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International Covenant on civil and political rights

Submission by Vietnam Coalition Against Torture (VN-CAT)

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Report to the Human Rights Committee for its consideration for the adoption of the List of Issues in relation to the review of the third periodic report of Vietnam

(CCPR/C/VNM/3)

A. INTRODUCTION

Vietnam-Coalition Against Torture (VN-CAT) is a civil society organization, officially launched on International Human Rights Days, December 10th, 2016, by a group of Vietnamese human rights activists living in Vietnam and abroad who shares the same concern that Vietnamese citizens continue to be subjected to abuses, torture, degrading, cruel and inhumane treatments. VN-CAT operates with the following objectives in mind:

- Provide the people in Vietnam with a clear understanding of the obligations of the Vietnamese government's responsibility pursuant to the UN Convention Against Torture (UNCAT), of which Vietnam is a member state since 2015;
- Educate the people in Vietnam about national and international laws against torture;
- Encourage victims and activists to report violations of UNCAT by both state actors and non-state actors operating under the directions of government officials;
- Monitor the implementation of UNCAT by the Vietnamese government and advocate concerning governments for sanction of violators according to the laws in those countries.

B. SUMMARY

VN-CAT greatly appreciates the opportunity to provide our independent and impartial assessment on how Vietnam implements the ICCPR in general and the second cycle Concluding Observations specifically, which we hope will be helpful information for the Human Rights Committee during the review of Vietnam's country report.

VN-CAT regrets the considerable delay in the submission of the third periodic report of Vietnam (CCPR/C/VNM/3), which was due in 2004 but not submitted until 2017.

VN-CAT is also concerned that despite the 13-year delay, not only has Vietnam not sufficiently filled the gaps in practice regarding ICCPR per the concluding observations of the Human Rights Committee (CCPR/C/SR.2031), it is also taking a major step backward resulting in dismal human rights records as evaluated by several democratic governments and respectable international human rights organizations.

In this report, VN-CAT assesses Vietnam's implementation of the recommendations made by the Human Rights Committee in August 2002. Specifically, the report looks at:

- Vietnam's refusal to consider acceding to the Optional Protocol in order to enhance the protection of human rights afforded to persons under its jurisdiction (recommendation 6 of CCPR/CO/75/VNM, 5 August 2002);
- Failure in the reduction of number of death penalty cases (recommendation 7);
- The lack of independence and impartiality of the judicial system (recommendation 9);
- The widespread use of torture and cruel, inhuman or degrading treatment of prisoners and other detainees (Article 7 and 10 of ICCPR) (recommendation 11);
- Restriction or denial of legal rights of detainees to access to counsel, medical care and members of the family (recommendation 13);
- Restriction of the right to freedom of opinion and expression (Article 19) (recommendation 18);
- Restriction of the right to freedom of association (recommendation 20).

C. AREAS OF CONCERN

1. Vietnam's refusal to consider acceding to the Optional Protocol in order to enhance the protection of human rights afforded to persons under its jurisdiction

Vietnam's National Assembly adopted the current Constitution in late 2013¹. Article 3 states "The State guarantees and promotes the People's mastery; acknowledges, respects, protects and guarantees human rights and citizens' rights." Article 14 guarantees that "human rights and citizens' rights in the political, civic, economic, cultural and social fields are recognized, respected, protected and guaranteed in concordance with the Constitution and the law." However, sovereignty and non-interference are often cited by Vietnam as grounds for refusal to conform to international standards and United Nations treaties, as noted in Article 12: "The Socialist Republic of Vietnam [...] seeks multilateral and diversified relations and actively seeks international integration and cooperation on the basis of respect for each

¹ The Constitution of VN 2013,

http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf

other's independence, sovereignty and territorial integrity, non-interference in each other's internal affairs, equality and mutual interest." Furthermore, "national security" is used as the basis for vaguely defined penal codes such as "undermining national unity" (Article 87 of the 1999 Criminal Code, presently Article 116 of the 2015 version), "spreading propaganda against the state" (Article 88 of the 1999 Criminal Code, presently Article 117), "abusing the rights to democratic freedom to infringe upon the interests of the State" (Article 258 of the 1999 Criminal Code, presently Article 331) or "carrying out activities aimed to overthrow the people's administration" (Article 79 of the 1999 Criminal Code, presently Article 109) to repress the civil and political rights stipulated in the ICCPR and to punish human rights defenders with lengthy prison sentences or even the death penalty. Within a week, from 5th to 12th April 2018, 9 human rights activists were sentenced to a total of 95 years' imprisonment and 32 years' probation. 8 of them were convicted of Article 79 (presently Article 109) and 1 was convicted of Article 88 (presently Article 117).

2. Failure in the reduction of number of death penalty cases

Even though the revisions of the Vietnam Criminal Code reduced the number of crimes punishable by the death penalty from 44 to 29 (in 1999) and to 22 (in 2015) ², the use of capital punishment is still frequent in the Socialist Republic of Vietnam. Amnesty International referenced a report published in February 2017 by the Ministry of Public Security which revealed that Vietnam executed 429 people in less than 3 years (between August 2013 and 30 June 2016), making it the world's third biggest executioner despite the country's tiny size. ³

An article by Vietnamnet, a government-run online media outlet, published in 2013 reported that 532 prisoners were waiting on death row and the Minister of Public Security Tran Dai Quang confirmed that Vietnam would produce poison to serve its policy on conducting the death penalty by lethal injection. ⁴

There has been public outcry on a number of death penalty cases plagued with irregularities, violations of due process principle, and serious procedural errors. Yet the Vietnamese authorities continue to push for execution. An example is the case of Mr. Ho Duy Hai, who in 2008 was convicted of rape and murder and sentenced to death. The police failed to find the weapon allegedly used by Hai to murder the two female victims. Instead, a knife was bought from a local market by a police staff and presented as evidence. Furthermore, the expert conclusion by the Technical Criminal Investigation bureau of the provincial police stated that "the fingerprints collected at the scene of the Cau Voi murder on January 14, 2008 ... are not found to match Ho Duy Hai's fingerprints." Nonetheless, in a televised speech in December 2017 the provincial Chief Procuracy pushed for acceleration of Hai's execution. Amnesty International recently issued an Urgent Action on this case after his mother went to Bangkok to plead with numerous international human rights organizations and staffers of the UN OHCHR office to save her son's life. ⁵

² Vietnam Criminal Code 2015, <http://www.wipo.int/wipolex/en/details.jsp?id=17225>

³ Death Sentences and Executions 2016, <https://www.amnestyusa.org/reports/death-sentences-executions-2016/>

⁴ Vietnam to produce poison for lethal injection, <http://english.vietnamnet.vn/fms/government/57673/vietnam-to-produce-poison-for-lethal-injection.html>

⁵ Amnesty International: 10-year death row case pushed for execution, <https://www.amnesty.org/en/documents/asa41/8004/2018/en/>

Another wrongful death penalty case that gained public attention is that of Le Van Manh, who in 2005 was also accused of rape and murder. Between 2005 and 2008, Manh underwent a total of seven court hearings, including three trials and three appeals. During these court proceedings, Manh alleged that he had to confess under duress and requested to retract the confession letter he was forced to write while in police detention. There was no physical evidence to prove his guilt. The only evidence the prosecutor could present was Manh's confession letter, which he already retracted. In October 2015, the International Commission of Jurists (ICJ) sent a letter to the President of the Socialist Republic of Vietnam calling on Vietnam to halt Le Van Manh's execution and order an impartial investigation into the alleged torture.⁶

More disturbingly, the death penalty is used to punish vaguely defined crimes of "*infringing upon national security*". In the most current Criminal Code (2015 revision), which took effect on July 1, 2016, **CHAPTER XIII (Offences Against National Security)** includes a total of six crimes relating to national security punishable by death: high treason (Article 108), activities aimed at overthrowing the people's administration (Article 109, formerly 79), espionage (Article 110, formerly 80), rebellion (Article 112), terrorist activities aimed at opposing the people's administration (Article 113), and sabotaging facilities of the Socialist Republic of Vietnam (Article 114).

VN-CAT is deeply concerned that human rights defenders and government's critics face the risk of being sentenced to death under the broad provisions of "national security" simply for their peaceful advocacy for the rights to freedom of expression, freedom of association, the right of peaceful assembly, and other rights protected by ICCPR. Those vaguely defined "offences against national security" are against the recommendations at the second cycle of the Universal Periodic Review (UPR) in 2014, which urged Vietnam to consider ratifying the Second Optional Protocol to ICCPR aiming at the abolition of the death penalty and to repeal or modify the Penal Code relating to national security.⁷

3. The lack of independence and impartiality of the judicial system

Vietnam is a one-party authoritarian state. Article 4 of the Constitution of the Socialist Republic of Vietnam sets forth the absolute power of the Communist Party of Vietnam (CPV): "*The Communist Party of Vietnam ... is the leading force of the State and society.*" Even though CPV is a political organization and not part of the country's institutional system, it plays a central role and has a deep involvement in shaping the country's policy and judicial system. Its firm control is reflected in the formation and election of the National Assembly, the operation of the administration, and the function of the judicial system.

The top positions of the judicial system are typically held by the leadership of the Ministry of Public Security (Police) and the Communist Politburo. For example, from 8/2007 until 8/2016 Politburo Commissioner *Truong Hoa Binh* was the Chief Justice of *The Supreme People's Court*. He is also the Lieutenant General and *Vice Prime Minister of Public Security*. His successor for the 2016 – 2021 term is

⁶ ICJ: Grant Le Van Manh permanent reprieve from death penalty and investigate allegations of torture, <https://www.icj.org/vietnam-grant-le-van-manh-permanent-reprieve-from-death-penalty-and-investigate-allegations-of-torture/>

⁷ UPR Second Cycle Recommendations – Vietnam, https://www.upr-info.org/database/index.php?limit=0&f_SUR=191&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

Brigadier General *Nguyen Hoa Binh*, also of the Ministry of Public Security. Nguyen is a member of the Central Committee of the Vietnam Communist Party (VCP). Prior to ascending to this position, he was the Chairman of *The Supreme People's Procuracy* (from 2011 – 2016). The current Chairman of the Supreme People's Procuracy is Mr. *Le Minh Tri*, Deputy Head of Internal Affairs and a member of the Central Committee of the CPV. The Secretary of *The Justice Department* is Mr. *Le Thanh Long*, another member of the Central Committee.

The CPV also extends its influence in the judicial system through its affiliated organization: the Vietnam Fatherland Front⁸. Article 1 of the Law of the Vietnam Fatherland Front states "*The Vietnam Fatherland Front is a political alliance organization, a voluntary federation of political organizations, social-political organizations ...*". And Article 2 confirms "*The Vietnam Fatherland Front is a part of the political system of the Socialist Republic of Vietnam under the leadership of the Communist Party of Vietnam ...*". While the New Law on Organization of People's Court (2014 revision)⁹, which came into effect on June 1, 2015 does not explicitly require subservience to the VCP, it mandates loyalty to the Vietnam Fatherland Front. Article 2 of this law describes the functions and duties of the people's courts as "*Through their activities, courts shall contribute to educating citizens in the loyalty to the Fatherland, ...*". Loyalty to the Fatherland is a required criterion for judgeship (Article 67) and responsibilities of judges (Article 76).

Most trials of human rights defenders and social activists in Vietnam lasted only a single day or even a few hours. During the trials, defense lawyers are allegedly treated unfairly and thus unable to ensure a fair outcome of the hearing or negotiate the sentences being handed down to their clients. Human Rights Watch (HRW) reported that during the trial of pro-democracy activist Nguyen Viet Dung in 2015, his lawyers requested the court to summon witnesses of his alleged crime. In response, the judge ejected one of the defense lawyers. His other lawyers walked out in protest. Nguyen Viet Dung was convicted of "disrupting public disorder" (Article 245 of the 1999 Criminal Code) and sentenced to 15 months' imprisonment.¹⁰

Similarly, in 2011, prominent human rights lawyer Cu Huy Ha Vu was convicted of "spreading propaganda against the state" (Article 88 of the 1999 Criminal Code, presently Article 117) and sentenced to seven years' imprisonment plus three years of probation. During the one-day court proceeding, the judge expelled one of Vu's defense attorneys from the court room. His other three lawyers walked out in protest, leaving Vu to defend himself.¹¹

There also exists partiality in evidence gathering and analysis as well as forensic medical examination. Verification by independent experts is typically not allowed. It's often the case that the agency responsible for collecting and processing evidence is under the same jurisdiction as the authority body

⁸ Law of the Vietnam Fatherland Front, <http://vietnamlawmagazine.vn/the-2015-law-on-the-vietnam-fatherland-front-4931.html>

⁹ The New Law on Organization of People's Court 2014, <http://hethongphapluatvietnam.com/law-no-62-2014-qh13-dated-november-24-2014-on-organization-of-people-s-courts.html>

¹⁰ HRW - Vietnam: Drop Charges Against Rights Activist, <https://www.hrw.org/news/2018/03/26/vietnam-drop-charges-against-rights-activist>

¹¹ Library of Congress - Vietnam: Prominent Rights Lawyer Sentenced to Seven Years' Imprisonment, <http://www.loc.gov/law/foreign-news/article/vietnam-prominent-rights-lawyer-sentenced-to-seven-years-imprisonment/>

who brings charges against the accused. For example, the office often engaged by the police investigators for handling and examining evidence is the Technical Criminal Investigation Bureau, which is under the same jurisdiction as the police. Furthermore, defense attorneys may not have access to the evidence. For example, in the recent trial of six pro-democracy activists in Hanoi on 5th April 2018, the evidence used by the prosecutor against Nguyen Van Dai, Nguyen Bac Truyen, Truong Minh Duc, Nguyen Trung Ton, Pham Van Troi and Le Thu Ha was some audio recordings of their alleged meetings via Skype to accuse them of “activities aimed at overthrowing the people’s administration” (Article 79 of the 1999 Criminal Code, presently Article 109).

The activists, who were accused of being affiliated with “Brotherhood for Democracy” (BFD) ¹², an online group formed to coordinate efforts to bring democracy to Vietnam, maintained that their peaceful exercising of the rights protected by ICCPR absolutely could not be distorted as aiming to overthrow the government. Their defense lawyers requested such evidence be presented publicly in the court room and the prosecutor would need to point out what in the audio files could indicate any intention of subversion. Their request was regrettably rejected by the court. The lawyers then requested to summon the experts who provided the analysis of the audio files used to incriminate the activists for cross examination, but that request was also rejected.

4. The widespread use of torture and cruel, inhuman or degrading treatment of prisoners and other detainees

The Socialist Republic of Viet Nam signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) on 7th November 2013. Its National Assembly ratified UNCAT on 28th November 2014. And in December 2017 Vietnam submitted to the UN its initial report on the implementation of UNCAT. However, in practice Vietnam falls far behind in its obligations to UNCAT as a member country. Torture, police brutality, and deaths while in police custody are still prevalent in Vietnam and due to the strict restriction on information very few cases were reported by state media accounts much less independently and impartially investigated. In March 2015, at a meeting with the Standing Committee of the National Assembly several lawmakers and members of the Assembly’s judicial committee raised doubt about the reliability of a report by the Ministry of Public Security which put the number of deaths in police custody for the 3-year period (from October 2011 to September 2014) at 226 cases but concluded the main causes of death were illness and suicides. ¹³

The topic of death in police custody is even more sensitive for human rights activists to discuss. In October 2016, blogger Nguyen Ngoc Nhu Quynh, popularly known by her pen name “Mother Mushroom” (Me Nam) was arrested and charged with “spreading propaganda against the state” (Article 88 of the 1999 Criminal Code, presently Article 117). Evidence used to prove her “crime” included a file name “Stop Police Killing Civilians”, which was information that Mother Mushroom and other activists in the Network of Vietnamese Bloggers collected based on state media reports on 31 cases of deaths in

¹² Radio Free Asia: Vietnamese Activists Form 'Brotherhood for Democracy', <https://www.rfa.org/english/news/vietnam/brotherhood-05082013170834.html>

¹³ Doubts linger as Vietnam reports causes of 226 deaths in custody, <http://www.thanhniennews.com/politics/doubts-linger-as-vietnam-reports-causes-of-226-deaths-in-custody-40112.html>

police custody. She was sentenced to 10-year imprisonment.

On 22nd September 2010, a report by Human Rights Watch documented 19 cases of police brutalities resulting in 15 deaths in 12 months.¹⁴

Research by VN-CAT, also based on information published on state-controlled online media outlets, tallies 124 cases for the period from 2010 to 2017. Those include 8 cases of torture and police brutality and 116 fatalities. The number of alleged suicides accounted for 44% of all deaths. Of those 51 suicide cases, 43 were reported as hanging. 11 died from unknown cause, 17 from illness, 20 from serious injuries sustained while in police custody such as traumatic brain injury, collapsed lungs, fractured skull, broken jaw bones and punctured intestine, etc.¹⁵

While the Ministry of Public Security insisted that suicide was the major cause of death, the situation around many cases makes suicide almost impossible. For example, several of the deceased were said to have hung themselves using unusual items such as shirt, pants, drawstring from their pants, belt, and even shoelaces. One case is of Mr. Nguyen Huu Tan, who died less than 10 hours after his detention. The police notified his family that he had committed suicide by cutting his own throat during the interrogation session using a small knife used for cutting the seal on police evidence. However, according to his father the injuries on Mr. Tan body suggest that Tan may have been tortured and killed in police custody. The victim had a cut across his throat that ran almost from ear to ear and was about 5 cm wide. His windpipe was severed and his neck bone exposed. His forehead was bruised and the skull around the forehead and the side of his head was soft. Tan's fatal slit was sewn up and his body sent home in a nailed coffin, accompanied by a large number of police officers. The police pressured his family to bury him as soon as possible and accept the police investigation conclusion that asserted Nguyen Huu Tan committed suicide "without any influence or assistance by another individual" despite their wish to seek an independent autopsy.

In August 2017, four Special Rapporteurs and the Chairperson of the Working Group on Arbitrary Detention sent a communication to the Vietnamese government requesting information on the arrest, detention, alleged torture and death in police custody of Mr. Nguyen Huu Tan¹⁶. The Vietnamese authority sent a response on this matter and denied any wrongdoing. Furthermore, they accused the surviving family members of Tan of being members of an anti-State organization¹⁷. His family is in the process of drafting a letter to the UN to reaffirm their innocence and ask for protection from ill-intentioned accusations by the Vietnamese government.

¹⁴ Vietnam: Widespread Police Brutality, Deaths in Custody, <https://www.hrw.org/news/2010/09/22/vietnam-widespread-police-brutality-deaths-custody>

¹⁵ VN-CAT – 'Number of Torture Incidents in Vietnam': <http://endtorturevn.org/article.php?&L=en&M=1&type=0>

¹⁶ UN Communication to Vietnam – Ref UA VNM 5/2017, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23245>

¹⁷ Reply of Vietnam to the Urgent Appeal Ref UA VNM 5/2017, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=74267>

Duress and torture using excessive force, hanging, waterboarding, electrocution, ... are common. One of the cases that made headline was that of Ngo Thanh Kieu, a suspect in a theft case in 2012 who died after having been tortured for 5 hours at Tuy Hoa city police station in Phu Yen province. The autopsy report listed a total of 63 injuries including fractured skull, brain hemorrhage, punctured lungs, testicular rupture, bruises and hemorrhaging in the thighs and legs, and several burn marks on his body. A detainee in a drug-related case, Vo Tan Minh, died in the detention center of city police in Ninh Thuan province. His injuries included traumatic brain injury, collapsed lungs, fractured chest case, and a 6-cm fracture in the skull.

The appalling conditions and dreadful mistreatment in Vietnam's detention centers and prisons illustrate a system of abuse towards detainees and prisoners. Yet, the sufferings of prisoners of conscience (PoCs) are even worse. In 2016, VN-CAT had the honor to assist Amnesty International in conducting several of interviews with former PoCs for the report **"Vietnam: Prisons within Prisons: Torture and Ill-treatment of Prisoners of Conscience in Vietnam"** ¹⁸. We would like to respectfully recommend the Country Report Taskforce on Vietnam review that thorough report by Amnesty International for an in-depth observation of violations of Vietnam's human rights obligations.

PoCs are often subjected to both verbal and physical abuses. Lutheran Pastor Nguyen Cong Chinh, a religious prisoner was sentenced to 11 years imprisonment on the false charge of "undermining the great national unity policy" (under Article 87 of the 1999 Criminal Code, presently Article 116 of the 2015 version) and had to accept exile from Vietnam as the condition for his early release, recalled his ordeal and described brutal mistreatment toward PoCs in a briefing with members of the US Congress in October 2017. During his pre-trial detention, the investigators tortured him using rubber batons, electric shocks, and pepper spray in the attempt to obtain a forced confession. ¹⁹

Prolonged solitary confinement is a common punishment used to force PoCs to confess their alleged guilt or to give up their advocacy for better prison conditions for all inmates and peaceful protesting of unlawful treatment by prison officials. Dang Xuan Dieu, another exiled activist, spoke at the 9th Geneva Summit for Human Rights and Democracy on 21st February 2017, recalling prisoners had their feet shackled and put in solitary confinement for 3 to 6 months, which could potentially result in paralysis. ²⁰

PoCs often share cells with "antennae" (inmates who act under the instructions of prison authorities to spy on the victims or to inflict verbal or physical abuses on them in exchange for favors or shortened prison time). Several PoCs described the constant fear of hostility or physical harm could cause insomnia and mental suffering for them. A female land rights activist recalled being held in a cell near the interrogation room where day and night she had to hear screaming sounds of prisoners being tortured.

¹⁸ Vietnam: Prisons within Prisons: Torture and Ill-treatment of Prisoners of Conscience in Vietnam, <https://www.amnesty.org/en/documents/asa41/4187/2016/en/>

¹⁹ Pastor Jailed and Tortured for Preaching Shares Horrors Christian Prisoners Face in Vietnam, <https://www.christianpost.com/news/pastor-jailed-and-tortured-for-preaching-shares-horrors-christian-prisoners-face-in-vietnam-223166/>

²⁰ Dang Xuan Dieu Speaks at 2017 Geneva Summit, <https://www.genevasummit.org/dang-xuan-dieu-speaks-at-2017-geneva-summit>

These sounds terrified her and gave her nightmares. This type of intentional punishment fits the definition of torture in Article 1 of UN CAT.

PoCs are often held in cramped cells behind up to three locked doors and have no open windows. Therefore, it is very dark and poorly ventilated inside the cell. Water is rationed in small amounts and is unsafe for drinking. Many prisoners, therefore, suffer from skin diseases, intestinal diseases, and deteriorating vision.

Another cruel punishment that could cause PoCs to become infected with deadly disease is forcing them to share the cell with inmates terminally ill with infectious diseases such as tuberculosis or HIV. Mai Thi Dung, a female religious prisoner described being forced to live for months in a locked, stuffy room crowded with HIV infected prisoners. When some patient died, the prison guards were informed but they would leave the dead body in the room for several hours before having it removed. Former PoC Huynh Anh Tri recalled in an interview with Amen TV, an online television channel of the Saigon Redemptorist Church, that prisoners were forced to share razors with HIV-infected inmates and when they were disciplined, prison authorities put them in shackles tainted with the blood of the infected inmates. If they agreed to pay a bribe to the guards, they would be put in “clean” shackles. In that interview, Tri and his former prison mate, another PoC, said that during their time in prison they witnessed several prisoners die due to HIV transmission. Tri himself was diagnosed with Stage 3 HIV shortly after his release after having spent 14 years in prison. Tri passed away a few months later from this disease.

5. Restriction or denial of legal rights of detainees to access to counsel, medical care and members of the family

Even though Article 31 of the Constitution of Vietnam and Article 16 and Article 26 of the Criminal Procedural Code (CPC) ²¹ guarantees the accused persons access to legal defense, “national security” is again leveraged as ground to delay engagement of lawyers until after the investigation ends, thereby nullifying the rights to receive legal counseling during the investigation of the human rights defenders and blocking defense lawyers from accessing documents and evaluating evidences from case files. Article 74 of the CPC 2015 version (formerly Article 58) states, *“The head of the Procuracy is authorized, when confidentiality of investigations into national security breach is vital, to sanction defense counsels’ engagement in legal proceedings after investigations end.”* It is often the case that defense lawyers were not provided with the indictment and not allowed to meet with their clients until a week or two before the trial, therefore, not having sufficient time to prepare for the defense.

Article 20 and Article 31 of the Constitution of Vietnam provides protection against deprivation of liberty. But there have been several cases where prisoners of conscience were arrested without a warrant and held incommunicado for prolonged period of times. It is not unusual that the families are not informed of their arrest and detention until weeks or even months later. On 11th February 2014, human rights activist Bui Thi Minh Hang was arrested while on her way to visit a former prisoner of

²¹ Vietnam Criminal Procedural Code 2015, <http://hethongphapluatvietnam.com/law-no-101-2015-gh13-dated-27-november-2015-criminal-procedure-code.html>

conscience and charged with “causing public disorder” (Article 245 of the 1999 Criminal Code). It was not until more than six months later that she was allowed to meet with her daughter for the first time. Even though Mrs. Bui had already signed a legal contract with her lawyer prior to her arrest, he was falsely told by the authority that Mrs. Bui declined legal representation; therefore, his request to provide defense counsel for her was rejected.

Another incident of arbitrary arrest and incommunicado detention happened in July 2017 when religious rights defender and former prisoner of conscience Nguyen Bac Truyen was abducted on the street near his workplace. He was immediately transferred to a detention center 1600 km away and held incommunicado for six months. His lawyer was not allowed to see him until two weeks before the trial, in which Truyen was sentenced to 11 years’ imprisonment and 3 years’ probation.

A common indirect punishment that the Vietnamese authorities often exert on prisoners of conscience and their families alike is to transfer the prisoners very far away. Prisoners arrested in the South of Vietnam are transferred to prison camps in the North and vice versa, making visitation both difficult and costly. Furthermore, unfamiliar climate could take a toll on the prisoners’ health.

Under horrendous conditions and cruel treatment in prison, prisoners of conscience frequently fall ill. Yet after months of complaints to prison authorities, they were only sent to prison clinics for basic examinations and received poor quality generic medication that did nothing to help with their medical problems or even made the condition worse. Medical treatment is also frequently used by Vietnamese authorities to pressure prisoners of conscience to confess their alleged guilt. Amnesty International twice issued Urgent Action appeals (in 2015 and 2017) for the case of Tran Thi Thuy, a Hoa Hao Buddhist and a land rights activist sentenced to eight years’ imprisonment and 5 years’ house arrest under Article 79 of the 1999 Criminal Code (presently Article 109) for “activities aimed at overthrowing the people’s administration”²². Mrs. Thuy was diagnosed with a tumor on her uterus, but she was denied medical treatment. A prison officer told her to admit her crimes or “die in prison”. The tumor continued to grow and Thuy was in such severe pain that she was unable to walk without assistance. She was also suffering from painful boils all over her body that burst and emitted blood and puss. Her family members reported that Thuy’s mental condition became alarmingly unstable after she was given some unknown medication by the prison authorities. The situation continued to get worse to the point that Thuy began to display symptoms of schizophrenia. She became confused and unable to recognize her family members. Such denial of medical treatment is the intentional infliction of extreme pain and suffering, thus a form of torture. Thuy’s family pleaded for help from the international human rights community to save her. Thanks to the timely intervention, prison authorities stopped making Thuy take medicine and her family felt that she had gradually regained mental clarity and was able to communicate coherently.

6. Restriction of the right to freedom of opinion and expression

According to a prison survey conducted in 2013 by CPJ (Committee to Protect Journalists), Vietnam was Asia's second-worst jailer of the press, trailing only China²³. RSF (Reporters Without Border) ranked

²² Urgent Action: Growing health fears for prisoners of conscience, <https://www.amnesty.org/download/Documents/ASA4157272017ENGLISH.pdf>

²³ CPJ: Vietnam Tightens the Squeeze on Its Bloggers, <https://cpj.org/2014/02/attacks-on-the-press-vietnam-analysis.php>

Vietnam number 175 out of 180 countries in its 2018 World Press Freedom Index ²⁴.

Vietnam frequently invokes vaguely worded "national security" provisions to repress the exercise of basic civil and political rights such as freedom of opinion and expression and imprisons bloggers who establish or contribute articles to independent blog sites.

NOW! Campaign, a coalition of 15 human rights organizations and Civil Society organizations, compiles and maintains a database consists of 165 Vietnamese PoCs and detainees ²⁵. Of those, 102 PoCs were convicted with "offences against national security":

- "carrying out activities aimed to overthrow the people's administration" (Article 79 of the 1999 Criminal Code, presently Article 109): 45 cases
- "undermining national unity" (Article 87 of the 1999 Criminal Code, presently Article 116): 37 cases
- "spreading propaganda against the state" (Article 88 of the Vietnam Criminal Code 1999, presently Article 117): 14 cases
- "abusing the rights to democratic freedom to infringe upon the interests of the State" (Article 258 of the 1999 Criminal Code, presently Article 331): 6 cases

The Vietnamese authorities show no leniency towards female activists with small children. Blogger Mother Mushroom, who blogged about politically sensitive issues such as police brutality, corruption, and environmental pollution and was awarded the International Women of Courage Award by US First Lady Melania Trump, was sentenced to 10 years' imprisonment under Article 88 of the 1999 Criminal Code (presently Article 117). Labor rights activists Tran Thi Nga (aka, Thuy Nga) was sentenced to 9 years' imprisonment followed by 5 years' probation, also under Article 88, for sharing articles and videos online highlighting ongoing rights abuses tied to illegal land grabs, environmental pollution and political corruption. Each of these activists has two small children who will be without the care of their mothers for many years.

The authorities often use force, intimidation, restriction of movement, and in some cases, arbitrary detention to prevent advocates from participating in meetings with foreign diplomats or traveling abroad to attend human rights conferences.

On 24th February 2014, prominent defender of religious freedom Nguyen Bac Truyen and his wife were viciously attacked by plainclothes police while they were on their way to a meeting at the Australian Embassy in Hanoi. ²⁶

²⁴ Reporters Without Border: 2018 World Press Freedom Index, <https://rsf.org/en/ranking/2018>

²⁵ The NOW! Campaign for the Release of Prisoners of Conscience in Vietnam, <https://www.vietnampocs.com/>

²⁶ Vietnam Should End Harassment of Human Rights Activists, <https://freedomhouse.org/article/vietnam-should-end-harassment-human-rights-activists>

On 16th December 2015, well-known human rights lawyer Nguyen Van Dai was arrested when he was on his way to meet with members of the European Union delegation who were in Hanoi for the fifth EU-Vietnam human rights dialogue. He was charged with “spreading propaganda against the state” under Article 88 (presently Article 117) and held in pre-trial detention for more than two years. His charge was later changed to “carrying out activities aiming to overthrow the people’s administration” (Article 79, presently Article 109). He was sentenced to 15 years in prison and 5 years’ probation.

On 16th November 2017, authorities in Hanoi detained three popular bloggers (Pham Doan Trang, Nguyen Quang A, and Bui Thi Minh Hang) for several hours after they met with representatives of the EU delegation to discuss the situation of human rights in Vietnam. Prior to that incident, Pham Doan Trang and Nguyen Quang A, along with human rights lawyer Ha Huy Son, were also prevented from attending a pre-scheduled meeting between US President Obama and some Vietnamese activists in May 2016 during his visit to Vietnam. ²⁷

Several human rights activists have their passports confiscated by the authorities to prevent them from attending international conferences or human rights trainings organized abroad. Authorities in Ho Chi Minh City detained activist Pham Le Vuong Cac for 24 hours and subjected him to “torture” upon his return from a UN meeting on Vietnam’s Universal Periodic Review (UPR). ²⁸

Vietnam perceives cyberspace as a “new battleground” and in response the government created a special force consisting of 10,000 military cyber warriors called “Force 47” (named after Directive N^o 47 that authorized its foundation) and tasked it with “combating wrongful information and anti-state propaganda”. This special cyber warfare unit was announced in December 2017 by Colonel General Nguyen Trong Nghia, deputy chairman of the General Political Department of the People’s Army of Vietnam ²⁹. According to the three-star general, to date some 62.7 percent of Vietnam’s population of 90 million have had access to the online world. Therefore, the Central Party Committee of the People's Army of Vietnam has concentrated on building a special force to fight in the ‘information war’ on the Internet.

Furthermore, non-state actors are mobilized to harass and assault activists and independent religious communities across the country. An example is the formation of the government-supporting group “Red Flag Associations”, which raises concerns among rights groups for its violent characteristic ³⁰.

On the evening of 30th May 2017, over 1,000 individuals wearing red T-shirts and carrying red flags, calling themselves members of the Red Flag Associations surrounded Van Thai Sub-Parish of the Song Ngoc Parish while Rev. Nguyen Dinh Thuc was celebrating Mass. This thuggish mob screamed insults at the Catholic parishioners, threw bricks and rocks to damage their vehicles and a number of houses,

²⁷ 'Empty Chairs' at Embassy Meeting as Vietnam Keeps Activists Away from Obama, <http://time.com/4346032/vietnam-obama-human-rights-detained/>

²⁸ Vietnam Rights Activist Held Upon Return Home from UN Talks, <https://www.rfa.org/english/news/vietnam/delegate-08072014151120.html>

²⁹ Vietnam has 10,000-strong ‘cyber troop’, <https://tuoitrenews.vn/news/politics/20171226/vietnam-has-10000strong-cyber-troop-general/43326.html>

³⁰ Rights Group Calls Attention to Vietnam’s Violent ‘Red Flags’ Groups, <http://www.persecution.org/2018/03/29/rights-group-calls-attention-vietnams-violent-red-flags-groups/>

desecrated the altar, and beat parishioners as they went home after Mass. On the next day, a mob of over 100 individuals forced its way into the homes of parishioners, destroyed property and religious icons. They also ransacked stores in the sub-parish. The terror continued for days with homes destroyed and statues and paintings of the Virgin Mary and the saints in the Van Thai Church wrecked. The authorities took no action to protect the victims, nor did they respond to written requests for investigation into these unlawful and violent acts. The violence continues to spread to other Catholic parishes. On 30th October, two parish priests went to the local government building to follow up on the complaint filed previously. When they came out of the building they were surrounded by some 300 Red Flag members, some carrying machetes and knives, who shouted threats at them. Boat People SOS (BPSOS), a US-based rights group, compiled a detailed 18-page report outlining the growth and missions of the Red Flag Associations as well as the refusal by the government to take actions to stop the violence and to investigate into allegations made by the victims. This report was presented to Mr. Sam Brownback, the U.S. ambassador-at-large for international religious freedom in advance of a U.S.-Vietnam human rights dialogue scheduled for May 2018.³¹

7. Restriction of the right to freedom of association

The lack of laws protecting the rights guaranteed by ICCPR and/or the conflict between Vietnam Constitution and the country legislation is often employed by the government to persecute peaceful activists. Even though Article 119 of the Constitution of Vietnam (version 2013) clearly stipulates "*The Constitution is the fundamental law of the Socialist Republic of Vietnam, and has the highest legal effect*", during the trial of the six activists being accused for their affiliation with "Brotherhood for Democracy" (BFD), an online group formed to coordinate peaceful exercising of the rights protected by ICCPR to bring democracy to Vietnam, the court insisted that "*The constitution stipulates that citizens have the right to form associations in accordance with the law, but there not exists the law on association; therefore, the [BFD] association is illegal*". The six human rights activists were convicted as charged and sentenced to a total of 66 years imprisonment and 17-year probation in a one-day trial.

Independent associations and labor unions are considered illegal and often harshly persecuted in Vietnam. Under country law, workers are prohibited from forming independent unions of their own choosing. Instead, all unions must be registered and affiliated with the Vietnam General Confederation of Labor, an official labor confederation controlled by the Communist Party.

Three young labor activists Nguyen Hoang Quoc Hung, Doan Huy Chuong and Do Thi Minh Hanh helped Vietnamese workers to form the United Workers-Farmers Organization (UWFO, aka Hiep Hoi Doan Ket Cong Nong) to advocate for the rights to peacefully organize, assemble, and strike for better pay and working conditions. They were arrested in February 2010 for distributing leaflets and helping to organize a strike of 10,000 workers at the My Phong shoe factory in Tra Vinh province. They were convicted on charge of "disrupting security" under Article 89 of the 1999 Criminal Code for "intent to oppose the people's administration by inciting, involving and gathering many people to disrupt security". Nguyen Hoang Quoc Hung was sentenced to 9 years in prison; the other two were each sentenced to 7 years.

³¹ Red flag Associations: An emerging threat to Catholic communities in Vietnam, <http://dvov.org/wp-content/uploads/2018/03/Red-Flag-Associations-03-27-18.pdf>

None of them had defense lawyers at the trial, nor were they allowed to speak in their own defense. UN Working Group on Arbitrary Detention (WGAD) found their detention to be in violation of international law and called on Vietnam to immediately release them. However, in their official response to the communication from WGAD the Vietnamese government reiterated the accusations that the victims "were founders and members of the illegal organization - the United Workers-Farmers Organization." ³²

A. CONCLUSION AND RECOMMENDATIONS

Vietnam's third periodic report states that "[H]uman rights and the citizen's rights have been always recognized in the Constitutions — the supreme law of the land of Viet Nam" and the legal framework, including provisions of the Constitution, amendments and supplements to laws and legal documents has marked an important progress of Viet Nam "in the recognition, respect, protection and guarantee of human rights and the citizen's rights in all areas." However, in reality earnest implementation of such legal framework remains questionable. Vietnam's report continues to reference Article 14 of the Vietnam Constitution to defend restriction of human rights and citizen's rights "in case of necessity for reasons of national defence, national security, social order and safety, social morality and public health".

Yet the "national security" provisions in the law and constitution are not clearly defined, thereby increasing limitations rather than safeguarding civil and political rights of all citizens.

The lack of laws in compliance with ICCPR such as laws on the right to freedom of association or the right of peaceful assembly gives rise to the escalation of crackdown on human rights activists.

Non-state actors are emboldened by government's refusal to act upon reports of violations of citizen's rights. Violence and hate crimes motivated by political and religious bias have escalated and become a serious concern for human rights groups.

Prisoners and detainees continue to be subjected to torture and other cruel, inhuman and degrading treatments and punishments. Yet the perpetrators still enjoy impunity due to failure by the Vietnamese government to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; and to take other necessary steps to prevent a recurrence of violations.

By providing the information in this report, we respectfully present the following recommendations:

1. To the government of the Socialist Republic of Vietnam:

- a) Fully implement the recommendations provided in the ICCPR second cycle Concluding Observations;

³² WGAD communication to Vietnam on 2 August 2012, <https://www.unwgadatabase.org/un/Document.aspx?id=2880>

- b) Pass and enact legislation with clear provisions on protecting the rights to freedom of religion, and freedom of association as well as the rights of peaceful assembly;
- c) Stop invoking the vaguely defined “national security” provisions as exception to the restrictions of human rights. Repeal all legislation restricting the exercise of constitutionally and internationally recognised human rights;
- d) Ensure a truly independent judicial system, free from interference by the State and the Communist Party. Guarantee all persons the rights to a speedy and fair trial, with adequate and timely legal counselling. Allow the family of the accused persons and the public to freely observe court proceedings and grant foreign diplomats the right to monitor upon request;
- e) Eliminate impunity. Order prompt, independent, and impartial investigation of violations. Ensure that the perpetrators are prosecuted and punished to the full extent of the law. Government officials at local, provincial, and national levels should publicly and strongly condemn violations and make clear such acts are illegal under Vietnam’s laws and will not be tolerated;
- f) Hold accountable any government official or non-state actor who violates the rights of other citizens. Strengthening the judicial mechanism responsible for investigating and resolving complaints and denunciations by citizens regarding civil and human rights violations to ensure fair and speedy resolution without retribution to the victims.

2. To the Human Rights Committee:

- a) Should continue to access and vigorously advocate the full compliance of ICCPR. Investigation and observation should not rely solely on information provided by the authorities accused of rights violations. Human rights advocates and organizations or the victims filing incident reports should be made informed of responses by the offending State when applicable and allowed the opportunity to provide counter-responses in a respectful and impartial manner;
- b) Should make governments of democratic countries aware of the human rights situation in Vietnam and encourage such countries to leverage diplomatic relations with the Socialist Republic of Vietnam and use bilateral dialogues to press Vietnam to respect its obligations to ICCPR and its responsibility to protect the rights of citizens.