all aged under 18 at the time their alleged crimes were committed. International human rights standards stipulate that no one under 18 at the time of the crime may be sentenced to death. Roger Anang’s death sentence was commuted to life imprisonment and six strokes of the cane in October 1993. Basar Jikirie’s sentence was commuted in 1994. Amnesty International is unaware of the fate of the three other young men.

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1 Report in the Malaysian Star newspaper of 23 May 1996
2 E/CN.4/1995/61
3 Safeguards adopted by the UN Economic and Social Council and endorsed by the UN General Assembly in 1984 in Resolution 39/118.
MALAYSIA

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<thead>
<tr>
<th>FACTS AND FIGURES AT A GLANCE</th>
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<tbody>
<tr>
<td>Capital offences</td>
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<tr>
<td>The death penalty is mandatory for trafficking in a number of specified drugs. The Dangerous Drugs Act stipulates that any person found in possession of at least 15 grams of heroin, 1,000 grams of opium or 200 grams of cannabis is presumed, unless the contrary can be proved, to be trafficking in the drug. The death penalty is also mandatory for murder and certain firearms offences.</td>
</tr>
<tr>
<td>Appeals procedure</td>
</tr>
<tr>
<td>Death sentences may be passed by the High Court. Appeals are made to the Supreme Court. The final stage in the judicial process is an appeal to the Yang di-Pertuan Agong (the King of Malaysia and Supreme Head of State) who has the power to grant clemency.</td>
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<tr>
<td>Number of prisoners under sentence of death</td>
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<tr>
<td>245 people were under sentence of death in July 1996</td>
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<tr>
<td>Number of executions carried out</td>
</tr>
<tr>
<td>349 people were executed between 1970 and March 1996, according to government statistics. 139 of these executions have been carried out since 1990, mostly for drug-trafficking. Amnesty International recorded three executions in the first few months of 1996.</td>
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<tr>
<td>Method of execution</td>
</tr>
<tr>
<td>Hanging</td>
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Until recently Amnesty International was unaware of the true number of executions in Malaysia as official statistics are not made public. However, the authorities revealed recently that between 1970 and March 1996, a total of 349 people were executed. It is believed that the majority of executions were for drug offences. Since 1993 Amnesty International has recorded at least 43 new death sentences, although the real figure may be higher. This figure includes death sentences passed on three Thai nationals - Arwae Puteh, Ahmad Yusof and Tuan Mat Tuan Ismail - all of whom were convicted of drug trafficking.
THAILAND

FACTS AND FIGURES AT A GLANCE

| Capital Offences | The death penalty is mandatory for premeditated murder, murder of an official on government business and regicide, production, import or export of heroin. It is discretionary for robbery, rape, kidnapping, arson and bombing if death results, insurrection, treason and espionage, possession of more than 100 grams of heroin, aircraft hijacking. |
| Appeals procedures | Prisoners sentenced to death by criminal courts have the right to appeal to the Appeals Court and then the Supreme Court. Prisoners sentenced to death by military courts have no right of appeal. Once all appeals have been exhausted, prisoners sentenced to death are allowed 60 days to petition the King for commutation. The Ministry of the Interior makes a recommendation on the request. |
| Number of prisoners under sentence of death | About 100 |
| Number of executions carried out | One person has been executed since 1987 |
| Method of execution | Shooting |

In the first execution in nine years, Prommas Leamsai, aged 38, was shot dead on 28 January 1996 by a firing squad at Bangkwang Maximum Security Prison near Bangkok, the capital. He had reportedly been convicted of murdering a policeman in the 1980s. His execution took place in great secrecy. According to a Ministry of Interior statement, Prommas was considered to be beyond rehabilitation. The statement also said that he was killed to set an example to other criminals. Amnesty International is concerned that the resumption of executions after nine years sets a very negative precedent in Thailand.
Information about the death penalty in Thailand is difficult to obtain because death sentences are usually not reported. Many prisoners under sentence of death have received commutations by Royal Pardon. In June 1996 some 120 people under sentence of death had their sentences commuted to life imprisonment in a Royal Pardon which marked the 50th anniversary of the King's reign. However the Royal Pardon did not include people convicted of drugs offences. At least three death sentences were imposed during 1996.
SOCIALIST REPUBLIC OF VIET NAM

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<th>FACTS AND FIGURES AT A GLANCE</th>
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<tbody>
<tr>
<td><strong>Capital offences</strong></td>
<td>The death penalty is applicable for a wide range of offences.</td>
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<td></td>
<td>Altogether 34 articles in the Criminal Code stipulate the death</td>
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<td></td>
<td>penalty as an optional punishment. These range from crimes such</td>
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<tr>
<td></td>
<td>as rape and murder, to offences classified as a &quot;grave violation</td>
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<td></td>
<td>of national security&quot; including espionage, terrorism, rebellion</td>
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<tr>
<td></td>
<td>and attempted prison escapes. Other offences include crimes</td>
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<td></td>
<td>against &quot;socialist property&quot; such as misappropriation,</td>
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<td></td>
<td>embezzlement and damage of state property and &quot;economic</td>
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<td></td>
<td>offences&quot; including manufacturing and selling counterfeit</td>
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<td></td>
<td>products. The manufacture and trafficking of narcotics was</td>
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<td></td>
<td>made a capital offence in December 1992.</td>
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<tr>
<td><strong>Appeals procedure</strong></td>
<td>Defendants sentenced to death by a first court are allowed the</td>
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<td></td>
<td>right of appeal to the People's Supreme Court, which together</td>
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<td></td>
<td>with the Chief Procurator should make a decision on a case</td>
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<td></td>
<td>within two months. If the sentence is upheld, defendants have</td>
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<td></td>
<td>the right to appeal to the President for clemency; this appeal</td>
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<td></td>
<td>must be lodged within seven days.</td>
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<tr>
<td><strong>Number of prisoners under sentence of death</strong></td>
<td>In November 1996 the People’s Supreme Court announced that</td>
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<td></td>
<td>during the first nine months of the year 81 people had been</td>
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<td></td>
<td>sentenced to death. According to official figures, a total of</td>
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<td></td>
<td>104 people were sentenced to death during 1995.</td>
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Against the tide: The death penalty in Southeast Asia

Number of executions carried out

No official statistics are available for the number of executions carried out. In 1995 Amnesty International heard of 11 executions, but an Australian delegation visiting Viet Nam in April 1995 was told by a Supreme Court official that 90 people were executed during 1994. Amnesty International cannot confirm this figure, but fears that most of the 104 people sentenced to death during 1995 may already have been executed.

Method of execution

Firing squad

The death penalty can be imposed for a wide number of offences in Viet Nam, including so-called “economic crimes” such as fraud and misappropriation of state property. In the last two years, Amnesty International has noted with grave concern the increasingly reported use of the death penalty, and statements from the authorities calling for the imposition of the death sentence on people found guilty of corruption. In April 1996 Phung Thi Tho, a 34-year-old woman was sentenced to death for fraudulently obtaining US$320,000. According to press reports, this was the first time the death penalty had been imposed for fraud. A second such case was reported later in the year.

For many years executions were not publicised, and the fate of those sentenced to death was not known. Since 1995, the Vietnamese authorities have published the names of a number of convicted criminals who have been executed. However, the number reported is thought to be only a small percentage of the executions carried out.

Amnesty International has long been concerned that defendants in Viet Nam may not receive fair trials. This concern is heightened when the death penalty is applicable as a punishment and therefore any risk of error is irreversible. Often defendants are not assigned a defender until just before the case is brought to trial, leaving insufficient time to prepare a defence. Defenders are not allowed to communicate with their clients during the course of a trial hearing and they are not allowed to call and examine witnesses for or against the defendant. In many cases the sole role of a defender appears to be to appeal for clemency on the client’s behalf.

At present there is a campaign against “social evils” in Viet Nam, which includes a crackdown against drug-related crime. It is likely that people arrested in connection with this campaign may face the death penalty. Amnesty International has no information about the treatment of prisoners on death row in Viet Nam. The organization received reports in April that Duong The Tung, a 19-year-old man sentenced to death for murdering a policeman, was tortured by police with electric batons in an anteroom at the court while
awaiting the verdict. Amnesty International wrote to the Vietnamese Government in October 1996, asking for information about the fate and whereabouts of Duong The Tung.
On 22 August 1996, three men were brought to trial in Hanoi, the capital of Vietnam, on charges of "divulging state secrets". The trial lasted only one day, and two of the men - Le Hong Ha and Ha Si Phu - were sentenced to prison terms. The third defendant, Nguyen Kien Giang was given a suspended sentence. Amnesty International believes that both Ha Si Phu and Le Hong Ha were detained for exercising their rights to freedom of expression, through their peaceful political activities. While Ha Si Phu was released on 4 December 1996 after completion of his sentence, Amnesty International believes that Le Hong Ha is a prisoner of conscience and calls for his immediate and unconditional release.

The apparent reason for the arrest and detention of Le Hong Ha and Ha Si Phu was that they allegedly had in their possession copies of a letter written by Prime Minister Vo Van Kiet to members of the Politburo in 1995, in which he called for both political and economic reforms and changes to the Vietnamese legal system. The document - which was regarded as highly sensitive by people within the government and Communist Party of Vietnam who were anxious to slow down rather than accelerate the reform process in the country - was leaked in 1995 and widely circulated among overseas Vietnamese communities in Western countries. Prior to the Eighth Party Congress of the Communist Party of Vietnam, held in June 1996, tensions were running high within the upper echelons of the party between those who favoured more radical reform and those who favoured a period of consolidation of party rule.

Foreign journalists who attempted to gain access to the court during the trial of Le Hong Ha and Ha Si Phu were denied permission to enter. While Amnesty International did not have an observer present either, reports of the trial have reached the organization which confirm that it followed the usual procedures for such cases in Vietnam. These fall far short of international standards for fair trial.
The verdict was delivered in the afternoon of 22 August 1996. All three men were found guilty of violating Viet Nam's national security laws through the deliberate divulging of state secrets. Le Hong Ha was sentenced to two years' imprisonment. Ha Si Phu to one year, and Nguyen Kien Giang - who unlike the other two men had not been in detention before the trial - to a 15 month suspended sentence. The full court judgement was not published. Le Hong Ha appealed against his sentence, but this was upheld by the Supreme People's Court on 22 November. Ha Si Phu was released on 4 December 1996 and Le Hong Ha is due to be released in December 1997.

Le Hong Ha and Ha Si Phu are prominent dissidents in Viet Nam, renowned for their independent thinking and their willingness to challenge official party policy. Their arrest, detention and conviction on charges of intentionally divulging state secrets appears to be a politically-motivated decision by the authorities in Viet Nam, in order to send a signal to the Vietnamese people that public dissent will not be tolerated. On the basis of the information received, the evidence presented against them at their trial did not appear to prove that they were guilty as charged and yet they were convicted and sent to prison. Amnesty International is concerned that the real reason for the men's detention is their peaceful political activities in support of their views that political change is necessary in Viet Nam.

While the organization welcomes the release of Ha Si Phu, it believes Le Hong Ha is a prisoner of conscience, imprisoned after an unfair trial because of his writing and broadcasting activities in support of his peaceful political beliefs. Amnesty International believes he should be immediately and unconditionally released.

**KEYWORDS:** PRISONERS OF CONSCIENCE / POLITICAL ACTIVISTS / TRIALS / POLITICALLY MOTIVATED CRIMINAL CHARGES / ESPIONAGE / SCIENTISTS / WRITERS /

This report summarizes a four-page document (2099 words): SOCIALIST REPUBLIC OF VIET NAM: The case of Le Hong Ha and Ha Si Phu (AI Index: ASA 41/09/96) issued by Amnesty International in December 1996. Anyone wishing further details or to take action on this issue should consult the full document.

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amnesty international

SOCIALIST REPUBLIC OF VIET NAM
The case of Le Hong Ha and Ha Si Phu

December 1996
AI Index: ASA 41/09/96
Distr: SC/CO/GR

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM
SOCIALIST REPUBLIC OF VIET NAM
The case of Le Hong Ha and Ha Si Phu

On 22 August 1996, three men were brought to trial in Ha Noi, the capital of Viet Nam, on charges of "divulging state secrets". The trial lasted only one day, and two of the men - Le Hong Ha and Ha Si Phu - were sentenced to prison terms. The third defendant, Nguyen Kien Giang was given a suspended sentence. Amnesty International believes that both Ha Si Phu and Le Hong Ha were detained for exercising their rights to freedom of expression, through their peaceful political activities. While Ha Si Phu was released on 4 December 1996 after completion of his sentence, Amnesty International believes that Le Hong Ha is a prisoner of conscience and calls for his immediate and unconditional release.

Background

On 4 December scientist and writer Nguyen Xuan Tu, better known by his pen name Ha Si Phu, was arrested in Ha Noi, on charges of having secret state documents in his possession. Ha Si Phu, who was born in 1940, had been visiting friends in Ha Noi at the time of his arrest. Trained as a biologist in former Czechoslovakia, Ha Si Phu is a widely respected intellectual, who in addition to his scientific work frequently contributed essays and articles to official Communist Party journals, although he was never a member of the party. In 1993 Ha Si Phu circulated a number of essays in which he argued that the Communist Party of Viet Nam should adapt to the economic changes taking place across the world. He lost his scientific job in Da Lat, and was criticised in the official press. In 1995, Ha Si Phu wrote an essay called *Farewell to Ideology*, arguing that the ideas of Marxism-Leninism are outdated and inappropriate for economic progress in Viet Nam. In the last five years, Ha Si Phu has spoken to a number of foreign journalists about his ideas and in 1995 he gave several interviews to US-based radio stations in which he confirmed his critical stance on official Communist Party policy in Viet Nam. Police searched Ha Si Phu's house in Da Lat after his arrest and reportedly confiscated a quantity of papers and video cassettes.

Shortly after the arrest of Ha Si Phu, a second prominent government critic, Le Hong Ha was arrested on 6 December. Le Hong Ha was a senior member of the Communist Party of Viet Nam until June 1995, when he was expelled from the party, apparently at the request of Vietnamese President Le Duc Anh. Le Hong Ha had previously held a number of important positions, including Chief of Cabinet of the Interior Ministry. His expulsion from the party appears to be linked to his attempts to have the Politburo recognise the party's error in imprisoning Hoang Minh Chinh, who was one of a number of Communist Party members imprisoned as "revisionists" in the late 1960s. Hoang Minh Chinh, who was detained again for six years in the 1980s, was rearrested in June 1995 and sentenced to one year's imprisonment in November 1995, along with a fourth prominent critic Do Trung Hieu.
The apparent reason for the arrest and detention of Le Hong Ha and Ha Si Phu was that they allegedly had in their possession copies of a letter written by Prime Minister Vo Van Kiet to members of the Politburo in 1995, in which he called for both political and economic reforms and changes to the Vietnamese legal system. The document - which was regarded as highly sensitive by people within the government and Communist Party of Viet Nam who were anxious to slow down rather than accelerate the reform process in the country - was leaked in 1995 and widely circulated among overseas Vietnamese communities in Western countries. Prior to the Eighth Party Congress of the Communist Party of Viet Nam, held in June 1996, tensions were running high within the upper echelons of the party between those who favoured more radical reform and those who favoured a period of consolidation of party rule.

The trial

When Ha Si Phu and Le Hong Ha were detained, soon after the trial of Hoang Minh Chinh and Do Trung Hieu, it appeared that their arrest and detention was part of a crackdown on open dissent by the Vietnamese authorities, in the run up to the Eighth Party Congress. However, the two men spent eight months in prison without charge or trial, while the Party Congress came and went. They were not tried until 22 August 1996. The announcement that the men were to face trial came only two days before the trial took place. The men were charged under Article 92 of Viet Nam's Criminal Code with "the crime of intentionally divulging state secrets". It was not known that Nguyen Kien Giang was also a defendant until the day of the trial.

Foreign journalists who attempted to gain access to the court during the trial of Le Hong Ha and Ha Si Phu were denied permission to enter. While Amnesty International did not have an observer present either, reports of the trial have reached the organization which confirm that it followed the usual procedures for such cases in Viet Nam. These fall far short of international standards for fair trial.

According to reports received on other cases, the normal procedure appears to run along the following lines. There is a panel of people who function as judge and jury. This consists of a Presiding Judge or Chairman, a magistrate and two or three "representatives of the people" who are often members of a local People's Committee, or representatives from a Fatherland Front organization, such as a Women's Association. These people sit at the front of the courtroom, while the accused typically sit on a bench facing the panel. The representative of the Procurator's office, who functions as Prosecutor sits at the front to the side of the judges' bench. The defence lawyer, often appointed just before the trial, is seated behind or to the side of the panel. The Procurator describes the charges, and the accused are then asked to stand and make a plea. The Presiding Judge then questions them. In some cases the accused have been allowed to respond fully, but according to reports received in some cases, they are cut off by the judges if they try to speak for too long. They are not in
proximity of their defence lawyer(s) during questioning, and they do not have access to any documentation. After the Presiding Judge has questioned the accused, the Procurator asks questions. This constitutes a significant proportion of the trial. Once the Procurator has finished, the defence lawyer can speak. S/he is usually allowed only to make a statement, not to call or question witnesses. Following the defence lawyer's statement, there is usually the opportunity for the accused to make a final statement before the verdict is announced. The procedure typically takes one day, and the verdict follows very soon afterwards, sometimes on the same day, sometimes on the following day.

Fair trial standards

Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR) sets out minimum standards safeguarding the fairness of criminal trials. Viet Nam as a state party to the ICCPR is bound to comply with these standards, yet available information indicates that the following safeguards are not being upheld in criminal trials, including the trial of Le Hong Ha and Ha Si Phu:

- the right to be informed promptly and in detail of the nature and cause of charges against [the accused]: Article 14(3)(a)
- the right to be represented by counsel: Article 14(3)(d)
- the right to have adequate time and facilities to prepare a defence: Article 14(3)(b)
- the right to be tried without undue delay: Article 14(3)(c)
- the right to examine or have examined witnesses against the accused: Article 14(3)(e)
- the right not to be compelled to testify against oneself or confess guilt: Article 14(3)(g)
- the right to have the opportunity to summons and question witnesses on behalf of the accused under the same conditions as the prosecution: Article 14(3)(e)

In addition, Article 14(1) of the ICCPR states that all persons charged with a criminal offence have the right to a fair and public hearing by an independent and impartial tribunal, and that the judgement should be made public except in cases of juvenile persons or matrimonial disputes of guardianship.

According to a report on the trial of Le Hong Ha and Ha Si Phu received by Amnesty International, when the Presiding Judge asked Ha Si Phu his opinion on the charge that he was guilty of "deliberately disclosing state secrets", Ha Si Phu attempted to reply at length. He told the court that while riding his bicycle by one of the lakes in Ha Noi, he had been struck down by two men on a motorcycle who had snatched his bag. He said that public security cadres escorted him and the two bag-snatchers to their district building, where the bag-snatchers were allegedly left alone. A public security cadre then took Ha Si Phu's bag and searched it, then started filing charges that he had commandeered secret state
documents. Ha Si Phu apparently told the court: “This is nonsense. This charge sounds like I was a commando spy being caught red-handed while unlocking the national archive store.” At this point, the Presiding Judge stopped the proceedings and told Ha Si Phu that he must not speak at length, and must simply say whether he agreed or disagreed with the charge.

The account of the trial states that the three defence lawyers all argued that no evidence had been presented in support of the charge that the men were guilty of deliberately disclosing state secrets, and that the state official who declared that the letter by Prime Minister Vo Van Kiet was a secret document did not appear in court to give evidence. The copies of the letter were taken by Public Security officials and returned to the government, and there was reportedly no attempt by the court to assess what, if any damage had been done to national security. All three defendants stated that they had no intention of divulging state secrets. The letter had circulated widely amongst the overseas Vietnamese community and was easily obtainable. Amnesty International has no information as to whether the letter was clearly identifiable as an official secret document. The Procurator apparently made no attempt to answer the points raised by the three defence lawyers.

The trial lasted less than one day, and the verdict was delivered in the afternoon of 22 August 1996. All three men were found guilty of violating Viet Nam’s national security laws through the deliberate divulging of state secrets. Le Hong Ha was sentenced to two years’ imprisonment, Ha Si Phu to one year, and Nguyen Kien Giang - who unlike the other two men had not been in detention before the trial - to a 15 month suspended sentence. The full court judgement was not published. Le Hong Ha appealed against his sentence, but this was upheld by the Supreme People’s Court on 22 November. Ha Si Phu was released on 4 December 1996 and Le Hong Ha is due to be released in December 1997.

Le Hong Ha and Ha Si Phu are prominent dissidents in Viet Nam, renowned for their independent thinking and their willingness to challenge official party policy. Their arrest, detention and conviction on charges of intentionally divulging state secrets appears to be a politically-motivated decision by the authorities in Viet Nam, in order to send a signal to the Vietnamese people that public dissent will not be tolerated. On the basis of the information received, the evidence presented against them at their trial did not appear to prove that they were guilty as charged and yet they were convicted and sent to prison. Amnesty International is concerned that the real reason for the men’s detention is their peaceful political activities in support of their views that political change is necessary in Viet Nam.

While the organization welcomes the release of Ha Si Phu, it believes Le Hong Ha is a prisoner of conscience, imprisoned after an unfair trial because of his writing and broadcasting activities in support of his peaceful political beliefs. Amnesty International believes he should be immediately and unconditionally released.
VIETNAM PLEDGES TO RELEASE ALL IN RE-EDUCATION CAMPS

BY DAVID STOREY

NO CHI MINH CITY, JAN 21, REUTER - VIETNAM IS TO FREE ALL REMAINING INMATES OF RE-EDUCATION CAMPS OPENED AFTER THE COMMUNIST TAKEOVER IN 1975, COMMUNIST LEADER NGUYEN VAN LINH SAID ON THURSDAY.

HE WAS SPEAKING TO A REGIONAL MEDIA SEMINAR IN THIS SOUTHERN CITY WHICH, UNDER THE NAME SAIGON, WAS THE CAPITAL OF THE DEFEATED U.S.-BACKED SOUTH VIETNAM GOVERNMENT.

"WE MADE A DECISION RECENTLY TO RELEASE ALL OF THEM, PLEASE BE ASSURED OF THAT," HE SAID WITHOUT GIVING THE NUMBERS INVOLVED.

THOUSANDS OF MILITARY PERSONNEL AND VIETNAMESE OFFICIALS ASSOCIATED WITH THE SAIGON GOVERNMENT WERE SENT TO RE-EDUCATION CAMPS AROUND THE COUNTRY.

LINH SAID ANY OF THOSE RELEASED WHO WANTED TO EMIGRATE WOULD BE ALLOWED TO DO SO. "WE DO NOT WANT TO KEEP THEM IN THIS COUNTRY ONCE THEY HAVE DECIDED THEY WANT TO GO AWAY," HE SAID.

BUT HE SAID MANY WHO WANTED TO GO COULD NOT OBTAIN A VISA FROM THE UNITED STATES, THE MOST POPULAR COUNTRY FOR VIETNAMESE EMIGRES.

"WE HAVE A LIST OF 20,000 NAMES TO WHOM THE AUTHORITIES HAVE GIVEN AN EXIT VISA BUT WHO HAVE BEEN GIVEN NO ENTRY VISA TO THE UNITED STATES," HE SAID.

THE UNITED STATES IS ENGAGED IN THE SO-CALLED ORDERLY DEPARTURE PROGRAM (ODP) AIMED AT PROVIDING AN OFFICIAL ROUTE FOR VIETNAMESE EMIGRANTS TO CUT DOWN ON THE NUMBERS OF "BOAT PEOPLE" RISKING PIRATES AND STORMS BY TRAVELLING ILLICITLY TO NEIGHBORING COUNTRIES IN SMALL CRAFT.

THE ODP WAS SUSPENDED BY VIETNAM ABOUT TWO YEARS AGO BECAUSE OF DISAGREEMENTS OVER PROCEDURES BUT RESUMED AT THE END OF LAST YEAR.

THE NUMBER OF BOAT PEOPLE ARRIVING IN THAILAND INCREASED CONSIDERABLY LAST YEAR.

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Dear Mrs. Tho,

Keep in touch

Robert Wadding

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