

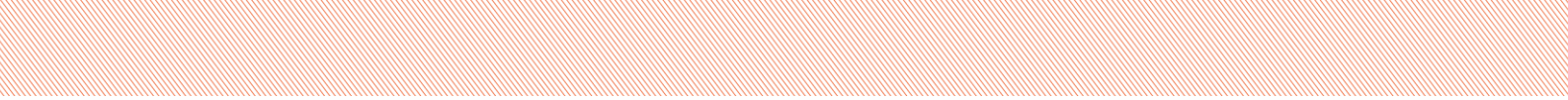
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# Report to the United Nations Committee Against Torture for the Examination of the First State Report of the Socialist Republic of Vietnam

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A joint report by ACAT, BPSOS, CAT-VN, CSW, LIV and VN-CAT for UNCAT's 65th session in Geneva, Nov 12, 2018 – Dec 7, 2018





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## Submitted by

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**ACAT-France.** Action by Christians for the Abolition of Torture, created in 1974, is a Paris-based ecumenical organisation fighting against torture and the death penalty around the world and defending asylum rights. ACAT is based on a network of more than 36.000 activists in France and more than 300 local groups. The organisation campaigns for the abolition of torture and every other form of cruel, inhumane and degrading treatment and lobbies governments (including the French one) and international organisations. ACAT also raises awareness among the public by creating and disseminating documents and reflections.



Founded in 1980 by former Vietnamese refugees, **Boat People SOS (BPSOS)** is a non-profit organization with branches in multiple cities in the United States and operations in Southeast Asia. For the past 38 years, BPSOS's international initiatives have defended the rights of asylum seekers, rescued victims of human trafficking, supported at-risk human rights defenders and built capacity for persecuted religious and indigenous communities.



**The Campaign to Abolish Torture in Vietnam (CAT-VN)**, advocates for the elimination of all forms of torture in Vietnam. Formed in 2014, CAT-VN monitors and reports instances of torture and mistreatment of detainees and prisoners in Vietnam, and proposes specific recommendations to the Vietnamese government and international stakeholders on practical approaches to systematically prevent and abolish torture in Vietnam.



**Christian Solidarity Worldwide (CSW)** is an advocacy organisation specialising in freedom of religion or belief (FoRB), and works on over 20 countries across Asia, Africa, the Middle East and Latin America. CSW has over three decades of

experience in advocating for FoRB and has held ECOSOC Special Consultative Status since 2017. Through in depth research, CSW gathers evidence of violations of FoRB, raises awareness, and calls on nations to uphold this right in accordance with international and national or constitutional obligations.

## **Legal Initiatives** *for* VIETNAM

**Legal Initiatives for Vietnam (LIV)** was formed by a group of Vietnamese lawyers, jurists, and journalists who have been working with various independent CSOs in the country since at least 2011. LIV works to improve the political and legal framework and culture in Vietnam through the implementation of universal values of human rights, democracy, and the rule of law.



**VN-CAT.** Vietnam-Coalition Against Torture, formed in 2016, is a civil society organization specializing in advocacy for the abolition of torture in Vietnam. Our objectives include, but not limited to: Educate the people in Vietnam about national and international laws against torture and the obligations of the Vietnamese government pursuant to the UN Convention Against Torture (CAT); monitor the implementation of CAT by the Vietnamese government; encourage victims and activists to report violations of CAT.

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## Introduction

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Police brutality, torture, and lethal beatings continue unabated throughout the Socialist Republic of Vietnam (hereafter Vietnam) despite its obligations under the United Nations Convention against Torture (UNCAT), which it signed and ratified in 2013 and 2015, respectively.

In this joint report by Vietnamese and international civil society organizations to the United Nations Committee Against Torture, we document the widespread use of torture in Vietnam, the systematic impunity of the abusers, and the lack of concrete action by the government of Vietnam to effectively reduce and prevent acts of torture. We focus specifically on abuses that take place in police stations, detention centers, and prisons that operate under the authority of the Ministry of Public Security. In addition to abuses suffered by the general population of prisoners and detainees, we examine specific violations of the rights of prisoners of conscience, ethnic and religious minorities, and inmates on death row.<sup>1</sup>

The findings in this report are based on research and first-hand interviews conducted by our organizations, supplemented by reports by Vietnamese and international media, UN agencies, foreign governments, and Vietnamese and international human rights organizations. We also drew from online reports, videos and photographs posted by bloggers and human rights defenders in Vietnam, as well as from Vietnamese state media and official government documents, directives, and laws.

The Vietnamese government's lack of transparency and constraints on independent human rights researchers make it challenging to conduct in-country research. We hope that in the future the government of Vietnam will enable research and inquiry into human rights practices — and in particular into conditions in prisons, detention centers, and police lock-ups — without restriction or sanction.

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<sup>1</sup> We use the term prisoner of conscience to refer to individuals arrested and imprisoned for peacefully exercising their internationally protected human rights.



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# Violations of the Convention Against Torture

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## 1. Inadequate Legal Safeguards Against Torture

The UNCAT prohibits torture and other ill-treatment in all circumstances without exception. It also commits state parties to prevent torture by taking “effective legislative, administrative, judicial and other measures”.

Essential safeguards against torture in pre-trial detention, such as the right to legal representation and limits on incommunicado detention, do not exist for most prisoners of conscience in Vietnam. In addition, political and religious detainees are rarely brought before a judge until the day of their trial, denying them the right to challenge the lawfulness of their detention or their treatment, including torture, in custody.

Many of the basic safeguards against torture and other abuses of detainees are enshrined in the International Covenant on Civil and Political Rights (ICCPR), to which Vietnam is a party. It protects the rights of people deprived of their liberty, including the right to prompt access to legal advice and a fair trial.

Instead of conforming to these agreed standards, Vietnam’s judicial system is characterized by arbitrary arrest; lengthy pre-trial detention; incommunicado detention; lack of presumption of innocence during court proceedings, where evidence is often lacking or fabricated; denial of access to defense lawyers; and politically-based judicial decisions.

### 1.1. Legal Framework

The Socialist Republic of Vietnam signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) on November 7, 2013. Its National Assembly ratified UNCAT on November 28, 2014. During 2015, the Prime Minister, Minister of Public Security, Supreme People’s Procuracy, and the Ministry of Justice issued action plans for the implementation of UNCAT<sup>2</sup> and amended key legislation pertaining to criminal justice.

The Constitution of Vietnam as amended in 2013 guarantees the right to life of all individuals and the inviolability of the individual and the legal protection against torture, violence, coercion, corporal punishment or any form of treatment harming body, health, honor and dignity.<sup>3</sup>

Vietnam’s 2015 Criminal Procedure Code prohibits torture, corporal punishment, and “any other forms of treatment that violate a person’s body, life and health.”<sup>4</sup> The 2015 Law on Enforcement of Custody and Detention prohibits “torture, corporal punishment or any other forms of treatment that infringe upon lawful rights and interests of, people held in custody or temporary detention.”<sup>5</sup>

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<sup>2</sup> Documents 364/QĐ-TTĐ (March 17, 2015), 2139/QĐ-BCA-V19 (April 24, 2015), 384/QĐ-VKSNDTC (June 18, 2015) and 1686/QĐ-BTP (September 21, 2015).

<sup>3</sup> Article 19 and 20 of the Constitution of Vietnam (2013).

<sup>4</sup> Article 10, Criminal Procedure Code of Vietnam, Law No. 101/2015/QH13, November 27, 2015.

<sup>5</sup> Law on Enforcement of Custody and Temporary Detention, No. 94/2015/QH13, November 25, 2015.

Vietnam's Criminal Code, as amended in 2015,<sup>6</sup> stipulates sentencing guidelines for the following criminal acts:

- Voluntary manslaughter by a law enforcement officer in performance of his/her official duties (Article 127);
- Deliberate infliction of bodily harm by a law enforcement officer in performance of his/her official duties (Article 137);
- Illegal arrest, detention, or imprisonment of a person (Article 157);
- Use of torture (Article 373);
- Obtainment of testimony by duress, including using torture, mistreating or insulting the interrogated person (Article 374).

## 1.2. Legislative Shortcomings

Despite Vietnam's obligations as a member state of UNCAT and the promulgation of a wide range of policies and laws on the implementation of the convention,<sup>7</sup> enforcement of legislative and institutional instruments prohibiting acts of torture remains poor. Torture, police brutality, and deaths in custody remain prevalent in Vietnam not only for prisoners of conscience but for people arrested for other crimes.<sup>8</sup>

While the government of Vietnam has incorporated prohibitions on torture in legislation passed or amended since 2015, these laws do not provide an explicit or comprehensive definition of torture consistent with Article 1 of UNCAT, nor do they provide essential safeguards against torture. According to Amnesty International, "The result is vague and deficient criminal offences that tend to reduce the gravity of the criminal conduct involved in a manner which is totally inconsistent with the fundamental and immutable nature of the prohibition on torture and other ill-treatment."<sup>9</sup>

In violation of the absolute prohibition on torture provided by Article 2 of UNCAT, Vietnam's 2015 Criminal Code authorizes police officers to use violence or inflict bodily harm in certain circumstances. Criminal Code Article 137 prohibits police officers from deliberately inflicting bodily harm in carrying out their duties – except for circumstances "in which infliction of bodily harm is permitted by law".

The government continues to use imprecisely-defined national security provisions in the Criminal Code and other laws to arrest and imprison peaceful political and religious dissidents.<sup>10</sup> Rights groups estimate that approximately 246 prisoners of conscience are currently detained or imprisoned, the majority on national security charges.<sup>11</sup>

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<sup>6</sup> Criminal Code of Vietnam, Law No. 100/2015/QH13, November 27, 2015.

<sup>7</sup> See Annex 13 (referenced in paragraph 131) of Vietnam's Initial Report on the implementation of CAT submitted in December 2017, which outlines the promulgation of plans by central and provincial government agencies and ministries in regard to the government's obligations under CAT.

<sup>8</sup> See, for example, "Public Insecurity: Deaths in Custody and Police Brutality in Vietnam," Human Rights Watch, September 16, 2014, available at <https://www.hrw.org/report/2014/09/16/public-insecurity/deaths-custody-and-police-brutality-vietnam>

<sup>9</sup> "Prisons Within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam," Amnesty International, July 2016, <https://www.amnesty.org/download/Documents/ASA4141872016ENGLISH.PDF>

<sup>10</sup> The United Nations Working Group on Arbitrary Detention has found that Vietnam's Criminal Code does not distinguish between violent and peaceful acts in defining "national security" crimes, which means that arrests of people for peaceful exercise of fundamental freedoms are arbitrary and in violation of international covenants to which Vietnam is a party. Report of the United Nations Working Group on Arbitrary Detention: Visit to Vietnam," December 21, 1994, UN doc E/CN.4/1995/31/Add.4

<sup>11</sup> "Latest Count: Vietnam Holds 246 Prisoners of Conscience," Now! Campaign, October 1, 2018, <http://www.vietnamhumanrightsdefenders.net/2018/10/03/vietnam-holds-246-prisoners-of-conscience-nowcampaign/>

Among the Criminal Code provisions most frequently used to suppress dissent are Article 109 (formerly 79), sedition; Article 116 (formerly 87), undermining the unity policy; Article 117 (formerly 88), propaganda against the state; and Article 330 (formerly 258), abusing democratic freedoms.

Once convicted, prisoners of conscience are stripped of many of the rights accorded to common criminal offenders in Vietnam. Instead, they are confined in special “Security Sections” (*Khu An Ninh*) in prisons, where they are isolated from and treated differently than the general prisoner population. The segregation and discriminatory treatment of prisoners sentenced for national security crime is provided by the Law on Execution of Criminal Judgements and its implementing legislation, Circular 37, and the Law on Enforcement of Custody and Detention (version 2015) (See section 7, below).

Upon release, former prisoners of conscience convicted on national security charges are subjected to additional penalties under Criminal Code Article 92, which deprives them of certain citizenship rights, places them on probation for up to five years, and allows confiscation of all or part of their property.

## 2. Police Brutality in Dispersing Public Protests

Even though the rights to freedom of assembly and association are enshrined in Vietnam's Constitution and the 2015 Criminal Code, a number of domestic laws that restrict freedom of assembly are used by police to aggressively crack down on peaceful protesters.

Decree No. 38 requires that any gathering of five or more people in a public place must be registered in advance with the district-level or provincial-level People’s Committee, unless the activities are organized by the Party or State bodies, the Vietnam Fatherland Front and socio-political organizations.<sup>12</sup>

Circular 13, issued by the Ministry of Public Security in 2016, provides additional rationale for police to violently disperse families and supporters gathering near courthouses when activists are on trial.<sup>13</sup>

In many cases, authorities have used Article 245 of the Criminal Code (now Article 318) on “causing public disorder” to target peaceful activists and rights defenders for exercising their right to freedom of assembly by violently arresting and prosecuting them.

The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials remind that officials “shall, as far as possible, apply non-violent means before resorting to the use of force.” They also specify that “[w]hen the lawful use of force and firearms is unavoidable, law enforcement officials shall exercise restraint in such use and act in proportion to the seriousness of the offence”.<sup>14</sup>

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<sup>12</sup> MPS Circular No. 09/2005/TT-BCA: Guiding the implementation of a number of articles of the Government’s Decree no. 38/2005/ND-CP of March 18, 2005,

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<sup>14</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, September 1990,

<https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>

During the first two weeks of June 2018, police violently suppressed mass protests by ordinary citizens across Vietnam against the draft bills on special economic zones and cyber security. As many as 800 people were arrested, primarily in Ho Chi Minh City, Hanoi, and Binh Thuan province.<sup>15</sup> Video recordings at the scene showed police forcibly dispersing protesters using tear gas, batons, water cannons, and Long-Range Acoustic Devices (LRADs), which emit pain-inducing sounds.<sup>16</sup> Police swiftly and violently arrested demonstrators as well as anyone under suspicion of intending to join the rallies. Some bystanders and tourists were arrested in the chaos. Many detainees were severely beaten on the street by uniformed and undercover police and members of civilian defense forces,<sup>17</sup> dragged into police vehicles, and beaten again multiple times while being transported and during detention at police stations or make-shift detention centers.<sup>18</sup> (See section 4, below.)

### 3. Physical Attacks by Government-Backed ‘Thugs’

Violent suppression of peaceful protests and physical attacks on activists can be carried out by the military, local militia, and uniformed and plainclothes police as well as by unidentified individuals or local mobs acting under police direction or acquiescence. In recent years, Vietnamese authorities have increasingly used groups of civilians to violently suppress popular protests and carry out harassment and physical assault on democracy campaigners and human rights defenders.<sup>19</sup>

Extremist groups such as the Red Flags Association frequently gather in large numbers and attack Catholic priests and parishioners in Vietnam while local police keep watch. On September 4, 2017, 20 Red Flag members carrying red flags, a pistol, electric batons, and tear gas dispensers entered Tho Hoa Parish in Dong Nai Province. They demanded retribution against Rev. Nguyen Duy Tan, the parish priest, who had posted opinions on his personal Facebook critical of the government’s policy toward independent religions. The parishioners were able to disarm the intruders. They called the police and prepared an official incident report, then requested a full investigation into the attack. However,

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<sup>15</sup> The figure of 800 arrests is a conservative figure. It is based on numbers supplied by police to state media, eyewitness accounts, and reports posted on social media. See: “HCM City Police Deal with 310 Extremists,” Voice of Vietnam, June 15, 2018, <https://english.vov.vn/society/hcm-city-police-deal-with-310-extremists-377066.vov>; “Police to Launch Criminal Probe into Violent Protest in Central Vietnam,” VNExpress, June 13, 2018, <https://e.vnexpress.net/news/news/police-to-launch-criminal-probe-into-violent-protest-in-central-vietnam-3762806.html>

<sup>16</sup> In June 2018, the United States Court of Appeals for the Second Circuit ruled that purposefully using LRADs in a manner capable of causing significant injuries, including hearing loss, is considered the use of excessive force. United States Court of Appeals for the Second District: 17-2065 Edrei v. Bratton, [http://www.ca2.uscourts.gov/decisions/isysquery/9a47eab2-8454-4880-822a-6f34731b14d7/2/doc/17-2065\\_opn.pdf](http://www.ca2.uscourts.gov/decisions/isysquery/9a47eab2-8454-4880-822a-6f34731b14d7/2/doc/17-2065_opn.pdf)

<sup>17</sup> A video clip provided by an unnamed demonstrator that shows unidentified individuals committing violent acts while uniformed policemen looked on is available on *Dan Lam Bao* (Citizen Journalism) website at: <http://danlambaovn.blogspot.com/2018/06/can-canh-ca-ap-anh-o-mau-nguoi-bieu.html>

<sup>18</sup> Reports of police beating and mistreating demonstrators are based on eyewitness accounts, photographs and videos posted on social media, as well as media reports and documentation by human rights organizations. See: “Hundreds of Vietnamese Protestors Arrested, Beaten During Nationwide Demonstrations, Crackdown Continues,” Defend the Defenders, June 13, 2018, <http://www.vietnamhumanrightsdefenders.net/2018/06/13/hundreds-of-vietnamese-protestors-arrested-beaten-during-nationwide-demonstrations-crackdown-continues/>;

“Many Vietnamese Protestors Say They Were Beaten in Custody, Numerous Others Still Held,” Defend the Defenders, June 11, 2018, <http://www.vietnamhumanrightsdefenders.net/2018/06/11/many-vietnamese-protestors-say-they-were-beaten-in-custody-numerous-others-still-held/>; “The HCMC Police Kept Silent about Beating Up Protesters,” RFA Facebook, June 25, 2018; “Black Sundays Report: Vietnamese People’s Response to Police Brutality During June 2018 Protests,” The Vietnamese, June 29, 2018; “Vietnam: Investigate Police Response to Mass Protests - Hundreds Detained in Sweeping Crackdown,” Human Rights Watch, June 15, 2018, <https://www.hrw.org/news/2018/06/15/vietnam-investigate-police-response-mass-protests>;

<sup>19</sup> “No Country for Human Rights Activists,” Human Rights Watch, June 18, 2017, available at <https://www.hrw.org/report/2017/06/18/no-country-human-rights-activists/assaults-bloggers-and-democracy-campaigners>.

the authorities only imposed an administrative fine on the intruders, including an equivalent of 40 USD fine against one member of the group for “possessing a dangerous toy gun”.<sup>20</sup>

In another incident, on May 2, 2017, approximately ten unidentified men broke into a private residence on Tran Nao street, Ho Chi Minh City, where activist Le My Hanh was staying with two female friends, and viciously assaulted the three women. The assailants recorded the violent attack and posted the video clip on social media. One man could be heard in the clip asking the victim, “You are a reactionary, aren’t you?”.<sup>21</sup> Le My Hanh received a medical report of her injuries and requested the District 2 Police Department to investigate the attack and prosecute the assailants but as of October 2018, the case is yet to be resolved.

From June 24 to July 4, 2018, unidentified assailants attacked the house of former prisoner of conscience Do Thi Minh Hanh, a labor rights activist and founder of Viet Labor Movement, on four different occasions. First, around a dozen men threw rocks at her family’s home. Two days later, the attack escalated when a home-made explosive device was thrown into her house but failed to ignite. A few days later, the power to her house was cut off in the middle of the night while rocks and an unknown chemical was thrown at her house, breaking glass and roof tiles and damaging furniture. During this ten-day period, Ms. Hanh tried to call the police for help several times to no avail.<sup>22</sup>

## 4. Abuses in Police Custody and Pre-Trial Detention Centers

Vietnamese and international human rights organizations have documented the widespread practice by police of mistreating, torturing, and even beating to death criminal suspects in temporary custody in Vietnam, even those detained for minor crimes such as routine traffic violations.<sup>23</sup>

Detainees are at most risk of being tortured by police during interrogation sessions that take place in temporary detention centers (*trai tam giam*) prior to trial, when they may be subjected to intense physical and psychological torture and abuse in order to extract information and coerced confessions from them.

### 4.1. Methods of Physical Torture

During interrogation sessions, which can take place at any time of day or night, detainees are subjected to a number of different forms of torture by police and prison officials:

- They are beaten with truncheons, belts, and leather sandals, boxed on the ears until they bleed, slammed against concrete walls, kicked with military boots, and shocked with electric batons.
- Some have their heads forcibly submerged in water during interrogation, or are forced to drink soapy water and then punched in the stomach.
- Others are injected with drugs that cause permanent memory loss and make them numb, weak, and unable to speak and think clearly.
- Detainees describe being hung up by their handcuffed wrists to the ceiling or the upper ledge of a window while being beaten with batons or shocked with electric rods.

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<sup>20</sup> “Red Flag Associations: An Emerging Threat to Catholic Communities in Vietnam,” BPSOS Religious Freedom Project, March 27, 2018, available at <http://dvov.org/wp-content/uploads/2018/03/BPSOS-Report-on-Red-Flag-Associations-03-27-18.pdf>

<sup>21</sup> The assault of human rights activist Le My Hanh, Youtube: <https://www.youtube.com/watch?v=8hANDhBNdog>

<sup>22</sup> “Labour rights activist Do Thi Minh Hanh blockaded in home, subject to daily violent attacks,” Front Line Defenders, July 10, 2018 <https://www.frontlinedefenders.org/en/case/do-thi-minh-hanh-subject-daily-violent-attacks>

<sup>23</sup> “Police Brutality and Lethal Beatings,” Campaign to Abolish Torture in Vietnam, 2014, <http://www.stoptorture-vn.org/police-brutality-and-lethal-beatings.html>

- Many are forced to maintain uncomfortable positions, such as sitting, squatting, lying down with arms and legs raised, or standing on one leg, for long periods of time.
- Others describe how police insert writing pens between their fingers and then tightly tie their hand with a rope, squeezing and crushing the fingers; or set two legs of a chair on the detainee's foot and then sit on the chair while interrogating the detainee.
- Some former detainees reported abuses that took place after they were forced to strip naked, such as guards standing on their legs and arms, attaching plastic bottles filled with water to the penis, shooting rubber bands at the penis, using electric shock to inflict pain on the groin and genitals, and conducting humiliating, invasive body searches.<sup>24</sup>

During the detention and interrogation of protesters arrested during demonstrations in Ho Chi Minh City, Hanoi, and Binh Thuan province in June 2018 (see Section 2, above), police subjected detainees to beatings and verbal abuse, including death threats. In many cases, police did not return confiscated money and personal belongings to detainees upon their release or transfer. A number of women reported being humiliated by having their clothes stripped off while they were videotaped by the police. Examples of some of the victims who suffered serious injuries include Mrs. Nguyen Thi Thuy Hanh, a well-known human rights advocate in Hanoi, who was detained and beaten in the police station of Dong Da district, resulting in bruises and burst lips; or Trinh Van Toan in Ho Chi Minh City who suffered a brain hemorrhage as a result of severe beatings during his interrogation. Other protesters who were seriously injured as a result of police beatings in Ho Chi Minh City include Hoai Diem, Nguyen Thi Mai, and Pham Thi Thanh Truc.

Despite physical abuse by police, about 150 people were charged with "disturbing public order". Those who were released continue to be closely monitored and threatened by the authorities. Some have been forced to remove information they shared on social media about their unlawful detention, ill-treatment, and torture.

## 4.2. Lethal Beatings and Deaths in Custody

The Initial report by the government of Vietnam does not mention the many cases of deaths in police custody that have been reported by Vietnamese state media, Vietnamese human rights defenders, and Vietnamese and international human rights organizations since 2010. These include a list of 31 deaths in police custody published in April 2014 by human rights defender Nguyen Ngoc Nhu Quynh on the blog Vietnamese Blogger Network, which she co-founded.<sup>25</sup> Other reports include one released by Human Rights Watch in September 2014 that documented 44 cases of police brutality resulting in deaths and serious injury of people in custody between August 2010 and July 2014, in 44 of Vietnam's 58 provinces and all five of Vietnam's major cities.<sup>26</sup>

In March 2015, the Ministry of Public Security reported that from October 2011 to September 2014, 226 people had died in police custody and detention centers.<sup>27</sup> At a meeting of the Standing Committee of the National Assembly on March 19, 2015, several lawmakers and members of the Judicial Committee raised doubts about the reliability of the report's conclusion that the main causes of death were illness and suicide, and asked the Ministry of Public Security for clarification regarding conditions of detention leading to deaths. Details of the report were not made public for verification.

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<sup>24</sup> "Vietnam: Torture and Abuse of Political and Religious Prisoners," Campaign to Abolish Torture in Vietnam, 2014.

<sup>25</sup> "Stop Police Killing Civilians," Vietnamese Blogger Network, April 21, 2014, <http://mangluoblogger.blogspot.com/2014/04/tap-tai-lieu-ve-tinh-trang-cong-dan.html>

<sup>26</sup> "Public Insecurity: Deaths in Custody and Police Brutality in Vietnam," Human Rights Watch, September 16, 2014, <https://www.hrw.org/report/2014/09/16/public-insecurity/deaths-custody-and-police-brutality-vietnam>

<sup>27</sup> "Doubts linger as Vietnam reports causes of 226 deaths in custody," Thanh Nien News, March 22, 2015, <http://www.thanhniennews.com/politics/doubts-lingeras-vietnam-reports-causes-of-226-deaths-in-custody-40112.html>

While the Ministry of Public Security alleged that suicide was the major cause of death, the situation around many cases makes suicide almost impossible or absurd. Several of the deceased were said to have hanged themselves using unusual articles such as their shirt, pants, the drawstring of their pants, belt, towel, and even shoelaces. On April 2, 2015, the police of Ba Dinh district in Hanoi ruled the death of Mrs. Nguyen Hong Luong, a petitioner in a land dispute, a suicide by self-immolation inside the police station. However, her family members told the media that autopsy revealed that in addition to burns, she also had a fractured skull and five broken ribs.<sup>28</sup>

Research by VN-CAT,<sup>29</sup> based on information published in state-controlled media outlets, tallies 156 cases of deaths in police detention from 2010 to the present. Those include 23 cases of torture and severe police brutality and 133 fatalities. The number of alleged suicides accounted for 42 percent of all deaths. Of those 56 suicide cases, 46 were reported as hanging (more than one-third of the total fatalities), 10 were by other methods. 13 died from unknown causes, 16 from illness, 33 from serious injuries sustained while in police custody such as traumatic brain injury, collapsed lungs, fractured skull, broken jaw bones and punctured intestine. Another 15 deaths were due to various causes, including falling, drowning, electrocution, and police shooting.

There appears to be a notable pattern of police officials attributing most deaths in custody to suicide. For example, under the leadership of Colonel Pham Van Ngan, the Deputy Chief of Vinh Long provincial police and the Head of Police Investigation, five cases of deaths in police custody were reported between 2012 and 2018, including three at the same detention center. One was said to be an accident while the four others were ruled as suicide. None of those five cases resulted in prosecutions.

Examples of individuals arrested for common criminal offenses who have died in police custody include the following:

- On July 8, 2017, Nguyen Hong De, a 26-year old suspect, died at the Temporary Detention Center of Phan Rang, in Ninh Thuan province, two days after his arrest on assault charge. The police notified his mother that De had used his long-sleeved shirt to hang himself.<sup>30</sup>
- In March 2016, Y Sik Nie, a Montagnard from Dak Lak province, died from alleged torture during more than three months' detention by district police in Dak Lak on charges of theft. His family learned about his death when they were summoned to the hospital to retrieve his body. Authorities refused the family's request Y Sik Nie's police and hospital medical.<sup>31</sup>
- On December 30, 2013, 14-year old Tu Ngoc Thach was arrested by Van Long commune police in Khanh Hoa province for his involvement in an argument with a group of youths. When his family was told to go to the commune police station to fill out paperwork to bail him out, they found Thach collapsed with his head on the table. His family rushed him to the hospital where he was pronounced dead due to brain hemorrhage; he had skull fractures in the right temple area. Under public pressure due to severe violence against an

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<sup>28</sup> "Hà Nội: Người phụ nữ chết sau khi tới UBND phường" (Hanoi: A woman died after arriving at the commune People's Committee), statement of the victim's daughter to the press in the last section of the article, *Vietnam Net*, April 7, 2015, <http://vietnamnet.vn/vn/thoi-su/ha-noi-nguoi-phu-nu-chet-sau-khi-toi-ubnd-phuong-230919.html>

<sup>29</sup> VN-CAT database: Number of Torture Incidents in Vietnam, accessed on October 10, 2018, <http://endtorturevn.org/article.php?&L=en&M=1&type=0>

<sup>30</sup> "Vụ thanh niên tử vong sau khi bị tạm giữ ở Ninh Thuận: Dùng áo treo cổ tự tử" (The Young man Died After Being Detained in Ninh Thuan: Suicide by Hanging With His Shirt), *Baomoi*, July 11, 2017, <https://baomoi.com/vu-thanh-nien-tu-vong-sau-khi-bi-tam-giu-o-ninh-thuan-dung-ao-treo-co-tu-tu/c/22723462.epi>

<sup>31</sup> "Chồng bị bắt lên công an, vợ được mời đến bệnh viện... nhận xác" (The Husband Was Taken to the Police, the Wife Was Invited to the Hospital...to Receive the Body), *Bao Pháp Luật*, <http://baophapluat.vn/phong-su-dieu-tra/chong-bi-bat-len-cong-an-vo-duoc-moi-den-benh-vien-nhan-xac-269778.html> ; *Vietnam 2016 Human Rights Report*, United States Department of State, <https://www.state.gov/documents/organization/265598.pdf>

underage victim, the authorities brought the case to trial. The police officer who personally inflicted the fatal injuries was convicted of "Intentionally inflicting injury" in pursuant of Article 104 of the 1999 Criminal Code. In March 2016 the People's Court of Van Ninh district sentenced the offender to 7 years and 6 months imprisonment. However, as of October 2018 the sentencing has not been finalized after six court proceedings, including three Appellate Court trials.<sup>32</sup>

- On July 23, 2010, Nguyen Van Khuong, aged 21, was arrested by traffic police for failure to wear a safety helmet while driving a moped. He died while in the custody of Tan Yen district police in Bac Giang province due to brain hemorrhage. After massive protests in Bac Giang, the provincial police ordered the arrest of a traffic police officer involved in Khuong's death, and placed three other officers on administrative leave pending investigation. There is no public information as to whether any of the police officers were ever formally charged or convicted.<sup>33</sup>

## 5. Abuses in Administrative Detention Centers

Vietnam's laws authorize the arbitrary "administrative detention" without trial of individuals considered threats to security, social order, or public safety. Normal legal safeguards relating to imprisonment do not apply to administrative detention centers, which operate outside of the criminal justice system. Administrative detainees are often picked up by police and sent to detention centers without notification of family members, heightening the risk that mistreatment of detainees can be carried out with impunity.

Under the 2012 Law on Handling Administrative Violations, people who violate laws on security, public order and safety, but not to the extent of criminal liability, may be placed under mandatory supervision and re-education in their locality or detained without trial in reformatories, re-education camps and compulsory detoxification centers.<sup>34</sup>

In theory, administrative detention is intended as punishment for people who have committed public order offenses that do not warrant criminal prosecution. In reality, administrative detention is often imposed in cases where there is not enough evidence to convict the person on criminal charges. Administrative detention laws can also be used to arbitrarily arrest and quietly punish perceived "trouble makers" such as land rights petitioners or members of unsanctioned religious groups, particularly in remote rural areas where it is less likely that international media or human rights defenders know about the cases.

Following widespread protests throughout Vietnam in June 2018, state media reported that authorities imposed "administrative punishments" on 175 protesters arrested in Ho Chi Minh City on June 9-10 on suspicion of "violating laws at different levels, from harming national security to affecting social order and safety".<sup>35</sup> No details were

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<sup>32</sup> "Ám ảnh nước mắt người cha" (*Haunted by Tears of the Father*), Baomoi, May 5, 2018, <https://baomoi.com/am-anh-nuoc-mat-nguoi-cha/c/25913407.epi>

<sup>33</sup> "Vu công dân chết tại trụ sở Công an huyện Tân Yên (Bắc Giang): Bat tam giam mot thieu uy công an" (*The Case in which a Citizen Died at the Police Station of Tan Yen District (Bac Giang): Police Lieutenant Detained*) Dai Doan Ket, August 10, 2010, <https://baomoi.com/vu-cong-dan-chet-tai-tru-so-cong-an-huyen-tan-yen-bac-giang-bat-tam-giam-mot-thieu-uy-cong-an/c/4684210.epi>; "Xử lý công an Bắc Giang vụ dân đột tử" (*Action taken against Bac Giang Police in Regard to Sudden Death of Citizen*), BBC Vietnamese, August 6, 2010, [https://www.bbc.com/vietnamese/vietnam/2010/08/100806\\_bacgiang\\_policeman\\_arrest](https://www.bbc.com/vietnamese/vietnam/2010/08/100806_bacgiang_policeman_arrest)

<sup>34</sup> Article 2.3, Law No. 15 on Handling Administrative Violations No.15/2012/QH13) of June 20, 2012, [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=445570](http://www.wipo.int/wipolex/en/text.jsp?file_id=445570).

<sup>35</sup> "HCM City Police Deal with 310 Extremists," Voice of Vietnam, June 15, 2018, <https://english.vov.vn/society/hcm-city-police-deal-with-310-extremists-377066.vov>



provided as to what the punishments entailed. Under the Law on Administrative Violations, penalties range from fines and warnings to re-education and compulsory detention.<sup>36</sup>

## 5.1. Compulsory Re-education Centers

Administrative offenders can be detained without trial for two-year renewable terms in “compulsory educational institutions” (cơ sở giáo dục bắt buộc) – often referred to as re-education camps – that are administered by the Ministry of Public Security.<sup>37</sup> Under the guise of vocational training, detainees are required to perform forced labor and fulfill production quotas in plantations, factories, and workshops. The use of forced labor by detainees in re-education and drug detention centers (see below) violates ILO Convention No. 29. Ratified by Vietnam in 2007, the convention prohibits the use of forced labor by detainees who have not been convicted in a court of law.

One of the few administrative detention cases to receive national and international press coverage was that of Hanoi-based activist Bui Thi Minh Hang, who was sent to Thanh Ha re-education camp in Vinh Phuc for two years’ detention in 2011.<sup>38</sup> International pressure was a factor in her early release after five months in detention.

More often, there is no press coverage or domestic and international advocacy about administrative detainees. Lack of a public trial and incommunicado detention makes it extremely difficult to trace detainees’ location and treatment in detention, with their families sometimes not even knowing their whereabouts. This has been the case for Montagnards belonging to independent house churches in the Central Highlands.<sup>39</sup> Putting activists such as these in detention for two years effectively silences them, with little chance of any outcry from the international community.

## 5.2. Social Protection Centers

Administrative offenders can also be compulsorily detained in Social Protection Centers (*Trung Tam Bao Tro Xa Hoi*). Police routinely round up homeless people, street children, beggars, and street vendors in arbitrary sweeps and deposit them in Social Protection Centers, where some are subject to verbal beatings, verbal abuse and mistreatment by staff.<sup>40</sup> Rural land rights activists petitioning authorities in the cities as well as citizens participating in peaceful protests have also been arrested and detained in Social Protection Centers without access to legal counsel or due process.<sup>41</sup>

## 5.3. Mandatory Drug Rehabilitation Centers

People who use drugs can be detained without trial for up to four years in mandatory drug rehabilitation centers (cơ sở cai nghiện bắt buộc), where failure to meet forced labor quotas or violation of rules results in beatings and

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<sup>36</sup> Articles 2, 24 and 28, Law No. 15 on Handling Administrative Violations No.15/2012/QH13) of June 20, 2012, [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=445570](http://www.wipo.int/wipolex/en/text.jsp?file_id=445570)

<sup>37</sup> Law No. 15/2012/QH13 on Handling Administrative Violations, June 20, 2012, <https://luatminhkhue.vn/en/law/law-no-15-2012-gh13-on-handling-of-administrative-violations.aspx>

<sup>38</sup> “Vietnam: Free Peaceful Activist,” Human Rights Watch, January 4, 2012, <https://www.hrw.org/news/2012/01/04/vietnam-free-peaceful-activist>

<sup>39</sup> “Vietnam: Torture and Abuse of Political and Religious Prisoners,” Campaign to Abolish Torture in Vietnam, 2014.

<sup>40</sup> “Children of the Dust: Abuse of Hanoi Street Children in Detention,” Human Rights Watch, November 2006.

<sup>41</sup> “Vietnam: Events of 2016,” Human Rights Watch World Report, January 2017, <https://www.hrw.org/world-report/2017/country-chapters/vietnam> ; “Vietnam: Torture and Abuse of Political and Religious Prisoners in Vietnam,” Campaign to Abolish Torture in Vietnam, 2014.

confinement in disciplinary rooms lacking adequate food and water.<sup>42</sup> In 2017, the government issued Decree 97 that expands the categories of people who can be sent to compulsory drug rehabilitation centers.<sup>43</sup>

## 6. Abuses in Prisons: General Inmate Population

### 6.1. Harsh Disciplinary Measures

Under Vietnamese law, police are not lawfully authorized to use corporal punishment to discipline prisoners who violate regulations. Instead, disciplinary measures are limited to issuing reprimands or warnings, or sending the prisoner to isolation cells.<sup>44</sup>

For the general prison population, physical abuse is less focused on extracting confessions for the crime they have been sentenced to, but on disciplining prisoners who violate rules or fail to meet work production quotas. (See section 7, below, regarding disciplinary measures for prisoners of conscience.)

Physical abuse takes place openly in the presence of other prisoners, behind closed doors in special interrogation rooms, or in solitary confinement cells. Prisoners with tacit approval or even disciplinary authority from prison officials also carry out beatings of other inmates.

In one incident at Cai Tau Prison in Ca Mau province, a police colonel and a prison guard viciously beat an inmate in the prison courtyard for more than ten minutes, as 1,000 prisoners looked on. While the guard kicked the prisoner all over his body, the colonel clubbed him numerous times with a hard rubber baton as he lay on the ground, covering his head. The colonel then used the trunk of a tree and a two-foot long bed post with sharp edges to bludgeon the prisoner, before ordering him to crawl on his hands and knees back to the Security Room.<sup>45</sup>

#### 6.1.a. Security Rooms

Prisons and detention centers have special rooms, sometimes referred to as “Security Rooms,” in which police interrogate and discipline prisoners who violate prison rules. Prisoners may be subjected to shackling, threats, and physical abuse in these rooms.

Nguyen Van Hai described the Security Room at Cai Tau Prison: “Many prisoners are beaten in that room. On each side of the room are benches with leg shackles. The prisoner sits on the bench, his feet chained to shackles on the floor, which prevents him from standing up when beaten. Beatings are carried out by prison supervisors, together with prisoners working as ‘security’.”<sup>46</sup>

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<sup>42</sup> “Vietnam: Events of 2017,” Human Rights Watch World Report, January 2018, <https://www.hrw.org/world-report/2018/country-chapters/vietnam> ;

“*The Rehab Archipelago: Forced Labor and Other Abuses in Drug Detention Centers in Southern Vietnam*,” Human Rights Watch, September 7, 2011, <https://www.hrw.org/report/2011/09/07/rehab-archipelago/forced-labor-and-other-abuses-drug-detention-centers-southern>

<sup>43</sup> Decree No. 97/2017/ND-CP detailing a number of measures to implement the Law on Handling Administrative Violations, August 18, 2017.

<sup>44</sup> Article 38, Law on Execution of Criminal Judgments, No. 53/2010/QH12, June 17, 2010

<sup>45</sup> CAT-VN interview with Nguyen Van Hai (Dieu Cay), April 2015. He was sent to Cai Tau Prison during his first round of imprisonment in 2009 on politically-motivated tax evasion charges (rather than national security charges), and thus was imprisoned with the general inmate population serving time for common criminal offenses.

<sup>46</sup> CAT-VN interview with former Cai Tau prisoner Nguyen Van Hai, April 2015.

### 6.1.b. Discipline Cells

Under Vietnamese law, prisoners who violate regulations can be punished by being sent to solitary confinement or small group isolation in “Disciplinary Rooms” (*buồng kỷ luật, phòng giam kỷ luật, or kho kỷ luật*) for up to 10 days, where their legs may be shackled.<sup>47</sup> In reality, many prisoners spend far longer than 10 days in Discipline Rooms. At Cai Tau Prison, for example, most prisoners are sent to the Discipline Room for an initial ten days, which can then be extended to as much as two or three consecutive months.<sup>48</sup>

Disciplinary Rooms include both solitary confinement cells as well as rooms holding up to three or four prisoners. As part of the prisoners’ punishment, conditions in the Disciplinary Rooms are much harsher than in regular cells: food rations and drinking water are reduced, family visits are prohibited, mats and mosquito nets are usually not provided, and access to bathing facilities restricted.

At Cai Tau Prison, the disciplinary section holds both male and female inmates. It consists of four rooms separated from the prison’s main courtyard by a locked gate. Each room holds up to three inmates. Prisoners in the disciplinary section are not allowed to receive food packages from their families, or to buy anything from the prison canteen. Meals, brought twice a day, consist of boiled water poured over tough *bok choy* (Chinese cabbage), with no seasonings or salt. Once a week the three cellmates in each room are provided one tablespoon of salt. Each three-person cell is provided only two liters of drinking water a day, which is not enough to drink, let alone to wash. Once a month they are allowed to take a shower.<sup>49</sup>

Nguyen Van Hai described the condition of a fellow prisoner after six months in the Discipline Cell: “After six months in there, his hair was shoulder length. He had sores from his toes to the back of his head from not being able to wash for so long. He had been in the cell 24/7 except for once a month, when he was allowed to shower. He said that he slept on the cement floor of the cell, where the dirt was an inch thick. It was hard to sleep because his feet were shackled and the heat could be intense. He told me the only reason he survived was because he ate whatever food the others couldn’t eat.”<sup>50</sup>

## 6.2. Detention Conditions Amounting to Torture and Ill-Treatment

Prisoners in Vietnam are subjected to harsh and degrading conditions of imprisonment that often fail to meet international prison standards. These include severe overcrowding, prolonged confinement in cells that lack natural light, sufficient air, or enough water to properly bathe; insufficient food and water, and prohibitions on leaving the cell and going outside.

Serious deprivation of basic human needs—especially when applied to increase prisoners’ feelings of powerlessness, break down their resistance, and coerce them to sign admissions of guilt—violates prohibitions on inhuman and degrading conditions and can amount to ill treatment and even torture.<sup>51</sup>

Group cells are often overcrowded, filthy, and airless. In many prisons, ventilation is provided only by small narrow slats in the concrete walls, near the ceiling. Food is provided through a window in the door. Adequate healthcare is rarely provided, and in some cases it is denied outright.

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<sup>47</sup> Article 38, Law on Execution of Criminal Judgments, No. 53/2010/QH12, June 17, 2010.

<sup>48</sup> CAT-VN interview with former Cai Tau prisoner Nguyen Van Hai, April 2015.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> “*The Treatment of Prisoners Under International Law*,” Nigel S. Rodley, Oxford University Press, 2009, page 425.

### 6.2.a. Overcrowding

While Vietnam's prison regulations state that prisoners in communal cells should be provided at least two square meters of sleeping area per inmate,<sup>52</sup> former prisoners describe extremely overcrowded living conditions in the group cells.

Nguyen Van Hai described the overcrowding at Cai Tau Prison, where he was imprisoned with the general inmate population of criminal offenders. In his cell, which measured 6 x 13 meters, more than 100 prisoners were held on two levels. This provided less than half a meter of space for each prisoner. "The space for one person was the width of my sandal. For two people and one mat, there was 55cm (22 inches). We had to cut the mat to fit within the space, but still there's no way that two people can fit in that space. The solution was to use a blanket to create another 'floor' hanging above the prisoner on the mat."

"At night, some prisoners also slept on the concrete walkway between the raised cement platforms, which was filthy and wet. The moisture from the walls and roof collects and falls on the floor. The walls were green with mold. It was a very damp environment, full of mosquitos—you didn't slap them off your body, but scraped them off by the handful."

"On the second level, people hung hammocks between the two sides. Sometimes the hammock strings broke and people fell down—it was almost an eight-foot drop. For elderly prisoners who had no money to buy a better space in the room, it was very difficult for them [...] The more influential or powerful prisoners occupied the corners of the room, which are larger and have more wall space. Spaces at the back of the room were also coveted because there's less foot traffic going by."

"The whole room reeked from the squat toilet, no matter where you were. At bedtime more than 100 people went to the bathroom, without enough water to flush. At night it was better to be on the first floor and close to the toilet."<sup>53</sup>

### 6.2.b. Inadequate Food, Water and Sanitation

While international standards provide that prisoners are to be provided with nutritional food adequate for health and strength, this is rarely the case in Vietnamese prisons.<sup>54</sup> The amount of food, including meat and fish, given to prisoners in detention centers and prisons is provided under Vietnamese law, including the 2015 Law on Execution of Temporary Custody and Detention and Decree No. 117/2011/ND-CP. Despite such standards, prisoners' diet is clearly insufficient, in some cases due to guards siphoning off part of prisoner rations for themselves.

Meals, provided twice a day, at lunch and dinner, consist largely of overcooked green vegetables such as water spinach (*rau muong*) and rice, with meat or fish provided only once a month. Food is frequently rotten or not properly cooked, with sand often mixed in with rice, former prisoners said.

Insufficient prison food rations make prisoners dependent on food packages from their family. Prisoners located in facilities far from their families, or who cannot afford to purchase salt or dried fish from the prison commissary to augment the prison rations, are often referred to by fellow inmates as "orphan prisoners". While Nguyen Van Hai was at Cai Tau Prison, authorities prohibited inmates' families from bringing dry fish to them; instead they had to purchase it at inflated prices at the prison canteen. "Most of the prisoners were from very poor families who only saw them every couple of months," he said. "Their families saved to give them 50,000 dong (about US \$2) and dried fish they

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<sup>52</sup> Article 42, Law on Execution of Criminal Judgments, No. 53/2010/QH12, June 17, 2010.

<sup>53</sup> CAT-VN interview with Nguyen Van Hai, April 2015.

<sup>54</sup> UN Standard Minimum Rules for the Treatment of Prisoners, section 20.

caught and prepared themselves. Prisoners whose families couldn't afford to buy dried fish at inflated prices at the prison store had only rice and bok choy to eat."<sup>55</sup>

At An Diem Prison in Quang Nam province, where several prisoners of conscience are being held, authorities set the limit at 5 kg of food that families are allowed to bring for prisoners each visit. However, if visiting family members buy food and necessities from the prison shop, sold at more than twice market value, to send in then the limit is lifted. They can send in as much as they wish.<sup>56</sup>

International standards require prisons and detention facilities to provide adequate toilets, bathing and shower facilities, as well as adequate toilet articles for inmates.<sup>57</sup> Instead, prison cells routinely lack functioning toilets and running water, with prisoners sometimes forced to defecate in buckets that are kept in the cells for days before being emptied. At PA-24 Detention Center in Ho Chi Minh City, former detainees report not being provided buckets of water to clean their cells. Instead, guards use hoses to spray water into the cells.<sup>58</sup>

At Chi Hoa Prison in Ho Chi Minh City, where Nguyen Van Hai was imprisoned for five months, there was not enough water for prisoners to drink or wash. Each day he and his two cellmates were given a bucket with about ten liters of water for three people to wash, and a five-liter container of drinking water. "There was very little water," he said. "We took turns washing — not every day. Once every three days I could shower. The toilet was a cement basin over a hole that went straight down. There was no water trap — the smell was always present. Prisoners used plastic bags to try to block the smell. The stench was terrible, especially when eating."<sup>59</sup>

Human rights lawyer Nguyen Van Dai reported that at B14 Detention Center in Hanoi, where he was detained for eight months, inmates were provided water that had a very foul odor, prompting fears that it was contaminated and would affect inmates' health if they used or drank it. The water was so murky that Dai and his fellow inmates had to filter it five times using a piece of cloth or a sock before being able to drink it. Cooked vegetables provided to detainees was "washed" using dirty water, which left worms and leeches that were cooked as well. Detainees were given expired food such as noodles, Dai said, and were even provided soup with urine in it. Regularly, the polystyrene (styrofoam) containers in which food was served had been stepped on. During the first 20 days of Dai's detention, prison authorities gave him inedible raw rice grains mixed with cooked ones.<sup>60</sup>

Former prisoner of conscience Can Thi Theu, who completed her 20-month imprisonment in February 2018, said that during her time at Gia Trung prison in Gia Lai province and later in Prison No. 5 in Thanh Hoa province, she suspected that the food supplied by the prison was unsafe and possibly mixed with toxic chemicals because her throat was often inflamed and she felt fatigued after eating prison rations.<sup>61</sup>

Blogger Nguyen Ngoc Nhu Quynh ("Mother Mushroom"), currently serving a ten-year sentence in Prison No. 5 in Thanh Hoa province, stopped eating the food provided by the prison because it sickened her every time she ate. During one of her mother's visits, she said she was only eating the noodles and fruits sent by her family. Since the

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<sup>55</sup> CAT-VN interview with Nguyen Van Hai, April 2015.

<sup>56</sup> VN-CAT interview with wives of prisoners of conscience held at An Diem prison, September 2018.

<sup>57</sup> UN Standard Minimum Rules for the Treatment of Prisoners, sections 12, 13, and 15.

<sup>58</sup> "Vietnam: Torture and Abuse of Political and Religious Prisoners," Campaign to Abolish Torture in Vietnam, 2014.

<sup>59</sup> CAT-VN interview with Nguyen Van Hai, April 2015.

<sup>60</sup> ACAT-France interview with Nguyen Van Dai, September 2018.

<sup>61</sup> "Vietnam Suspected of Poisoning Prisoners of Conscience," Defend the Defenders, June 2, 2018,

<http://www.vietnamhumanrightsdefenders.net/2018/06/02/vietnam-suspected-of-poisoning-prisoners-of-conscience/>

beginning of her incarceration in October 2016, she has lost a lot of weight, developed hair loss and become very pale, both as a result of her conditions of detention and of the hunger strikes she has undertaken to denounce them.<sup>62</sup>

### 6.2.c. Prison Labor

Manual labor is obligatory for convicted prisoners in Vietnam, regardless of whether they have been sentenced for political and religious reasons, or for common crimes. All convicted prisoners are required to work eight hours a day without pay, primarily doing agricultural and manufacturing work.

Some of the job assignments are in hazardous industries, such as cashew nut processing. Because the shell and fruit of the cashew contain a toxin similar to that found in poison ivy and other poisonous plants, physical contact with cashew nuts, oil from the cashew nut shell and fruit, or inhaling fumes from roasting or boiling the nuts can cause skin rashes, itching, blisters, eye irritation, and respiratory problems including asthma and bronchitis.<sup>63</sup>

Prisoners are required to crack open, clean and shell cashews by hand. Those who don't meet production quotas, or who break or blemish nuts while prying open the shells, are beaten. Prisoners are reluctant to leave their work stations, even to go to the bathroom, fearful they will lose time or that other inmates will steal their cashews.

According to the Ministry of Public Security, prisoners in Vietnam work on 1,000 hectares of cashew tree plantations nationwide, where they are required to meet production quotas.<sup>64</sup>

At Cai Tau Prison, Nguyen Van Hai observed that after two to four weeks working on the cashew team, most workers' legs became swollen after working all day at one activity and not moving all day long. Two men who had worked two years on the cashew team had to use sticks to walk because their legs had become almost unusable, he said.<sup>65</sup> "Cashew nut workers know that coming into contact with the nuts can cause skin rashes and respiratory problems, and that the water used for cashew processing is toxic, but they have no choice."

Prisoner of conscience Nguyen Bac Truyen described his work shelling cashews during a previous imprisonment at Xuan Loc (Z30A) Prison in Dong Nai province: "This type of cashew nut I have to say is very toxic. When its oil touches your skin, it causes burns immediately. Therefore when processing it, if one is not careful and lets it get to one's eyes, hands, feet... I myself at the time, as I split the shells, suffered many injuries on my body because of that work. I have to say that processing cashew nuts is a very dangerous task."<sup>66</sup>

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<sup>62</sup> "Human rights blogger 'Mother Mushroom' in great distress," ACAT-France, July 9, 2018,

<http://www.acatfrance.fr/actualite/mere-champignon-en-etat-de-detresse-intense>

<sup>63</sup> "Cashews: A Toxic Prison Industry," Campaign to Abolish Torture in Vietnam, January 2014, <http://www.stoptorture-vn.org/cashews-a-toxic-prison-industry.html>

<sup>64</sup> Prisons that operate cashew processing facilities include Chi Hoa in Ho Chi Minh City, Nam Ha Prison in Ha Nam, Xuan Loc (Z30A) Prison in Dong Nai, Gia Trung Prison in Gia Lai, Dak Trung Prison in Dak Lak, An Phuoc and Bo La prisons in Binh Duong, Xuan Phuoc Prison in Phu Yen, Thu Duc (Z30D) Prison in Binh Thuan, and Cai Tau Prison in Ca Mau. Unclassified cable from the U.S. Embassy in Hanoi, "Prison Labor and Cashew Nuts in Vietnam," Wikileaks Reference ID 08HANOI450, April 18, 2008; See also: "Cashews: A Toxic Prison Industry," Campaign to Abolish Torture in Vietnam, January 2014, <http://www.stoptorture-vn.org/cashews-a-toxic-prison-industry.html>

<sup>65</sup> CAT-VN interview with Nguyen Van Hai, April 2015.

<sup>66</sup> "Cựu tù lương tâm mô tả hệ thống trại tù và nạn đày ải bằng đập hạt điều," Radio CTM, August 10, 2012, <http://viettan.org/Cuu-tu-luong-tam-mo-ta-he-thong.html>

#### 6.2.d. Lack of Medical Care

Beatings and physical abuse inflicted on prisoners early on in the course of their detention leave many with internal injuries and other serious health problems during the rest of their incarceration and even after release. Unsanitary and overcrowded cells, inadequate food and exercise, and the stress of imprisonment are breeding grounds for disease and further weaken prisoners physically.

International prison guidelines provide clear standards for provision of medical care to prisoners, including access to properly trained and equipped medical staff to care for ill prisoners and transfer of sick prisoners requiring specialist treatment to civilian hospitals or specialized care facilities.<sup>67</sup> In reality, Vietnamese prisoners who become ill in prison, or who already suffer from serious medical conditions upon incarceration, are routinely denied adequate medical treatment. Medical care is often not provided unless there is danger that the prisoner might die from beatings, malnutrition, or disease.<sup>68</sup>

Former prisoners report that when they became ill in prison they rarely saw a doctor or any other trained medical personnel. Those who sustained injuries during torture rarely received medical treatment. Some said that once their monthly allotment of paracetamol (2-3 tablets a month) was up, they were not allowed more. If they had money, they might be able to purchase medication. Most were dependent on family members to provide medicine to them if and when they were able to visit. Many former prisoners have reported that prisoners are only admitted to a hospital when they were about to die.

Poor health also makes it difficult for prisoners to meet work quotas, which can result in disciplinary measures such as their food rations being cut or being confined to an isolation cell.

## 7. Abuses of Prisoners of Conscience

Despite Vietnam's assertions in its state report that its laws guarantee respect for and defense of fundamental human rights, prisoners of conscience are routinely deprived of basic rights from the moment they are arrested until after they finish serving their sentences, when they are placed under probationary detention for up to five years.

### 7.1. During Police Custody and Pre-Trial Detention

Because prisoners of conscience are usually charged with national security crimes, they are not eligible to be released on bail and are routinely subjected to prolonged pre-trial detention. They are usually held in isolation, often incommunicado, for investigation and interrogation, which usually lasts at least a year, and often more.

While Vietnamese law limits pre-trial detention for investigation of "less serious" criminal offenses to three months (extendable to five months), political and religious detainees indicted on national security charges can be detained for investigation up to 28 months and more if the procuracy secures approval for additional periods of detention and investigation.<sup>69</sup>

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<sup>67</sup> UN Standard Minimum Rules for the Treatment of Prisoners, section 22. In addition, article 12 of the ICCPR provides for the right to health.

<sup>68</sup> "Vietnam: Torture and Abuse of Political and Religious Prisoners," Campaign to Abolish Torture in Vietnam, 2014.

<sup>69</sup> Articles 88, 119, 120, and 121, Criminal Procedure Code, No. 19/2003/QH11 of November 26, 2004.

Examples of prolonged pre-trial detention for prisoners of conscience held on national security charges include human rights lawyer Nguyen Van Dai, who was held in pre-trial detention for 27 months; blogger Nguyen Huu Vinh (aka Anh Ba Sam), held for 22 months; and pro-democracy activist Luu Van Vinh, who was held for 23 months.

#### 7.1.a. Incommunicado Detention and Denial of Access to Counsel

Detainees are at the greatest risk of being tortured or subjected to aggressive, arbitrary treatment when they are held in incommunicado detention, with no access to lawyers. Incommunicado detention not only facilitates and perpetuates torture, but in itself can constitute cruel and degrading treatment and even torture.<sup>70</sup>

Prisoners of conscience are routinely held completely incommunicado during the pre-trial investigation period. They are denied access to their families and legal representation during the investigation phase on the grounds that they have been charged with national security crimes.<sup>71</sup> While they are detained incommunicado, prisoners of conscience can be subjected to intense physical and psychological torture and abuse in order to extract information and coerced confessions from them.

The UN Working Group on Arbitrary Detention (WGAD) has expressed concerns about the arbitrary and incommunicado detention of numerous Vietnamese dissidents over the years.<sup>72</sup> In an opinion adopted on April 26, 2018, WGAD stated that the one-year incommunicado detention of activist Luu Van Vinh “creates the conditions that may lead to violations of the Convention against Torture, and may itself constitute torture or ill-treatment.” On November 12, 2017, Luu Van Vinh was allowed to meet with his family for the first time since his arrest on November 6, 2016.<sup>73</sup>

On September 21, 2017, six Special Rapporteurs (SRs), including the SR on Torture, issued a communication raising concerns about the incommunicado detention of six human rights and religious rights activists: Nguyen Bac Truyen, Truong Minh Duc, Nguyen Trung Ton, Pham Van Troi, Nguyen Van Tuc, and Le Dinh Luong.<sup>74</sup>

Vietnam’s state report to CAT (paragraph 150) states that the 2015 Law on Organization of Criminal Investigation Agencies prohibits preventing arrested persons and detainees from “asking lawyers or other persons to defend them

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<sup>70</sup> The UN Special Rapporteur on Torture, the UN Human Rights Committee, and the UN Committee against Torture have arrived at similar findings regarding prolonged incommunicado detention and solitary confinement. UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: note by the Secretary-General*, UN Doc. A/63/175, July 28, 2008; Commission on Human Rights Resolution 2003/32, “Torture and other cruel, inhuman or degrading treatment or punishment,” April 23, 2003; OHCHR, General Comment 20, 44th session, paras. 8, 14, 15, March 10, 2012.

<sup>71</sup> The Campaign to Abolish Torture in Vietnam found that all but one of the 60 former prisoners of conscience they interviewed for their 2014 report were held completely incommunicado during the pre-trial investigation period. More than half of those interviewed were also held in isolation cells during the initial investigatory part of their detention. All 18 of the former prisoners of conscience interviewed by Amnesty International for its 2016 report were subjected to prolonged periods of incommunicado detention, the longest lasting over two years. Campaign to Abolish Torture in Vietnam, “Vietnam: Torture and Abuse of Political and Religious Prisoners,” 2014, <http://www.stoptorture-vn.org/torture-report.html> ; Amnesty International, “Prisons within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam,” July 2016.

<sup>72</sup> Between 2001 and 2014, the UN Working Group on Arbitrary Detention (WGAD) concluded in 63 cases submitted to it regarding Vietnam that individuals were arbitrarily detained and charged with national security crimes under Criminal Code (1999 version) articles 79, 80, 87, 88, 89, and 258. Campaign to Abolish Torture in Vietnam, “Vietnam: Torture and Abuse of Political and Religious Prisoners,” 2014.

<sup>73</sup> “Opinion No. 35/2018 concerning Luu Van Vinh (Viet Nam),” A/HRC/WGAD/2018/35, Working Group on Arbitrary Detention, adopted April 26, 2018,

[https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A\\_HRC\\_WGAD\\_2018\\_35.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A_HRC_WGAD_2018_35.pdf)

<sup>74</sup> Mandate of the Special Rapporteurs, AL VNM 6/2017, September 21, 2017,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23338>



or render legal aid” and also prohibits preventing “defense counsels or legal aid providers from making the defense or providing legal aid in accordance with the law.”

Numerous testimonies gathered from current or former prisoners of conscience have shown that in many cases, authorities do provide attorneys access to their clients or the evidence against them until immediately before the case goes to trial and without adequate time to prepare their cases.

Human rights activist Dang Xuan Dieu was denied the right to meet with his lawyers for the entirety of his stay in pre-trial detention center – 16 months — and in prison, where he spent five years before being exiled to France in January 2017. The lawyer appointed by Dieu’s family was only given access to the 4,000 pages file shortly before the court hearing in January 2013, leaving no time to prepare his defence.<sup>75</sup> Human rights lawyer Nguyen Van Dai was only allowed to see his attorney two months before his trial, after more than two years in pre-trial detention.<sup>76</sup>

Following indictment, Vietnamese authorities often continue to obstruct communication between human rights activists and their legal counsel. Trial dates are frequently rescheduled earlier or later with no warning to family or to defense counsel, leaving defenders with no representation in the courtroom. Trials are frequently very short, and allow defenders little to no chance to defend themselves, whether or not their legal counsel is present.

Vietnamese human rights lawyers are also regularly obstructed from the ordinary and lawful conduct of their official business, refused access to their clients, given limited opportunity to present their case in court, and denied access to materials on their laptops and cell phones during trials.

#### 7.1.b. Harsh Conditions in Pre-Trial Isolation

During the investigation period, most prisoners of conscience are held in isolation, either in solitary confinement or with a cellmate (sometimes referred to as “antennae”), whose duty is monitor and report on them for prison authorities.

Democracy activist Nguyen Ngoc Quang, who spent 25 months in pre-trial detention, much of it in solitary confinement, described the impact: “They use solitary confinement to coerce the prisoners, to make them feel that their lives are unbearable, unimaginable, so they have to make a statement or a confession in order to be set free. This crime is very systematic. This is a coercive technique. Furthermore, to terrorize me mentally, they would take me out in the middle of the night for investigation.”<sup>77</sup>

At B-14 detention center in Hanoi, prisoners are moved to cells on the fourth floor as a punitive measure for those who fail to cooperate with prison authorities and to break their resistance. While other floors are better insulated, the walls on the fourth floor are made of metal sheets that make it unbearably hot in summer. During the time human rights lawyer Nguyen Van Dai spent in isolation at B-14 — right before his charge sheet changed from Article 88 to Article 79 in July 2017 — he was held in the fourth floor, where after five or six days he started developing skin rashes that took a month and a half to disappear.<sup>78</sup>

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<sup>75</sup> ACAT-France interview with Dang Xuan Dieu, March 2017.

<sup>76</sup> ACAT-France interview with Nguyen Van Dai, September 2018.

<sup>77</sup> “*Democracy Advocate Nguyen Ngoc Quang of Block 8406 Released from Prison*,” interview with Nguyen Ngoc Quang, Radio Free Asia, September 8, 2009,

<https://www.rfa.org/english/news/vietnam/dissidentdefiant-09082009170524.html>

<sup>78</sup> ACAT-France interview with Nguyen Van Dai, September 2018.

Prolonged or indefinite solitary confinement lasting more than 15 days can amount to torture and other acts prohibited by the ICCPR and the Convention against Torture. As a form of psychological torture prohibited by UNCAT, prolonged solitary confinement can be as debilitating as physical forms of torture, causing mental pain and suffering, trauma, and long-lasting post-traumatic effects.

In several detention centers, inmates are never allowed outside of their cells. At PA-24 detention center in Ho Chi Minh City, detainees in Sections C-1 and C-2 were not permitted to use the small open-air exercise spaces attached to their cells when Nguyen Van Hai (Dieu Cay) was held there. "The windowless cells at PA-24, covered by a steel roof, get extremely hot," he said. "From 12 to 2 pm, if you touch the wall you can feel the heat, even through the concrete. Only around 11 pm does the heat subside. It's only then you feel you can breathe a bit. At noontime, it's so hot that the steel roof crackles as it expands and contracts in the heat."<sup>79</sup> The only air in the cells comes from a small vent (15 x 30 cm) in the iron door for food delivery. Large windows with bars at PA-24 have been covered by steel sheets with holes drilled into them. "The corners of the cells lack oxygen," Nguyen Van Hai said. "People there are in a perpetual dazed state, not really awake, not really sleeping."<sup>80</sup>

At Chi Hoa Prison in Ho Chi Minh City, Nguyen Van Hai was not allowed to leave his cell during the five months he was imprisoned there, except for one 30-minute meeting with his lawyer. "I stayed inside the cell night and day. My skin became green and translucent because there was no sunlight. I was not allowed to shave and my hair grew long. There wasn't enough water, so we took turns washing. Once every three days I could shower."

At B-34 detention center in Ho Chi Minh City, Nguyen Van Hai was held in solitary confinement in a windowless cell in Section D for five and a half months. The only air in his cell came from a 30-cm long slot at the top of the wall and a smaller slot (20 x 15 cm) cut into the solid steel door of the cell, through which guards pushed his food. "To get air I had to lie crossway on the platform, next to the toilet, so that my head was near the steel door. If I tilted slightly at the wrong angle, the lack of oxygen could put me in a daze. When I sat up I had to do so slowly, otherwise I was dizzy," Nguyen Van Hai said.

### 7.1.c. Enforced Disappearances

In many cases, authorities refuse to inform families of prisoners of conscience where the prisoner is being held, which causes suffering and distress to the prisoner and their families and in most cases constitutes an act of torture or cruel, inhuman and degrading treatment.<sup>81</sup> Victims of enforced disappearance and incommunicado detention are at high risk of torture because they are placed completely outside the protection of the law.

Former prisoner of conscience Nguyen Van Hai was subjected to several periods of incommunicado detention, the longest of which lasted 17 months, as well as three periods of enforced disappearance that ranged from 1-6 months. On two occasions, police secretly transferred him from prisons where he was serving a sentence on tax evasion charges, to PA-24 Detention Center in Ho Chi Minh City to investigate him on new, unnamed charges linked to his political activities. Both times, police officials rejected his repeated requests to have a lawyer present, nor did they notify his family that they had moved Nguyen Van Hai back to a detention center. When his family arrived at the

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<sup>79</sup> CAT-VN interview with Nguyen Van Hai, April 2015.

<sup>80</sup> CAT-VN interview with Nguyen Van Hai, April 2015.

<sup>81</sup> An enforced disappearance is defined under international law as "the arrest, detention or abduction of an individual by state authorities or their agents followed by a refusal to acknowledge the deprivation of liberty or by concealing the fate or whereabouts of the person, which places the person outside the protection of the law." Convention against Enforced Disappearance, adopted September 23, 2005, E/CN.4/2005/WG.22/WP.1/Rev.4 (2005), art. 2.

prison for their regular monthly visit, the police turned them away with no explanation. Each time, after one month's investigation, police discretely returned Nguyen Van Hai to prison.<sup>82</sup>

Nguyen Van Hai's third period of incommunicado detention started on the day he was to be released from Xuan Loc prison after serving his first sentence. Instead of being released, he was transferred back to PA-24 Detention Center for further investigation, this time on national security charges. He was held completely incommunicado for another 17 months and did not see his family for the next two years. During the first six of those 17 months, prison authorities refused to provide any information about his whereabouts. His former wife, Duong Thi Tan, went to PA-24 13 times in unsuccessful attempts to visit him, deliver supplies, and obtain information about how much longer he would be detained. She was turned away each time by police, without any clear explanation. More than a year later, she learned that police had transferred her husband to a different detention center for investigation.

Amnesty International and the Campaign to Abolish Torture in Vietnam have reported on enforced disappearances involving members of ethnic minorities living in remote areas, where there is less chance of international outcry.

In 2013, Khmer Krom Buddhist monk Ly Chanda was detained for one month in the locked room of a former police officer in Soc Trang province after being severely beaten by police and soldiers. For the first five days, his mother believed he had been killed until she was brought to the house as he was being filmed reading a confession.<sup>83</sup> After his release, Ly Chanda told Amnesty International that he believed the authorities held him in the secret location because they feared he would die from the torture he endured on the day he was detained. He was told that when he recovered, he would be sent to court and to prison.<sup>84</sup>

#### 7.1.d. Forced Confessions

Several laws adopted in 2015<sup>85</sup> reinforce the prohibition of using corporal punishment and coercion to obtain a testimony, in application of Article 4 of the UNCAT. But despite these legal safeguards, abuses are common in the period before conviction, as authorities apply pressure to extract confessions from detainees.

On August 16, 2018, at the hearing of environmental activist Le Dinh Luong, human rights defenders Nguyen Viet Dung and Nguyen Van Hoa informed the presiding Judge that their written confessions against Le Dinh Luong had been obtained through torture. They had been brought to the trial of Luong as witnesses for the prosecutor at a court in central Vietnam's Nghe An province. However, both men retracted their earlier testimony and denounced the duress. The court immediately adjourned. When the trial resumed later in the day, Hoa and Dung were absent. A family member alleged that afterward Nguyen Van Hoa was struck in the head when he was brought to the back room of the court house. Nguyen Viet Dung was allegedly put in a chokehold so tight that he had a sore throat and temporarily lost his voice. On August 21, detention facility officers refused to allow Nguyen Viet Dung's father to see his son, on the basis that he had failed to cooperate with authorities at the trial of Le Dinh Luong.<sup>86</sup>

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<sup>82</sup> "Prisons within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam," Amnesty International, July 2016.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Namely, the 2015 Criminal Code (Article 374), the 2015 Criminal Procedure Code (article 10) and the 2015 Law on Organization of Criminal Investigation Agencies (Article 14).

<sup>86</sup> "Vietnamese Activist Given 20-Year Term For Seeking Regime 'Overthrow'," Radio Free Asia, August 16, 2018, <https://www.rfa.org/english/news/vietnam/overthrow-08162018144518.html>

On May 15, 2017, environmental rights defender Hoang Duc Binh was violently arrested by the police. While detained in Nghe An province, Hoang Duc Binh was reportedly forced to sign a confession statement by authorities, which was then used during his trial on February 6, 2018<sup>87</sup>.

In February 2014, human rights activist Nguyen Thi Thuy Quynh was arrested on trumped up charge of “causing public disorder”. Her mother was forced to pressure her to confess her human rights activities. In protest, Quynh went on a hunger strike that lasted 37 days. She was not allowed to meet with her lawyer until the day before her trial, and only for half an hour.<sup>88</sup>

In 2013, human rights activist Truong Minh Tam was arrested under the pretext of “business fraud”. When the police investigators were unable to force Tam to provide information about his human rights activities, they detained his older sister. Each day the investigators would make Tam walk past the room where his sister was being interrogated. They pressured Tam to confess his “wrongdoings” in exchange for his sister’s release. Neither Tam nor his sister yielded to coercion. Without a confession, the police released her after several weeks in detention and sentenced Tam to one year’s imprisonment.<sup>89</sup>

Vietnamese authorities have also been known to coerce detainees into appearing in televised confessions, as a propaganda tool. In June 2018, Will Nguyen, an American graduate student of Vietnamese descent, appeared on state television a few days after he was violently arrested for protesting draft laws on special economic zones and on cybersecurity. In the broadcast, Will Nguyen said he regretted breaking the law and that vowed he would “not join any anti-state activities anymore”<sup>90</sup>. He was later deported back to the US. Similarly, on July 31, 2017, former oil executive Trinh Xuan Thanh appeared on Vietnamese state TV to “admit [his] faults and apologize” after he was forcefully repatriated from Germany where he had sought exile. According to his lawyers, his confession — broadcast in a in a prime-time bulletin — was forced.<sup>91</sup>

State television stations regularly broadcast news clips showing Montagnards “confessing” their wrongdoings by being in contact with Montagnard groups overseas or following unsanctioned religions. In July 2017, for example, Y Joi Bkrong, the son of a prominent Montagnard pastor in the U.S., was brought for public review and coerced confession of wrongdoing in Dak Lak for being in contact with his father and proselytizing for the un-recognized Evangelical Church of Christ.<sup>92</sup>

Khmer Krom Buddhist monk Ly Chanda was filmed by a television crew during his illegal detention in 2013 reading a statement denouncing his wrongdoings. After his release, he told Amnesty International that he read the statement after being severely tortured and because a gun was pointed into his back.<sup>93</sup>

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<sup>87</sup> “Maximum prison sentence for anti-Formosa activist,” Amnesty International, February 28, 2018, <https://www.amnesty.org/download/Documents/ASA4179622018ENGLISH.pdf>

<sup>88</sup> VN-CAT interview with Nguyen Thi Thuy Quynh, February 2016.

<sup>89</sup> VN-CAT interview with Truong Minh Tam, March 2017.

<sup>90</sup> “U.S. Protester Held in Vietnam Confesses on State Television,” *New York Times*, June 19, 2018, <https://www.nytimes.com/2018/06/19/world/asia/vietnam-will-nguyen-confession.html#click=https://t.co/2hJvXQTID6>

<sup>91</sup> “Vietnam state TV broadcasts former oil executive saying he turned himself in,” Reuters, August 3, 2017, <https://www.reuters.com/article/us-germany-vietnam-tv/vietnam-state-tv-broadcasts-former-oil-executive-saying-he-turned-himself-in-idUSKBN1AJ1XG>

<sup>92</sup> “Cảnh giác với tà đạo ‘Tin lành đấng Christ’” (“Watch Out for the ‘Evangelical Church of Christ’”), ANTV, July 8, 2017, <http://www.antv.gov.vn/tin-tuc/xa-hoi/canh-giac-voi-ta-dao-tin-lanh-dang-christ-212896.html>. An Ninh TV (ANTV, or Security Television) is owned and operated by the Ministry of Public Security.

<sup>93</sup> “Prisons within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam,” Amnesty International, July 2016.

In addition to the physical abuse described in section 4.1. of this report, Vietnamese authorities frequently use threats, psychological abuse and denial or withholding of medical treatment to pressure detainees to confess their alleged guilt.

Testimonies and confessions obtained under duress are then routinely used as evidence during legal proceedings, thus breaching Article 15 of the UNCAT. In many reported cases, confessions by the accused were used as sole evidence of their guilt, despite claims in Vietnam's State report that "it is absolutely prohibited to use confessions of the accused, defendants as the only evidence to convict them." (paragraph 228).

#### 7.1.e. Deaths of Prisoners of Conscience in Police Custody

In several cases, the acts of physical torture inflicted on prisoners of conscience in order to extract their confessions have led to their death in police custody. Members of religious and ethnic minorities make up many of the detainees who die while in police custody, particularly in remote rural areas where it is harder for international media or human rights defenders to document cases.

On May 5, 2017, Hmong Protestant Ma Seo Sung from Dak Nong province died as a result of torture inflicted while in police custody.<sup>94</sup> Five days previously, he and his nephew Giang A Lang were stopped by police who then accused them of using cocaine. Police handcuffed and beat the two men and transferred them to the Dak Lak provincial police detention center. On May 5, the police captain notified family members that Ma Seo Sung had committed suicide by hanging himself in the detention center. However, the rope marks on the body were inconsistent with the stated cause of death, and there were bruises on his neck, chest, thighs, and legs having the appearance of being caused by blunt trauma to the body. Family members were not provided with any documents regarding the arrest, detention or the death of Ma Seo Sung.

In May 2017, Hoa Hao Buddhist Nguyen Huu Tan died within ten hours of being taken into custody at a police detention facility in Vinh Long province, after being arrested on charges of distributing anti-government propaganda. Despite claims by authorities that he committed suicide using a letter opener, his injuries suggest he was tortured in custody. Family members who requested an investigation into his death have been harassed and threatened with arrest and subject to ongoing persecution in connection with their affiliation with an independent Hoa Hao Buddhist religious group.<sup>95</sup>

In January 2016, Pastor Ksor Xiem, the head pastor of an unregistered Montagnard evangelical church, died from injuries sustained during a police beating in December 2015 in Ayun Pa District, Gia Lai Province. The government stated that he died due to disease.<sup>96</sup>

In December 2016, Y Ku Knul, a Montagnard Protestant from Buon Ma Thuot, Dak Lak, died in police custody.<sup>97</sup> Family members stated that his internal organs were damaged and there were traces of electric shock batons used on his body.

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<sup>94</sup> UPR joint submission on FORB in Vietnam, July 2018, <http://dvov.org/wp-content/uploads/2018/07/Vietnam-UPR-2019-FORB-Joint-Submission.pdf>

<sup>95</sup> "Open Letter by 32 Organizations Calling for Investigation of Death in Custody of Nguyen Huu Tan," July 3, 2017, <https://www.amnesty.org/download/Documents/ASA4166572017ENGLISH.pdf> ; "Vietnam: Hoa Hao Buddhist Death in Police Custody," CSW, June 2017, <http://www.csw.org.uk/2017/06/21/report/3595/article.htm>

<sup>96</sup> U.S. Department of State, "Annual Report on Religious Freedom," August 15, 2017, <https://www.state.gov/j/drl/rls/irf/2016/eap/268780.htm> ; USCIRF, "Vietnam Chapter – 2017 Annual Report," April 26, 2017, <http://www.uscifr.gov/countries/vietnam#annual-reportschapters-summaries>

Hmong Protestant church elder Hoang Van Ngai (Vam Ngaij Va) died in police custody on March 17, 2013. Ngai defended his church – which belongs to the legally recognized Evangelical Church of Vietnam (South) – when the authorities tried to force it to close. On March 15, 2013, he and his brother Hoang Van Pa were arrested without formal documentation. Detained in an adjacent room, Hoang Van Pa heard the sound of violent beating just before his brother's limp body was removed from the cell on March 17. Photographs of Ngai's corpse showed severe bruising that was not there before his detention. Ngai's family rejected the police's explanation of suicide.<sup>98</sup>

## 7.2. Post Trial Abuses: Isolation and Discriminatory Treatment

Prisoners of conscience are physically separated from the general inmate population in prisons and stripped of many of the rights accorded to other prisoners under Vietnamese law.<sup>99</sup>

Rather than living in communal cells and being able to circulate with the general inmate population, prisoners of conscience are confined in special "Security Sections" (*Khu An Ninh*), where they are kept in small cells with two to five cellmates. If allowed outside of their cells it is only to a small enclosed area adjacent to their cell. They are not allowed to mingle or communicate with other prisoners other than their cellmates, if they have any. They are prohibited from joining regular prison activities with the general inmate population such as group sports, cultural activities and vocational training.

Security Sections — referred to as "prisons within prisons" by human rights activists — are frequently placed under lock-down. During that time, prisoners of conscience are not allowed to leave their cells even to get food or shower. Meals are delivered to their rooms; doors are locked and windows shut, especially when there are prison audits<sup>100</sup> or visiting delegations. Prison officials send guards or "antennae" (inmates who take orders from prison officials to monitor or punish prisoners in exchange for favors) to stay with prisoners during visits by outside delegations to ensure that they do not communicate their grievances.

Under Vietnam's Law 53 on Execution of Criminal Judgements, prisoners have the right to be held in communal cells with others and participate in prison activities, unless they violate prison regulations, are dangerous, have a contagious disease, or are being evaluated for mental illness. However, Circular 37, issued in 2011 as implementing legislation for Law 53, provides for the classification, segregation and differential treatment of prisoners by type, including prisoners convicted of national security offenses — in other words, prisoners of conscience.<sup>101</sup>

Prisoners of conscience who speak out about prison abuses, or who refuse to sign admissions of their guilt, are subjected to additional measures to further isolate and punish them. Under Circular 37, directors of prisons and detention camps can arbitrarily decide to hold prisoners of conscience in solitary confinement for months on end, revoke their family visitation rights, prohibit them from leaving their cells and going outside, and confiscate reading materials and supply packages sent to them by their families.

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<sup>97</sup> Report by Boat People SOS, March 2017, <http://dvov.org/wp-content/uploads/2014/07/BPSOS-03-Global-Magnitsky-Act-Central-High-Churches-03-16-2017.pdf>

<sup>98</sup> "Vietnam: Death in Custody of Hmong Christian, Central Highlands," CSW, April 2013, <http://dvov.org/wp-content/uploads/2014/07/vietnamese-christian-death-in-custody.pdf>

<sup>99</sup> Law on Execution of Criminal Judgments, No. 53/2010/QH12, June 17, 2010.

<sup>100</sup> "Prison audits" refer to visits by government officials, such as the People's Procuracy, members of the National Assembly, or in rare cases third-party organizations such as foreign embassies, to observe prison conditions.

<sup>101</sup> Circular 37 of the Ministry of Public Security, Detailing Classification and Incarceration of Inmates according to Categories, No. 37/2011/TT-BCA, dated June 3, 2011.

In a 2016 report, Amnesty International described the isolation of prisoners of conscience as “a system of physical and emotional isolation with several deliberate aims: to break prisoners of conscience into “confessing” to the crimes they are charged with; to punish them for challenging the authority of the Communist Party of Vietnam (CPV) by asserting their rights; and to prevent them from interacting with fellow prisoners and continuing their activism behind bars.”<sup>102</sup>

### 7.2.a. Relentless Pressure to Confess

Many prisons require inmates to write “self-criticism” reports every three months. In these reports, prisoners are required to state that they have clearly seen their mistakes and the errors of their ways; in other words, to admit to their guilt under the charges on which they had been convicted.<sup>103</sup> They are also encouraged to report on any wrongdoing by fellow prisoners.

High profile dissidents with large followings outside prison are subjected to even more pressure by prison authorities to confess to the crimes they have been charged with — ideally in writing or in front of a video camera, for broadcast on national television. Many prisoners of conscience are subjected to countless hours of interrogation and “education” sessions, where prison authorities hector, harangue and threaten them in efforts to break their resolve, confess their guilt, and stop raising complaints about prison conditions. As was the case with Nguyen Ngoc Nhu Quynh, prisoners’ families may also be pressured by prison authorities to convince prisoners of conscience to confess in exchange for early release.

### 7.2.b. Beatings and Abuse by Other Prisoners

Many former prisoners of conscience report that in addition to being beaten by police and prison officials, they were regularly subjected to harassment and even beatings by other inmates who were common criminals. These beatings are often carried out by cell “bosses” appointed by prison authorities or other inmates – known as “antennae” – who have been planted or encouraged by prison officials. Requests for intervention or to transfer cells are ignored. These acts of physical and mental harassment are instigated and rewarded by prison authorities to inflict severe mental suffering and punish prisoners of conscience for speaking out against abuses or refusing to confess, without prison officials appearing responsible.

Prohibitions on torture provided by UNCAT include instances where the immediate perpetrators are not government officials but individuals acting “at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” (Article 16 of UNCAT).

In August 2018, human rights defender Tran Thi Nga, currently serving a nine-year jail sentence, said she was brutally beaten and threatened with death by her assigned inmate in Gia Trung prison. According to former prisoners of conscience who were detained in that same prison in Gia Lai province, said inmate is known to be violent and often ended up in the same cell as prisoners of conscience.<sup>104</sup>

In June 2018, blogger Nguyen Ngoc Nhu Quynh (also known as Me Nam, or Mother Mushroom) told her mother during a visit that two female prisoners had recently been moved to her cell and started harassing, provoking and

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<sup>102</sup> “Prisons within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam,” Amnesty International, July 2016, [https://www.amnestyusa.org/wp-content/uploads/2017/04/asa\\_4141872016\\_eng\\_report.pdf](https://www.amnestyusa.org/wp-content/uploads/2017/04/asa_4141872016_eng_report.pdf)

<sup>103</sup> The reports are called “Tiêu chuẩn thi đua — chấp hành án phạt tù”, or “Standards to copy regarding following prison regulations - accepting imprisonment sentence.”

<sup>104</sup> “Activist Tran Thi Nga beaten and threatened in jail,” ACAT-France, September 5, 2018, <http://www.acatfrance.fr/actualite/lactiviste-tran-thi-nga-battue-et-menacee-de-mort-en-prison>

insulting her. Extremely distressed, she asked the guards to intervene, but no action was taken. In addition, another inmate often came to her cell, accompanied by a female guard, and threatened her verbally. The blogger told her mother that she feared for her own life.<sup>105</sup>

During his appeal hearing in April 2018, labor rights defender Hoang Duc Binh revealed that he had been housed with death row inmates, who had attacked him on multiple occasions.<sup>106</sup>

After his sentencing in 2013, human rights activist Dang Xuan Dieu was placed in a cell with thugs working with the guards. "They wanted me to accept the verdict and admit guilt. They beat me up, kicked me, insulted me, and threatened me with death. They enslaved me: I had to clean the cell, boil some water for them... Humiliations and psychological pressure were harder to endure than the physical violence."<sup>107</sup> After his health rapidly worsened, guards started fearing he would die and withdrew the thugs from Dieu's cell.

### 7.2.c. Psychological Torture

In addition to physical abuse, prison authorities subject prisoners of conscience to intense psychological pressure and other tactics that leave no physical marks or visible scars to break them down and get them to confess. While all forms of torture cause psychological pain, psychological torture has been defined as the intentional infliction of severe mental pain and suffering without direct physical violence.<sup>108</sup>

Several former prisoners of conscience have reported that prison authorities made them take unknown pills or injected them with unknown drugs during pre-trial detention.<sup>109</sup> In some cases the intent appears to have been to calm down the prisoner or make him or her docile. In other cases prisoners said they were given medication in order to energize them and make them more talkative during interrogation. Khmer Krom land rights activist Chau Hen was administered unknown injections twice during his three months of pre-trial detention and interrogation in Tri Ton district jail in An Giang. Each time the injections left him unconscious for long periods of time and unable to speak or to think clearly even when he was conscious.<sup>110</sup>

Hoa Hao Buddhist and land rights activist Tran Thi Thuy was given some unknown medication by prison authorities during her eight-year imprisonment, which made her mental condition become alarmingly unstable. She began displaying symptoms of schizophrenia and became confused to the point that she was unable to recognize her family members. Thanks to her family's advocacy towards the international human rights community, prison authorities stopped making Thuy take the medicine. She gradually regained mental clarity and was able to communicate coherently again. Released from prison in August 2018, she is currently serving five years' probation.<sup>111</sup>

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<sup>105</sup> "Human rights blogger 'Mother Mushroom' in great distress," ACAT-France, July 9, 2018,

<http://www.acatfrance.fr/actualite/mere-champignon-en-etat-de-detresse-intense>

<sup>106</sup> "Vietnamese Environmental Activist's Sentence Upheld on Appeal," April 24, 2018,

Radio Free Asia, <https://www.rfa.org/english/news/vietnam/sentence-04242018162901.html>

<sup>107</sup> ACAT France interview with Dang Xuan Dieu, March 2017.

<sup>108</sup> The Convention against Torture defines torture in pertinent part as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted."

<sup>109</sup> "Prisons within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam," Amnesty International, July 2016, p. 41-42; "Vietnam: Torture of Political and Religious Prisoners," Campaign to Abolish Torture in Vietnam, January 2014, p. 48-50, [http://www.stoptorture-vn.org/uploads/2/5/9/2/25923947/report-torture\\_in\\_vn\\_1-16-2014-final.pdf](http://www.stoptorture-vn.org/uploads/2/5/9/2/25923947/report-torture_in_vn_1-16-2014-final.pdf)

<sup>110</sup> CAT-VN interviews with Chau Hen, April 2013 and November 2015.

<sup>111</sup> "Growing Health Fears for Prisoner of Conscience," Amnesty International - Urgent Action, February 17, 2017, [https://www.amnestyusa.org/files/uaa28415\\_2.pdf](https://www.amnestyusa.org/files/uaa28415_2.pdf)



Some of the psychological techniques that police and prison authorities in Vietnam use on prisoners of conscience clearly amount to torture. These include isolation, death threats, sexual humiliation, forced medication, stress positions, denial of natural light, water torture, denial of religious materials, confiscation of personal journals or poetry written in detention, and erratic scheduling of interrogation sessions.<sup>112</sup>

Prison authorities routinely deny requests for bibles by Christian prisoners of conscience. Montagnard Protestants report that prison officials taunted them about their religion during interrogation, saying “Where is your God to help you now?” Several Montagnards said a common stress position during interrogation was to be forced to stand on one leg, with both arms held out perpendicular to the body (in the form of a crucifix).<sup>113</sup>

Buddhist prisoners of conscience report being forced to engage in activities contrary to their faith. Khmer Krom Buddhist monk Kim Muon said prison authorities forced him to eat dog meat, which violates his vows as a monk, put underwear on his head, and mocked his faith by saying he had only joined the monkhood in order to become involved in politics.<sup>114</sup>

The practice of putting prisoners in conditions designed to be to be degrading or humiliating – such as preventing them from attending to personal hygiene and depriving them of proper toilet and bathing facilities – is also considered psychological torture (see section 6.2, above). Together with solitary and incommunicado confinement and restrictions on family visits, the aim is to increase prisoners’ isolation, distress, and feelings of powerlessness.

#### 7.2.d. Punitive Isolation

Under Vietnamese law, prisoners who violate regulations may be placed in solitary confinement for periods up to 10 days.<sup>115</sup> In many cases, however, prisoners of conscience are sent to solitary confinement — often for far more than 10 days — not as a disciplinary measure but as to isolate and punish them for raising complaints about prison conditions or refusing to admit any guilt under the charges on which they have been convicted.

Again, Circular 37 serves as the legal basis for harsh treatment of prisoners of conscience. It provides for prolonged solitary confinement of “particularly dangerous” prisoners who “show signs or activities of making contact and colluding with other inmates and outsiders in order to carry out opposing activities” as well as “inmates with relentless opposing activities or inmates requiring isolation for feasible education and re-education.”<sup>116</sup> Under Circular 37, prison officials can mete out solitary confinement in three-month terms. No limit is set on the number of terms, which can be extended at the discretion of prison officials, who determine whether the prisoner has shown “progress with rehabilitation.”

Democracy campaigner Vi Duc Hoi spent two periods of prolonged solitary confinement: eight months in pre-trial detention at Yen Trach District Detention Center and close to nine months at Nam Ha Prison after he protested the beating of another prisoner.<sup>117</sup>

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<sup>112</sup> For additional details regarding psychological torture tactics described above, see: “*Vietnam: Torture of Political and Religious Prisoners*,” Campaign to Abolish Torture in Vietnam, January 2014, <http://www.stoptorture-vn.org/torture-report.html>

<sup>113</sup> “*Vietnam: Torture of Political and Religious Prisoners*,” Campaign to Abolish Torture in Vietnam, January 2014, <http://www.stoptorture-vn.org/torture-report.html>

<sup>114</sup> Ibid.

<sup>115</sup> 2010 Law on Execution of Criminal Judgments (No. 53/2010/QH12), article 38(1)(c) and 2015 Law on Enforcement of Custody and Temporary Detention (No. 94/2015/QH13, article 23(1)(b).

<sup>116</sup> Circular 37, Article 12, of the Ministry of Public Security, Detailing Classification and Incarceration of Inmates according to Categories, No. 37/2011/TT-BCA, dated June 3, 2011.

<sup>117</sup> CAT-VN interview with Vi Duc Hoi, December 2015.

Human rights activist Dang Xuan Dieu was sent to solitary confinement, where his feet were shackled for three weeks as punishment for refusing to plead guilty and for pushing for better conditions for his fellow inmates.<sup>118</sup>

Using coercive tactics, such as intentionally placing prisoners in isolation in order to apply psychological pressure on them to confess or to break their will, violates the Convention against Torture and other international prohibitions against torture.<sup>119</sup>

#### 7.2.e. Arbitrary Prison Transfers and Denial of Family Visits

International standards provide that prisoners and detained persons have the right to contact the outside world, including regular visits and correspondence, particularly with family members and legal counsel.<sup>120</sup> In addition, reasonable efforts should be made to place convicted prisoners near their usual place of residence.<sup>121</sup>

The reality is that prisoners of conscience are often sent to prisons far from their homes. Many are subjected to numerous prison transfers, usually without any prior notification to their families. These punitive prison transfers are authorized by Circular 37, which calls for the “division and transfer” of inmates who “show signs or activities of colluding, forming cliques... refusing to work or study” as well as those who have been “educated but show no progress in rehabilitation.”<sup>122</sup>

Such prison transfers aim to stem prison activism by prisoners of conscience by breaking up prison relationships and support networks, while intensifying prisoners’ sense of powerlessness and isolation. The transfers also deprive them of crucial supplies and emotional support from their families, who face increased geographical and financial burdens with each visit.

According to Amnesty International, “the practice is common in the cases of recalcitrant prisoners of conscience who refuse to plead guilty or who resist ‘re-education’, as well as high-profile or influential prisoners who authorities fear will persuade other prisoners to protest prison conditions and ill-treatment.”<sup>123</sup>

Prisoners’ families are rarely notified about transfers in advance, and often learn about a transfer only after traveling to their former prison to visit them. In some cases, prison authorities refuse to divulge the new location.

The list of prisoners who have been targeted with punitive prison transfers is long. Examples include the following:

- Nguyen Ngoc Nhu Quynh is currently serving her 10-year sentence 1,200 kilometers away from her mother and her two children.
- In March 2018, human rights defenders Nguyen Van Oai and Tran Thi Nga, both parents of young children, were transferred to prisons 1,000 kilometers away from their home, without any warning,

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<sup>118</sup> ACAT-France interview with Dang Xuan Dieu, March 2017.

<sup>119</sup> “The Istanbul Statement on the Use and Effects of Solitary Confinement,” adopted on December 9, 2007 at the International Psychological Trauma Symposium, Istanbul, [http://solitaryconfinement.org/uploads/Istanbul\\_expert\\_statement\\_on\\_sc.pdf](http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf)

<sup>120</sup> UN Standard Minimum Rules for the Treatment of Prisoners, article 37.

<sup>121</sup> “Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment,” Principle 20, Resolution 43/173 adopted by the UN General Assembly, Dec. 9, 1988.

<sup>122</sup> Circular 37, Article 13, of the Ministry of Public Security, Detailing Classification and Incarceration of Inmates according to Categories, No. 37/2011/TT-BCA, dated June 3, 2011..

<sup>123</sup> “Prisons within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam,” Amnesty International, July 2016.

- In July 2018, blogger Hoang Duc Binh and journalist Truong Minh Duc, sentenced to 14 and 12 years in jail respectively, were moved to a prison several hundred kilometers away from their families.<sup>124</sup>
- Nguyen Dang Minh Man, a young activist imprisoned since 2011 for photographing protests, is serving her sentence more than 1,500 kilometers from her hometown. Each month, her father must travel for 40 hours to visit her, and even once there, he is sometimes not allowed to meet with her.<sup>125</sup>
- During the five and a half years Dang Xuan Dieu spent behind bars between 2011 and 2017, he was detained in six different prisons, all deliberately located far from his home and his family. His relatives were never allowed to visit him, except for his brother who was able to meet him very briefly, only once.<sup>126</sup>
- During his six and a half years in prison between 2008 and 2014, Nguyen Van Hai (Dieu Cay) was transferred 20 different times, to 11 different prisons and detention centers.<sup>127</sup>

Vietnam's prison regulations provide that inmates may meet their relatives once a month and send and receive letters.<sup>128</sup> However, this right can be arbitrarily withheld by prison authorities in order to exert psychological pressure on recalcitrant prisoners, or to hide the fact that the prisoner has placed in solitary, gone on hunger strike, or been transferred to another person.

Because of Dang Xuan Dieu's refusal to admit guilt or to even wear the prison uniform, he was not allowed to see his family nor send or receive letters and phone calls during his five years and five months in prison between 2011 and 2017.<sup>129</sup> Since her arrest in October 2016, Nguyen Ngoc Nhu Quynh has been denied letters from family and friends, as well as outgoing mail, and a Bible.<sup>130</sup> Some political prisoners have been denied visitors during their entire imprisonment, such as the 37 people sentenced to prison in May 2001<sup>131</sup> for alleged involvement with Nguyen Huu Chanh's "Government of Free Vietnam" group.<sup>132</sup>

When family visits are allowed, they are closely monitored and controlled by prison officials who may take notes, audio recordings and photos. Democracy campaigner Vi Duc Hoi described the situation at Nam Ha Prison: "The guards governed the visits – we could only talk about the family situation – no discussion about society, what's happening outside, or prison conditions. We could ask about each other's health, but couldn't talk about the condition of the prison or how harshly we were being treated. If we went out of line, they warned us once; a second infraction and the visit would be finished right then and there."<sup>133</sup>

Human rights lawyer Nguyen Van Dai was not allowed to see his family until 11 months after his arrest. He was allowed to write letters to his family once a month but only after his release did he learn that authorities had mailed only two of his 14 letters. "When I heard that my father-in-law had passed away, I asked to write a letter to my family to share my condolences. I was permitted to write the letter but they never received it," he said.<sup>134</sup>

<sup>124</sup> Vietnamese Political Prisoner Database, The 88 Project <https://vietnamprisoners.info/>

<sup>125</sup> ACAT-France interview with Pham Minh Hoang, March 2018.

<sup>126</sup> ACAT-France interview with Dang Xuan Dieu, March 2017.

<sup>127</sup> CAT-VN interview with Nguyen Van Hai (Dieu Cay), April 2015.

<sup>128</sup> Article 46, Law on Execution of Criminal Judgments, No. 53/2010/QH12, June 17, 2010.

<sup>129</sup> ACAT-France interview with Dang Xuan Dieu, March 2017.

<sup>130</sup> "Vietnam Blogger 'Mother Mushroom' in Hunger Strike Over Prison Treatment," Radio Free Asia, June 1, 2018, <https://www.rfa.org/english/news/vietnam/prisoners-political-06012018162141.html>

<sup>131</sup> "Vietnam tries opposition group", BBC, May 16, 2001, <http://news.bbc.co.uk/2/hi/asia-pacific/1333359.stm>

<sup>132</sup> Campaign to Abolish Torture in Vietnam, "Vietnam: Torture and Abuse of Political and Religious Prisoners," 2014.

<sup>133</sup> CAT-VN interview with Vi Duc Hoi, December 2015.

<sup>134</sup> ACAT-France interview with Nguyen Van Dai, September 2018

In another example, labor rights activist and citizen journalist Tran Thi Nga's family members made multiple long trips to the prison in the past three months, but were not allowed to visit her. They were told by the prison wardens that Nga was being disciplined for violating prison regulations.<sup>135</sup>

Denial of visitation rights constitutes a clear violation of international prison standards, which provide that except in exceptional circumstances and subject to reasonable restrictions specified by law, communication with the outside world — particularly visits by and communication by family members — “shall not be denied for more than a matter of days.”<sup>136</sup>

#### 7.2.f. Health Issues for Prisoner of Conscience

Former prisoners of conscience report that conditions in Vietnamese detention centers and jails have led to several types of illnesses and infections amongst prisoners, including intestinal issues, diarrhea, and skin diseases. Some prisoners also report having experienced partial paralysis of the legs. For those who do not receive financial support from the outside and are forced to eat only the food provided by the prison, the lack of protein leads to their muscles weakening, sometimes preventing them from being able to stand.<sup>137</sup>

Vietnam's 2010 Law on Execution of Criminal Judgments calls for separate detention of detainees and prisoners with infectious diseases. Yet, several former prisoners of conscience have reported being detained in the same cells as inmates suffering from communicable and potentially deadly diseases, such as tuberculosis or HIV. Prisoner of conscience Nguyen Trung Ton, who was sometimes placed in cells with HIV-positive inmates during his first imprisonment between 2011 and 2013, contracted kidney stones and developed a skin fungus due to the lack of natural light in his cell.<sup>138</sup>

Others said that poor sanitation, overcrowding, and prison health practices, such as forcing male inmates to share razors, heightened the risk of contracting contagious illnesses. Human rights lawyer Nguyen Van Dai contracted hepatitis B, a serious blood borne viral infection, in pre-trial detention. He questioned the safety of some practices he experienced in pre-trial detention. For example, officers would pressure the inmates to shave quickly, and take the razors they all shared away after two minutes. This caused accidents where prisoners cut themselves in the rush, and could be a cause for infection through the use of razors contaminated with infected blood.<sup>139</sup>

Former prisoner of conscience Huynh Anh Tri, whose brother died in prison from HIV, said that during his 14 years in prison he was also forced to share razors with other inmates, some of whom were HIV-positive. In an interview after his release, he said that when prisoners of conscience were disciplined, prison authorities would put them in shackles tainted with the blood of the HIV-positive inmates. If they agreed to pay a bribe to the guards, they would be put in “clean” shackles. Tri and his former prison mate, another prisoner of conscience, said that during their time in prison

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<sup>135</sup> “*Tính mạng của Trần Thị Nga có thể đang gặp nguy hiểm* (Tran Thi Nga's life may be in danger),” SBS audio interview with Tran Thi Nga's husband, October 1, 2018, <https://www.sbs.com.au/yourlanguage/vietnamese/vi/audiotrack/nguy-cua-tran-thi-nga-khong-ro-sau-hai-thang-lien-gia-dinh-bi-tu-choi-tah8m-gap?language=vi>

<sup>136</sup> “*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*,” principles 15 and 19, General Assembly Resolution 43/173, December 9, 1988.

<sup>137</sup> ACAT-France interviews with former prisoners of conscience, 2018.

<sup>138</sup> Information provided by Nguyen Trung Ton's family to ACAT-France, February 2018.

<sup>139</sup> ACAT-France interview with Nguyen Van Dai, August 2018

they witnessed several HIV-positive prisoners die.<sup>140</sup> Tri himself was diagnosed with Stage 3 HIV shortly after his release and passed away a few months later.

In some cases, guards have taunted prisoners of conscience by saying they will contract HIV by alleging that their cell mates are HIV-positive. During the incarceration of land rights activist Can Thi Theu, guards terrorized her by informing her that her cellmates were both HIV-positive and implying that she was at risk of contracting the virus.<sup>141</sup>

Hoa Hao Buddhist Mai Thi Dung, a female religious prisoner who suffered from gallstones prior to her imprisonment, spent more than two years in the prison's tightly packed "health clinic" with HIV positive prisoners, 11 of whom died while she was there. When a patient died, their bodies were left up to three hours in the crowded cell before prison guards removed them.<sup>142</sup>

### 7.2.g. Withholding Medical Treatment

The denial or withholding of medical treatment is also used by Vietnamese authorities to pressure prisoners of conscience to either confess their alleged guilt or weaken their body and spirits.

While serving an eight-year sentence between 2010 and 2018, Hoa Hao Buddhist and land rights activist Tran Thi Thuy was diagnosed with a tumor on her uterus, but 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 pus. Such denial of medical treatment is the intentional infliction of extreme pain and suffering, thus a form of torture.<sup>143</sup>

On 16 June 2017, human rights defender Tran Thi Nga told her lawyer, Ha Huy Son that her health was deteriorating and that she was denied medical treatment for her mucosal injury, sustained in May 2014 after she was beaten for her political activism. Due to her health worsening, she could not eat anything but rice soup.<sup>144</sup>

On 5 February 2018, Nguyen Ngoc Nhu Quynh's mother, Nguyen Thi Tuyet Lan, visited her in prison briefly and reported that she was still in poor health, with curled up fingers and toes, and she had recently suffered from an allergic reaction to medication provided by the prison.<sup>145</sup> Yet, the prison has repeatedly denied Quynh medication sent by her mother.<sup>146</sup>

Even when they eventually consent to give medicine to the prisoners, the jail authorities find ways to make it distressing for the prisoner. When Nguyen Van Dai contracted a virus while in pre-trial detention and asked for medication, he was told that he would be given water at 8AM followed by medication at 9AM. He waited throughout the day but it was only during the middle of the night, when he was fast asleep, that they woke him up to give him his medication. The lawyer reported that this also occurred to some of his fellow inmates who required medication.

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<sup>140</sup> Interview with Huynh Anh Tri and other prisoners of conscience, Amen TV, an online television channel of the Saigon Redemptorist Church, 2014, beginning at minute 1:40, [https://www.youtube.com/watch?v=1\\_JFz7alVFA](https://www.youtube.com/watch?v=1_JFz7alVFA)

<sup>141</sup> *Land rights defender Can Thi Theu sentenced*, Front Line Defenders, September 20, 2016, <https://www.frontlinedefenders.org/en/case/sentencing-land-rights-defender-can-thi-theu>

<sup>142</sup> Amnesty International, *Prisons within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam*, July 2016.

<sup>143</sup> Amnesty International - Urgent Action, February 17, 2017, [https://www.amnestyusa.org/files/uaa28415\\_2.pdf](https://www.amnestyusa.org/files/uaa28415_2.pdf)

<sup>144</sup> "Ailing HRD refused proper medical treatment while in detention," Front Line Defenders, June 21, 2018, <https://www.frontlinedefenders.org/en/case/tran-thi-nga-arrested#case-update-id-5920>

<sup>145</sup> "Jailed Vietnamese Blogger Mother Mushroom in Poor Health," Radio Free Asia, February 7, 2018, <https://www.rfa.org/english/news/vietnam/blogger-02072018163316.html>

<sup>146</sup> Information provided by Quynh's family to ACAT-France, February 2018.

Medical examination would be carried through the prison bars. Nguyen Van Dai had to tell the doctor which medicine he required, as the doctor was not allowed to prescribe any medicine.<sup>147</sup>

Amnesty International notes that “Such denial of medical treatment is a passive but clear form of torture, as it involves the intentional infliction of pain and suffering by officials for the purpose of extracting a confession, thus meeting all the criteria in the definition of torture as set out in Article 1(1) of the UNCAT.”<sup>148</sup>

#### 7.2.h. Deaths in Prison

Physical abuse, heavy physical labor, overcrowded cells, and lack of adequate food, sanitation and medical care can mean a death sentence for some dissidents sentenced to prison. Former prisoners and the families of prisoners tell of numerous inmates who died in prison—even those who were relatively young and in their 40s. Others were prematurely released from prison to home or to hospital on temporary medical parole because they were so ill that prison authorities feared they would die in prison.<sup>149</sup>

Harsh treatment, beatings, and torture of Montagnards in police custody and in prison resulted in the deaths of at least 25 Montagnards between 2001 and 2011, according to Human Rights Watch.<sup>150</sup> (See section 7.1.e. above, for additional details regarding deaths of Montagnards and other ethnic and religious minorities in police custody.)

## 8. Abuses of Ethnic and Religious Minorities

The most serious violations of the right to freedom of religion or belief (FoRB) in Vietnam tend to be against individuals who are both ethnic and religious minorities, particularly those in remote areas.<sup>151</sup> Religious and ethnic minorities belonging to unregistered religious groups are particularly at risk of state-perpetrated human rights violations, including police torture and mistreatment. Victims include ethnic minority Montagnard and Hmong Christians in the Central and Northwest Highlands, ethnic Khmer (Khmer Krom) Buddhists in the Mekong Delta region, and Cao Dai and Hoa Hao Buddhist followers in southern Vietnam. Violations range from harassment, intimidation and intrusive monitoring, to arbitrary arrest, imprisonment, torture, and extrajudicial killings.<sup>152</sup>

### 8.1. Montagnard Christians

For decades, Vietnamese authorities have targeted independent religious communities of Montagnard Catholics and Protestants in the Central Highlands for systematic persecution, including forced confessions and recantations of faith, arbitrary detention, enforced disappearances, torture, and lethal beatings by police. Of hundreds of Montagnard former detainees and prisoners of conscience interviewed by Human Rights Watch since 2001, the vast majority have been subjected to torture and ill-treatment by police.<sup>153</sup> (See section 4) The government alleges that independent

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<sup>147</sup> ACAT-France interview with Nguyen Van Dai, September 2018.

<sup>148</sup> “Prisons within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam,” Amnesty International, July 2016.

<sup>149</sup> “Vietnam: Torture and Abuse of Political and Religious Prisoners,” Campaign to Abolish Torture in Vietnam, 2014.

<sup>150</sup> “Montagnard Christians in Vietnam: A Case Study in Religious Repression,” Human Rights Watch, March 30, 2011;

<sup>151</sup> “Interfaith Council Raises Cases of Concern,” Christian Solidarity Worldwide, March 24, 2017,

<https://www.csw.org.uk/2017/03/23/press/3485/article.htm>

<sup>152</sup> Submission to the Universal Periodic Review, 32nd session Submission by CSW, July 2018,

<https://www.csw.org.uk/2018/07/17/report/4048/article.htm>

<sup>153</sup> “Repression of Montagnards: Conflicts Over Land and Religion in Vietnam’s Central Highlands,” Human Rights Watch, 2002; “Vietnam: New Evidence of Torture, Mass Arrests of Montagnards,” Human Rights Watch, January 10, 2005; “Montagnard Christians in Vietnam: A Case Study in Religious Repression,” Human Rights Watch, March 30, 2011; “Persecuting ‘Evil Way’ Religion: Abuses against Montagnards in Vietnam,” Human Rights Watch.

Montagnard religious groups are “false religions” shielding anti-government activities orchestrated by Montagnard refugees in the United States.<sup>154</sup>

The government continues to carry out centrally-directed police operations and coercive propaganda campaigns to eradicate independent Montagnard house churches and capture and punish “reactionary enemy forces disguised as ethnic religious groups.”<sup>155</sup> Propaganda campaigns include public denunciations, forced recantation of religion, and forced confessions, which are extensively covered by Vietnamese state newspapers, radio, online publications, and national television.

By continuing to force Montagnard Christians to recant their faith, government officials are violating the internationally protected right to freedom of religion as well as Vietnam’s laws that prohibit forced renunciation. Montagnards who resist and insist on their right to independent worship face beatings, arrest, and imprisonment.

In June 2018, Provincial Political Security Police (Unit PA90) together with provincial and district police in Gia Lai arrested 14 followers of the independent Ha Mon Catholic sect who had gone into hiding in the forest for almost six years to avoid arrest. State media reported that “After listening to the police force propaganda, advocacy, and analysis of their wrongdoing ...the group identified their mistakes and agreed to return to their villages.”<sup>156</sup> The group’s two leaders, Yuen and Brun, were detained at the district police station, where they were “provided with adequate food and treated well by district police,” who carried out “education and advocacy activities to influence [them]”. On August 25-26, district police and local authorities brought the two men for “education and review” in front of the community. After admitting that their actions were wrong and violated the law, and signing commitments to abandon the “evil way” Ha Mon religion and actively cooperate with the authorities to apprehend other Ha Mon Catholics in hiding, the two men were released.<sup>157</sup>

Internet use by Montagnards is closely monitored by the Ministry of Public Security, which launched an operation in 2014 to prevent Montagnards from accessing or sharing “anti-government” material on the internet. State media has reported on the arrests of a number of Montagnards for using the internet to communicate with Montagnard activists abroad, with at least one sentenced to prison and others forced to confess their wrongdoings in public meetings broadcast on state television.<sup>158</sup>

Montagnards who resist confiscation of their ancestral lands are subjected to beatings, arrest, and excessive use of force by police. In July 2016, for example, police violently dispersed a demonstration by 400 Montagnard villagers in Buon Ma Thuot, Dak Lak Province, who were protesting against the sale of 100 hectares of the community’s ancestral land to a private company. Twenty demonstrators were injured and seven were arrested and held in incommunicado detention.<sup>159</sup>

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<sup>154</sup> “40 năm giữ bình yên Tây Nguyên” (40 Years to Keep the Central Highlands Quiet), Cong An Nhan Dan (People’s Police newspaper), April 28, 2015, <http://cand.com.vn/Phong-su-tu-lieu/40-nam-giu-binh-yen-Tay-Nguyen-349470/>

<sup>155</sup> “Những người cứu dân ra khỏi bóng tối u mê” (Those Who Rescue People from Darkness), February 27, 2015, <http://trandaiquang.org/nhung-nguoi-cuu-dan-ra-khoi-bong-toi-u-me.html>

<sup>156</sup> “Gia Lai: Vận động nhiều người từ bỏ tà đạo ‘Hà Môn’” (Gia Lai: Many People Mobilized to Abandon the Heretic ‘Ha Mon’), Tin Tay Nguyen, June 4, 2018, <https://tintaynguyen.com/gia-lai-van-dong-nhieu-nguoi-tu-bo-ta-dao-ha-mon/590426/>

<sup>157</sup> “Mang Yang đưa hai đối tượng ‘Tà đạo Hà môn’ ra kiểm điểm trước dân” (Mang Yang Brings Two Members of ‘Evil Way Ha Mon’ for Review Before the People), August 28, 2018, <http://mangyang.gialai.gov.vn/TIN-TUC/Hoat-%C4%91ong-UBND-huyen/Mang-Yang-%C4%91ua-hai-%C4%91oi-tuong-Ta-%C4%91ao-Ha-mon-ra-kiem.aspx>

<sup>158</sup> See, for example: “Ngăn chặn hoạt động của FULRO lợi dụng internet để chống phá,” ANTV (Security Television), March 3, 2017, <http://www.antv.gov.vn/tin-tuc/phap-luat/ngan-chan-hoat-dong-cua-fulro-loi-dung-internet-de-chong-pha-204716.html>

<sup>159</sup> “Minority Group’s Protest Met with Violence,” Amnesty International, July 22, 2016.

Since 2001, at least 350 Montagnards have been sentenced to prison for their peaceful religious or political beliefs on national security charges under Criminal Code Article 116 (formerly 87), undermining the unity policy. At least 60 Montagnards are currently serving prison sentences of up to 17 years for simply exercising their rights to peaceful dissent and independent worship. While Montagnards make up less than 2 percent of the population of Vietnam, they comprise as much as a third of the numbers of prisoners of conscience in Vietnam.<sup>160</sup>

A sampling of some of the Montagnards currently imprisoned includes the following — most of whom are not well known to international advocates:

- Jarai Protestant Deacon Siu Bler, arrested and tortured during a police crackdown in 2004, is serving a 17 year sentence in Nam Ha Prison, where he suffers from deteriorating health and paralysis in both legs.
- Bahnar activist Runh is serving a 10 year sentence. He was among 62 followers of the unregistered Ha Mon Catholic sect in Gia Lai who were arrested during a police operation in 2012.
- Jarai Christian Rmah Prai is serving six years' imprisonment after authorities unsuccessfully tried to pressure him to recant his faith through harassment, detention, and beatings.<sup>161</sup>

## 8.2. Hmong Christians

Ethnic minority Hmong Christians in the Northwest Highlands are subject to forced renunciations of faith, forced evictions, denial of access to public services, disruption of religious services, and destruction of properties used for religious services.<sup>162</sup> As in the Central Highlands, there are numerous reports of police and local authorities using torture as tool to pressure Hmong Christians to recant their beliefs.<sup>163</sup> Recent incidents include the following:

- In March 2018, after the authorities threatened recently converted Hmong Christians with eviction from their village if they did not recant their religion, the village chief led a mob that attacked 24 Hmong, resulting in the hospitalization of four of them.<sup>164</sup>
- In May 2017, Hmong Protestant Ma Seo Sung from Dak Nong province was tortured to death in police custody in Buon Ma Thuot detention center.<sup>165</sup>
- In January 2017, police and authorities in Thai Nguyen Province arrested and tortured seven Hmong Christians for two days and destroyed funeral sheds belonging to Hmong followers of Duong Van Minh (DVM), a group not recognized by the government. At a meeting with provincial authorities on January 7,

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<sup>160</sup> The NOW! Campaign published in October 2018 a list of 246 prisoners of conscience in Vietnam, of whom 75, or 31 percent, are Montagnards. In 2017, Human Rights Watch's list of prisoners of conscience in Vietnam included 59 Montagnards, or 56 percent, of a total of 105 prisoners. See: "Vietnam Holds 246 Prisoners of Conscience: Now! Campaign," Defend the Defenders, October 2018, <http://www.vietnamhumanrightsdefenders.net/2018/10/03/vietnam-holds-246-prisoners-of-conscience-nowcampaign/> and "Vietnam: Release All Political Prisoners – Over 100 Behind Bars," Human Rights Watch, November 3, 2017, <https://www.hrw.org/news/2017/11/03/vietnam-release-all-political-prisoners>

<sup>161</sup> "Vietnam's Relentless Persecution of Montagnards," Montagnard Human Rights Organization and Campaign to Abolish Torture in Vietnam, May 2018,

[http://www.stoptorture-vn.org/uploads/2/5/9/2/25923947/montagnard\\_rights\\_abuses\\_2018-5.pdf](http://www.stoptorture-vn.org/uploads/2/5/9/2/25923947/montagnard_rights_abuses_2018-5.pdf)

<sup>162</sup> "Vietnam: Freedom of Religion or Belief in Vietnam," Christian Solidarity Worldwide, September 2018.

<sup>163</sup> Ibid.

<sup>164</sup> "Hmong Christians Assaulted in Vietnam: Repression Continues Under New Law on Belief and Religion," Vietnam Committee on Human Rights, March 20, 2018.

<sup>165</sup> Joint submission to the Universal Periodic Review, 32nd session, Submission by Buddhist Solidarity Association, Hoa Hao Buddhist Congregation Central Overseas Executive Committee, Junior Sacerdotal Council of the Cao Dai Religion, Hmong United for Justice and Montagnard Evangelical Church of Christ, July 2018, <http://dvov.org/wp-content/uploads/2018/07/Vietnam-UPR-2019-FORB-Joint-Submission.pdf>



2017, high ranking officials accused DVM followers of “opposing the party and the state”, and stated that the building of the funeral sheds is illegal, without reference to any legal provision.<sup>166</sup>

- In February 2014, a Hmong family in Dien Bien Dong Province who had converted to Christianity was attacked by government officials and local people who demanded that they recant their faith. When they refused to give up their faith, the family, including their nine-year-old daughter, was whipped with pieces of electric cable. Their home was destroyed and they were forcibly evicted from the village.<sup>167</sup>

### 8.3. Montagnard and Hmong Refugees in Thailand

Persecution of Montagnard and Hmong Christians by Vietnamese authorities has sparked refugee flows to Cambodia and Thailand since 2001. Between 2015 and 2017, following Vietnam’s ratification of UNCAT, 698 Vietnamese nationals fled to Thailand to register for political asylum with the United Nations High Commissioner of Refugees.<sup>168</sup> Of these, the vast majority are ethnic and religious minorities escaping religiously and politically motivated persecution. The following incidents, which have taken place since Vietnam signed UNCAT in November 2014, provide a description of the police brutality and torture that has caused many Montagnards and Hmong to flee the country to see political asylum in Thailand:<sup>169</sup>

- “Muy” is a Montagnard Christian who began to be harassed by authorities after her father, a former prisoner of conscience, fled Vietnam. The authorities visited her home frequently to question her as to her father’s whereabouts. Eventually, Muy was summoned by the police and interrogated. During this session, she accused the authorities of discriminating against her father and falsely imprisoning him in the past. The police beat and slapped her repeatedly and pushed a toothpick into her fingernail. Muy was later issued a second summons, but fearing she would be tortured again, she fled to Thailand rather than report to the police.
- “Hai”, a Montagnard Christian, was accused by authorities of helping others in his village flee from Vietnam and making anti-government propaganda. He was summoned by the police, who interrogated him and ordered him to renounce his religion. They shocked him with electricity and beat him so severely that he bled. Shortly thereafter, he fled Vietnam.
- “Pa” is a Hmong Christian from Dien Bien province. After his conversion to Christianity, the police in his village began to pressure him to renounce his faith. When he refused, he was beaten and expelled from the village. In his new village, Pa was excoriated by the authorities for refusing to renounce his religion and ordered to leave the village. Afterwards, he was beaten with a chain and thrown from his home into the street. Following further relocation and expulsions, Pa chose to flee to Thailand with his family.
- “Nam” is a Hmong Christian from Dak Nong province. After his brother fled Vietnam, the authorities began to question him regarding his brother’s whereabouts. When he refused, the authorities confiscated his land. Afterwards police summoned him for interrogation and violently beat him, resulting in large bruises across his body. He fled shortly after this incident.

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<sup>166</sup> Submission to the Universal Periodic Review, 32nd session, Submission by CSW, July 2018, <https://www.csw.org.uk/2018/07/17/report/4048/article.htm>

<sup>167</sup> Reported to CSW, April 2018

<sup>168</sup> See Population Statistics - Asylum-Seekers (Refugee Status Determination), UNHCR, [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers).

<sup>169</sup> Identifying details have been removed from these reports, and pseudonyms used, in order to protect individual refugees, asylum seekers, and their families.

## 8.4. Khmer Krom Buddhists

State-sponsored Buddhist bodies interfere heavily with Khmer Krom religious activities and ensure that monks who advocate for greater religious freedom are dismissed from their pagodas and even imprisoned.<sup>170</sup>

In 2013, authorities in Soc Trang province cracked down on Khmer Krom Buddhists who they alleged were in contact with overseas Khmer Krom human rights organizations.<sup>171</sup> In May, armed police and soldiers, backed up by a civilian mob, used axes and hammers to break into the room of Khmer Krom Buddhist monk Ly Chanda. According to Amnesty International, police beat him and shocked him with electric batons, forced him to change from his monks robes to civilian clothes, and then forced him into a police car. They beat him unconscious on the way to the local police station, where they continued to beat him as he lay on the floor. When he passed out again, they threw a bucket of water on him. Three times they injected him with an unidentified liquid that reduced his pain but made him lose consciousness again. When he next awoke, he was in the home of a former police officer, where he was detained for one month. For the first two weeks there he urinated blood.<sup>172</sup> He was able to escape from detention and fled to Thailand, where he was recognized as a refugee by UNHCR.

Police arrested two other Khmer Krom Buddhist monks, Thach Thuol and Lieu Ny, as they attempted to flee Vietnam in May 2013 to seek political asylum in Thailand. Thach Thuol was beaten by police during pre-trial detention but refused to confess to any crimes.<sup>173</sup> In September 2013, Thach Thuol and Lieu Ny were sentenced to six years and four years in prison respectively, and two other Khmer Krom Buddhists, Thach Phum Rit and Tra Quanh Tha, were sentenced to three years and two years in prison.<sup>174</sup>

## 8.5. Religious Freedom Defenders

Those who defend the right to freedom of religion or belief are also frequently detained, interrogated and tortured in connection with their work. In June 2018 — three days before Cao Dai religious freedom activist Hua Phi was to brief Australian diplomats for an upcoming human rights dialogue — plainclothes police broke into his home and beat him so brutally that he lost consciousness.<sup>175</sup> He suffered from hemorrhage of the urinary tract and gastrointestinal tract, which required surgery. The assailants also humiliated him by cutting off his long beard, a common tradition of his religion. As of October 2018, the local police have not taken any action to investigate the serious attack.<sup>176</sup> In

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<sup>170</sup> Khmer-Krom, subsection: Religious freedom and Freedom of Association, UNPO, <http://unpo.org/members/7887>, accessed May 2018; "On the Margins: Rights Abuses of Ethnic Khmer in Vietnam's Mekong Delta," Human Rights Watch, January 2009.

<sup>171</sup> "Testimony of Eric P. Schwartz, Commissioner, US Commission on International Religious Freedom, before the Tom Lantos Human Rights Commission on the Persecution of Religious and Indigenous Communities in Vietnam," March 26, 2014, <https://www.uscirf.gov/sites/default/files/pictures/Vietnam%20testimony%20LHRC%20%20March%202014FINAL%20Wednesday.pdf>

<sup>172</sup> "Prisons within Prisons: Torture and Ill-Treatment of Prisoners of Conscience in Viet Nam," Amnesty International, June 2016.

<sup>173</sup> Ibid.

<sup>174</sup> "Testimony of Eric P. Schwartz, Commissioner, US Commission on International Religious Freedom, before the Tom Lantos Human Rights Commission on the Persecution of Religious and Indigenous Communities in Vietnam," March 26, 2014.

<sup>175</sup> "Submission to the Australia-Vietnam Human Rights Dialogue," Human Rights Watch, July 2018, <https://www.hrw.org/news/2018/07/10/submission-australia-vietnam-human-rights-dialogue>; "Chức sắc Cao Đài tố cáo Công an địa phương đánh đập trước đối thoại nhân quyền Việt – Úc" (Cao Dai Leader Denounces Beating by Police Before Vietnam-Australia Human Rights Dialogue), Radio Free Asia, June 23, 2018, <https://www.rfa.org/vietnamese/news/vietnamnews/cao-dai-leader-beaten-by-police-06232018091127.html>

<sup>176</sup> "Vietnamese rights groups condemn 'inhumane' regime'," UCA News, July 24, 2018, <https://www.ucanews.com/news/vietnamese-rights-groups-condemn-inhumane-regime/82887>

January 2018, Hua Phi suffered severe health issues after being interrogated by police about his interviews with foreign media and meetings with international delegations regarding religious freedom.<sup>177</sup>

Religious freedom advocate Pastor Nguyen Cong Chinh was arrested in 2011 and later sentenced to 11 years in prison for “undermining the national unity policy”. In July 2017, as a condition of his early release, he accepted exile from Vietnam. In a briefing with members of the US Congress in October 2017, he said that investigators tortured him using rubber batons, electric shock, and pepper spray during pre-trial detention in the attempt to obtain a forced confession. In prison, he was attacked by other prisoners and prison guards subjected him to psychological torture. He was beaten by guards while praying, placed in solitary confinement, and denied access to urgently needed medical care. Two months before his release he was placed in solitary confinement after he described his mistreatment to US officials who visited him in Xuan Loc Prison.<sup>178</sup>

## 9. Abuses of Death Row Prisoners

In Vietnam, data on the use of the death penalty, including the names of the drugs administered for lethal injection as the form of execution, is classified as a state secret. Lack of transparency regarding executions makes tracking and documentation extremely difficult for activists and human rights monitors. However, according to Amnesty International, at least 600 individuals were imprisoned on death row at the end of 2017.<sup>179</sup> In the majority of cases where people are sentenced to death or executed, the death penalty is imposed after proceedings that do not meet international fair trial standards. Some convictions and death sentences are based solely on “confessions” that extracted through torture or other ill-treatment.

### 9.1. Forced Confessions Used as Sole Evidence in Death Penalty Cases

In pre-trial detention, police brutality and forced confessions are rife. At least three prisoners currently on death row were originally convicted in deeply flawed legal proceedings based on testimonies obtained under torture or duress.

As a detainee in a murder investigation, factory worker Nguyen Van Chuong was compelled to testify against himself and to confess guilt during interrogation. His official case file — as described by his defense lawyer, Hoang Van Quanh in March 2015, demonstrates how police brutality affected the criminal investigation, since both the suspect and the witnesses fell victims to such practice. After his conviction in 2008, Nguyen Van Chuong told his parents how the police had hung him up by his handcuffed wrists so that only the tips of his toes could touch the floor. They then beat

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<sup>177</sup> “*Công an cộng sản khủng bố và đả tố CTS Hứa Phi, tình trạng sức khỏe nguy kịch*” (*Communist public security terrorized and denounced Sub-dignitaries Hua Phi, critical health condition*), press release by the National Council for Liaison of Vietnamese in Vietnam and Overseas, January 31, 2018, <https://vietbao.com/a277127/cong-an-cong-san-khung-bo-va-dau-to-cts-hua-phi-tinh-trang-suc-khoe-nguy-kich>

<sup>178</sup> “Pastor Jailed and Tortured for Preaching Shares Horrors Christian Prisoners Face in Vietnam,” Christian Post, <https://www.christianpost.com/news/pastor-jailed-and-tortured-for-preaching-shares-horrors-christian-prisoners-face-invietnam-223166/>; “Jailed Vietnamese Pastor Punished After US Visit,” UCA News, <https://www.ucanews.com/news/jailed-vietnamese-pastor-punished-after-us-visit/79479>

<sup>179</sup> “*Death sentences and executions 2017*,” Amnesty International, <https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF>. According to a 2016 report by the Ministry of Public Security, between 2011 and 2016, there were 1,134 people sentenced to death in Vietnam, with 429 executed by lethal injection between 2013 to 2016. MPS Report No. 05/BC-BCA-C81, “Review of implementation of the Law on Execution of Criminal Judgements 2011-2016,” January 4, 2017, cited in “*Hơn 1.000 trường hợp bị tuyên tử hình trong vòng ba năm*” (More than 1,000 death penalty cases within three years), Viet Nam Moi, September 2, 2017, <http://vietnammoi.vn/hon-1000-truo-ng-ho-p-bi-tuyen-tu-hinh-trong-vong-ba-nam-19733.html>

him repeatedly until he confessed.<sup>180</sup> One of his alibi witnesses, Tran Quang Tuat, told *Tien Phong* newspaper in November 2007 that the police had intimidated him into changing his testimony about Chuong's whereabouts on the night of the murder. Another witness, Trinh Xuan Truong, petitioned the People's Supreme Procuracy Office on September 10, 2013 and claimed that the police had beaten him up, burnt him with cigarettes, threatened to arrest him, and ordered him to change his testimony — from being with Chuong in a different city during the night of the attack to not having seen Chuong that night. Despite the fact that the confessions of he and his co-defendants were obtained as a result of torture, they were the only evidence used to convict Nguyen Van Chuong in June 2008. As of October 2018, he remains on death row.

Similarly, Le Van Manh remains incarcerated since his 2005 death sentence for murder, despite vehemently denying all of the charges and having retracted his earlier confessions. He alleges that he was forced to confess after being beaten by both the police officers investigating his case and his cellmates, who were acting under police instructions. The only evidence presented by the prosecution was Manh's confession letter, which he had already retracted.<sup>181</sup>

Ho Duy Hai, a 23-year-old college graduate who was convicted of double homicide and robbery in 2008, was beaten up and tortured by police during his pre-trial detention to force him to confess to the crimes. None of the fingerprints left at the scene of the murder matched his, no physical evidence tied him to the case, and there were testimonies that other men were seen at the crime scene during the night of the murders. Yet, he was convicted solely based on his confession. In February 2015, the Committee on Judicial Affairs of the National Assembly called for review of Hai's case after it found that his conviction was the result of serious procedural errors.<sup>182</sup> However, as of October 2018 he has not been granted a review and remains incarcerated on death row.

## 9.2. Prison Conditions on Death Row Fail to Follow International Standards

There are concerns regarding the poor living conditions of death row inmates, combined with the lack of independent monitoring.

### 9.2.a. Solitary Confinement

A former death row inmate interviewed by Legal Initiatives for Vietnam<sup>183</sup> attested that he was held in isolation for six months with three others in a 15 square meter cell in a prison in Ca Mau province that lacked ventilation and was extremely hot. Prisoners were not provided adequate food or allowed to spend time outside the cell. His parents were also not allowed to visit him during his six month's confinement there. To prevent skin diseases, he and his cellmates had to take off their clothes. He believed that the treatment was a reprisal because he did not plead guilty as requested by the investigators. After one year of imprisonment, the case against him was revoked and he was released and awarded compensation for being wrongfully accused.

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<sup>180</sup> "Wrongful Death Sentences Sent A Loud and Urgent Cry to Reform Vietnam's Criminal Procedures," *The Vietnamese*, November 8, 2017, <https://www.thevietnamese.org/2017/11/wrongful-death-sentences-sent-a-loud-and-urgent-cry-to-reform-vietnams-criminal-procedures/>

<sup>181</sup> Information provided by Le Van Manh's family to LIV, October 2015. See also: "Viet Nam: Halt imminent execution of Lê Văn Mạnh and order investigation into allegations of torture," Amnesty International, October 25, 2015, <https://www.amnesty.org/download/Documents/ASA4127372015ENGLISH.pdf>

<sup>182</sup> "Urgent Action: Ten Year Death Row Case Pushed for Execution," Amnesty International, March 14, 2018, <https://www.amnesty.org/download/Documents/ASA4180042018ENGLISH.pdf>; "Các diễn biến chính của vụ án Hồ Duy Hải" (The major developments of Ho Duy Hai's case), *Luật Khoa tạp chí*, December 21, 2014, <https://www.luatkhoa.org/2014/12/cac-dien-bien-chinh-cua-vu-an-ho-duy-hai-lien-tuc-cap-nhat/>

<sup>183</sup> Information provided to LIV in an interview in April 2018.

If death row inmates show any sign of wanting to commit suicide, escape the prison, and/or any other dangerous acts, their feet are shackled 24/7. The shackles are removed only once a day for 15 minutes when they go to the toilet. Once a week they are allowed to change their shackle from one foot to another. However, at An Lao Detention Center in Hai Phong province, death row prisoner Nguyen Van Chuong was held in solitary confinement in a small cell for years, according to testimony provided to his father during visitation.<sup>184</sup> He had to constantly lie down on a cement platform and was shackled day and night, even though he did not express any sign of wanting to commit suicide or escaping. In addition, he was not allowed to use the toilet to defecate due to being kept in shackles.

### 9.2.b. Death Row Prisoners Targeted with Physical Violence

Physical violence is frequently used to force death row inmates to confess to their crime even after they have been convicted and sentenced. If a convicted inmate confesses to the crime in prison, then he or she could be “rated” as an inmate with good behavior.

According to Nguyen Truong Chinh, father of Nguyen Van Chuong, in August 2018, Chuong was beaten up by other prisoners after he refused to comply with the request from the prison officers to write a letter with the title "Xin tha tội chết" (please forgive my death sentence) as evidence to prove he had confessed to the crime. In 2017, Chuong was stabbed in the neck with a plastic toothbrush.<sup>185</sup>

### 9.2.c. Lack of Food and Water Supply

According to Nguyen Van Chuong's father, Chuong told him during visitation that he had to use the same water in his cell for both drinking and cleaning, and was not allowed to receive any supply from his family. The treatment of death row inmates can differ from one to another. According to the law<sup>186</sup>, the death row inmates are entitled to receive supplies, including food, books, newspaper and cash in credit, not more than two times per month.

## 9.3. Lack of Contact with the Outside World

Death row inmates are not guaranteed the right to contact with the outside world. According to Vietnam's laws,<sup>187</sup> death row inmates do not have the right to meet with their brothers and sisters-in-law, aunts, uncles, cousins in comparison with the other types of prisoners. There has yet to be a law provision which allows death row inmates to meet with any organizations or individuals besides their immediate family. They are also not allowed contact by phone with non-family members.

The right to send or receive letters of death row inmates also depends on the prison officers of the particular center. Nguyen Van Chuong has been denied the right to receive letters from his family since early 2018. He was trying to send out letters and souvenirs he made in prison to his family through other prisoners who were close to being released.

Their regular family visitations are also interfered with by the prison officers. According to Ho Duy Hai's aunt, at the end of 2014, the family received verbal notice from the Long An Province's prison center that they were not allowed to visit Hai because of an order from the central government. Three months later, Hai's aunt and his mother traveled

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<sup>184</sup> Information provided by Nguyen Van Chuong's family to LIV in September 2018.

<sup>185</sup> Information provided by Nguyen Van Chuong's family to LIV in September 2018.

<sup>186</sup> Circular No. 07/2018/TT-BCA of the Minister of Public Security, providing regulations regarding to prisoners' visits with their relatives; mail receiving and sending; receiving money and objects, and contacting their relatives by telephone.

<sup>187</sup> Circular No. 39/2012/TT-BCA of the Minister of Public Security on managing and detaining death row inmates

to Hanoi to raise questions about the order and found out that there was no such notice to prevent Hai from having a family visit. After they came back and went to the prison center of Long An Province, they allowed his younger sister to visit him with a condition that she had to sign a paper that stated she would not talk to Hai about anything related to appeal process, news about his case, and his conditions in the prison.<sup>188</sup>

## 9.4. Long Waits and Last-Minute Execution Notice Amount to Torture

### 9.4.a. No Legislation Regarding Execution Notice

There is no regulation regarding the notification of an upcoming execution to the prisoners and their family. In most cases documented by Legal Initiatives for Vietnam, the family was informed of the execution between a week and 10 days in advance.

On October, 16, 2015, the People Court of Thanh Hoa Province notified Le Van Manh's family in writing that they had until October 26 to petition the authorities to allow the return of Manh's body to them for burial, which supposed that his execution would be carried out on that day. Accordingly, the family only knew of the execution date 10 days before it was supposed to take place. Thanks to public pressure, the execution was halted. However, the notification process in Manh's case was done according to Vietnam's law.<sup>189</sup> The Law on Enforcement of Criminal Judgment does not contain a provision to give death row inmates and their families prior notification of the execution date. In an interview with Zing News in November 2017, attorney Do Hai Binh, the defense lawyer for Nguyen Hai Duong who was sentenced to death for murder in 2015 in Binh Phuoc Province, said that the law would not allow death row inmates to receive prior notice of their execution date, citing "humanity reasons".<sup>190</sup> Similar provisions confirming that notification is indeed not provided to the inmates and their families can also be found in a joint circular<sup>191</sup> issued by the Ministry of Public Security, Ministry of Defense, Ministry of Healthcare, Chief Justice of the People's Supreme Court, and the Chief Procurator of the People's Supreme Procuracy.

### 9.4.b. Living for Years in the Shadow of Execution

According to some psychiatrists, the results of being confined to death row for an extended period of time, including the effects of knowing one will die and the living conditions, can fuel delusions and suicidal tendencies in prisoners. This unique psychological impact on prisoners of long periods under the harsh conditions of death row, with the ever-present shadow of execution hanging over them, is known as death row phenomenon.<sup>192</sup>

In a 2016 report,<sup>193</sup> VCHR and FIDH wrote that many prisoners begged to be executed as soon as possible rather than live with the terror of waiting for an unknown execution date. Conditions deteriorated in death row compounds after 2011 as executions were halted after Vietnam replaced firing squads with lethal injections, with larger numbers of

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<sup>188</sup> Information provided by Ho Duy Hai's family to LIV in September 2018.

<sup>189</sup> Luật Thi hành án Hình sự 2010 (Vietnam's Law on Enforcement of Criminal Judgment 2010)

<sup>190</sup> "Phút cuối của những tử tù trước giờ thi hành án" (The last minute of the death row inmates before execution), Zing News, November 17, 2017 <https://news.zing.vn/phut-cuoi-cua-nhung-tu-tu-truoc-gio-thi-hanh-an-post796823.html>

<sup>191</sup> Joint Circular No. 05/2013/TTLT-BCA-BQP- BYT-TANDTC-VKSNDTC on The Execution by Lethal Injection, June 6, 2016.

<sup>192</sup> "Death Row Phenomenon: The psychological impact of living in the shadow of execution", Reprieve, accessed in September 2018, <https://reprieve.org.uk/death-row-phenomenon-psychological-impact-shadow-execution/>

<sup>193</sup> "The Death Penalty in Vietnam," Vietnam Committee on Human Rights (VCHR) and International Federation for Human Rights (FIDH), June 2016, [https://www.fidh.org/IMG/pdf/2016\\_-\\_report\\_on\\_death\\_penalty\\_in\\_vietnam.pdf](https://www.fidh.org/IMG/pdf/2016_-_report_on_death_penalty_in_vietnam.pdf)

inmates waiting to be executed. Several death row inmates committed suicide, including Nguyen Tien Cong on June 15, 2013<sup>194</sup>. Others have unsuccessfully attempted to take their own life.

Cases documented by Legal Initiative for Vietnam show that some prisoners can remain on death row for more than a decade, especially in cases where executions were halted due to public outcry and international pressure. Since 2005, Le Van Manh underwent a total of seven court hearings, including three trials, three appeals, and one cassation trial. In total, he has been on death row for 13 years. Nguyen Van Chuong has been kept on death row for 11 years, while Ho Duy Hai was sentenced to death 10 years ago. Yet, all the requests for cassation trials and review of their sentence were either denied or ignored by the judicial authorities, leaving those prisoners in limbo.

## 10. Lack of Independent Monitoring and Effective Complaint Mechanisms

One of the most effective preventive measures against torture, according to the Special Rapporteur against Torture, is regular and unannounced inspection of places of detention. However, the Vietnamese government does not allow independent monitoring of prisons and detention centers by UN experts, international bodies, or Vietnamese and international human rights organizations.

UNCAT Article 13 calls for state parties to ensure that individuals who allege they have been tortured are able to submit complaints that are promptly and impartially examined without reprisals from authorities. Vietnam's laws governing temporary custody, pre-trial detention, and imprisonment provide for detainees and inmates to file complaints if they are subjected to abuses in custody. However, the vast majority of prisoners and detainees in Vietnam do not submit complaints, while the few who do raise complaints or ask for legal representation are often harshly disciplined.

In pre-trial detention centers, prisoners of conscience are unable to write complaints since they are not allowed pen and paper during the course of their investigation. After conviction, official grievance procedures for prisoners are largely ineffective since complaints must be submitted through prison guards to prison wardens, putting those who raise complaints at risk of further abuse.

During Nguyen Van Hai's six years of imprisonment, he filed 16 written complaints to prison authorities to contest arbitrary and unlawful mistreatment of prisoners and call for conditions to meet minimum international standards. Prison authorities either ignored his complaints, or subjected him to punitive measures. At Prison No. 6 in Nghe An province, for example, he was sent to solitary confinement for three months after he and 10 other prisoners of conscience submitted a complaint about their isolation and discriminatory treatment in the prison's Security Section.<sup>195</sup>

Similarly, when Tran Thi Nga's family asked why she was being disciplined and denied family visits since July 2018, the officials declined to provide a specific reason for the disciplinary actions or to show Nga's family a copy of the discipline decision, which should be issued and filed by prison wardens in accordance with Article 38 of the Law on Execution of Criminal Judgments.<sup>196</sup> Article 38 also stipulates that the inmates who violate regulations may be confined to the disciplinary room for up to 10 days, during which time he or she is not allowed to meet his/her relatives. Yet, Nga was held incommunicado for almost three months. Her husband filed a Denunciation with the

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<sup>194</sup> "Vietnam's death row inmates enduring a wait worse than death," Thanh Nien News, July 9, 2013, <http://www.thanhniennews.com/society/vietnams-death-row-inmates-enduring-a-wait-worse-than-death-1953.html>

<sup>195</sup> CAT-VN interview with Nguyen Van Hai, April 2015.

<sup>196</sup> VN-CAT interview with Tran Thi Nga's husband, September 30, 2018.

Prison Board of Supervisors, the People's Procuracy of Gia Lai province, and the Police Department for Criminal Judgement Execution and Judicial Support. He did not receive any response from those authorities, except for the People's Procuracy of Gia Lai province, who deferred to Gia Trung Prison to handle the complaint, even though the procuracy is responsible for following up and resolving denunciations, according to Article 168 of the same law.

Prisoners of conscience's grievances routinely go unanswered and unresolved unless they are able to use other means to exert pressure on authorities, such as publicizing the issue beyond prison walls through their families, or going on hunger strike.

## 11. Impunity for Perpetrators

In its State Report, Vietnam highlights the low number of cases of corporal punishment handled by the country's Courts to illustrate the "effectiveness of the measures taken to prevent torture". The report states that only ten cases of applying corporal punishment were registered between 2011 and 2015, while the People's Courts did not receive any cases of testimony obtained by duress, bribery or "coercing other persons to make false declarations or to supply false documents". Far from representing the actual reality of torture and ill-treatment in Vietnam, these numbers demonstrate instead Vietnam's failure to properly implement laws against corporal punishment and its lack of will to tackle impunity for perpetrators.

### 11.1. Lack of Transparency and Censorship

Lack of transparency regarding detention, interrogation and imprisonment of suspects, coupled with government restrictions on media and bloggers, means that only a small percentage of torture cases is publicly reported by the press. The common practice of holding prisoners of conscience incommunicado and denying them access to family and legal representation further removes their torture and mistreatment in custody from the public eye. The absence of independent monitoring and complaint mechanisms means that the government fails to independently investigate and impartially prosecute most allegations of torture. Those who submit complaints about torture are subject to reprisals. Abuses committed in rural areas, where the majority of Vietnam's ethnic minorities reside, are particularly unlikely to be reported.<sup>197</sup> The result is impunity for police and government officials who commit or authorize acts of torture and cruel, inhuman and degrading treatment.

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<sup>197</sup> See "Vietnam Query Response: The treatment of ethnic minority groups in Vietnam: Hmongs and Montagnards," Asylum Research Centre (ARC), July 19, 2017, <http://www.refworld.org/docid/5970855d4.html> ("The report also found that 'While the number of prosecutions has declined in recent years, many religious communities report increased harassment by local police, public security, and hired thugs, particularly in remote, rural areas.'"); "International Religious Freedom Report for 2015," United States Department of State, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dliid=256155> ("There were numerous reports of physical assaults, detention, and property destruction in rural provinces, particularly in the Central and Northwest Highlands."); "Public Insecurity: Deaths in Custody and Police Brutality in Vietnam," Human Rights Watch, September 16, 2014, <https://www.hrw.org/report/2014/09/16/public-insecurity/deaths-custody-and-police-brutality-vietnam> ("The problem of police abuse also derives from the relative neglect of the Commune Police, the single most important on-the-ground unit in many parts of the country. The force interacts daily with Vietnam's large rural population, but remains a semi-professional unit that is treated as a second-tier force within the MPS...[t]hey also receive inadequate training in law and basic police procedures. It may be no coincidence that a large portion of abuses documented in this report were committed by Commune Police.").



## 11.2. Due to Vaguely Worded Laws and Judicial Bias, Perpetrators are Seldom Prosecuted

Article 298 (Corporal Punishment) of the Criminal Code (version 1999) stipulates three levels of punishment: between six months and three years of imprisonment for those who apply corporal punishment; between two years and seven years for crimes causing serious consequences; and between five years and twelve years for crimes causing very serious or particularly serious consequences. However, there is no clear guideline for defining which constitutes "serious", "very serious" or "particularly serious" consequences. It is up to the court to arbitrarily interpret this vaguely-worded law and apply the punishment. To date there has not been any court case resulting in the maximum penalty. The offenders often receive lenient sentences.

An example is the case of Ngo Thanh Kieu, a suspect in a theft case in 2012 in Phu Yen province 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. Five low-level police officers were charged with Article 298. The four co-defendants were sentenced from 1 year suspended sentence to 2 years and 6 months imprisonment. The primary defendant, who was convicted of delivering the fatal blow to the victim's head with a police baton received the highest sentence of 8 years imprisonment. An Appellate Court later reduced his sentence to 5 years. Le Duc Hoan, the Deputy Head of Tuy Hoa City police was found "irresponsible causing serious consequences" but received only 9 months suspended sentence because he "came from a good family and has served in his job well," according to the People's Procuracy.<sup>198</sup>

Similarly, on September 13, 2018 the People's Court of Ninh Thuan province tried the case of Vo Tan Minh, a suspect in a illegal drug dealing case who died while in the detention center of Phan Rang - Thap Cham city police from traumatic brain injury, collapsed lungs, fractured chest case and a 6-cm fracture in the skull. Five police officers also charged with Article 298, received sentences ranging from 5 to 7 years imprisonment. No superior was charged in this case. State media reported that "the judges also felt that the policemen were provoked by the non-cooperative attitude of the victim. Since they have a good professional record, they are entitled to leniency under the law, the court ruled."<sup>199</sup>

While the 2015 Criminal Code — which came into effect on January 1, 2018 — is in some aspects an improvement of the 1999 version (for example, Article 373 is explicitly named "Use of torture" and specifies a wider range of penalties, from 6 months to 12-20 years' imprisonment or life imprisonment if the offence results in the death of the tortured person), its full implementation and effectiveness remain to be seen and should be monitored closely.

## 11.3. Human Rights Lawyers are Targeted

Since 2017, Vietnamese authorities have intensified the suppression of human rights lawyers, who have been harassed and/or had their practice license revoked. By targeting attorneys, Vietnam is depriving victims of abuse of a voice and directly affecting their chances to be properly represented in courts and access justice.

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<sup>198</sup> "Two police who beat suspect to death get suspended sentences", Vietnam Right Now, April 4, 2014, <http://vietnamrightnow.com/2014/04/two-police-who-beat-suspect-to-death-get-suspended-sentences/>

<sup>199</sup> "Five cops jailed for killing prisoner in central Vietnam", VN Express International, September 13, 2018, <https://e.vnexpress.net/news/news/five-cops-jailed-for-killing-prisoner-in-central-vietnam-3808835.html>

According to attorney Vo An Don, a well-respected human rights attorney in Vietnam's central province of Phu Yen, there are about 14,000 attorneys in Vietnam, but very few dare to take on "sensitive" cases and several of those who did got disbarred. On November 26, 2017, the Bar Association of Phu Yen province issued a decision to revoke Vo An Don's license to practice for allegedly abusing the right to freedom of expression. Notably, the decision came four days before the Appeal Court proceeding of the case of popular blogger Mother Mushroom (Nguyen Ngoc Nhu Quynh), of whom Attorney Vo An Don was the defense counsel. Due to the disciplinary decision, attorney Vo could not be present in court. More than a hundred lawyers wrote to request the Standing Committee of the Vietnam Bar Federation (VBF) to reconsider the disciplinary action, but in May 2018 VBF upheld the decision to revoke his practice license.<sup>200</sup>

Similarly, on March 12, 2018 the Bar Association of Ho Chi Minh City issued the decision to remove Attorney Pham Cong Ut from the roster of defense counsel, allegedly due to his failure to resolve a complaint by one of his clients. But Pham's removal is very likely a retribution for his role as the founder of the Defense Council, a group of attorneys from many regions in Vietnam who provide pro-bono legal defense for wrongful convictions, victims of possible duress, or those who cannot afford legal defense.<sup>201</sup>

Moreover, a section of the 2015 Criminal Code has been criticized by lawyers and human rights organizations for threatening the right to defense. The revised Code's Article 19, section 3, which was introduced by the Vietnamese National Assembly in June 2017,<sup>202</sup> now holds lawyers criminally responsible for not reporting clients to the authorities for a number of crimes related to national security. Considering that any criticism or opposition to the government or Communist Party can be qualified a "national security" matter, this provision makes it even more difficult for lawyers to take on "sensitive" cases related to human rights.

#### 11.4. Harassment of Victims and their Family in their Search for Justice

In application of Article 13 of the UNCAT, the State Report lists the pieces of legislation that theoretically guarantee the right of a victim to complain to the relevant authorities and their protection against all ill-treatment or intimidation as a consequence of their complaint (paragraphs 201 to 209). In fact, these legal safeguards are far from efficient in preventing victims of torture and ill-treatment or their families seeking justice from being harassed, intimidated and even assaulted.

Reports that the authorities employ tactics aimed at preventing the relatives of torture victims from communicating with the outside world or to seek help to advocate for justice are common. Confiscation of mobile phones and electronic devices by the police, heavy police presence and intimidation make it extremely difficult to access and verify information about deaths in police custody. In at least two cases documented by VN-CAT, the authorities pressured the families to accept suicide as the cause of death and ordered them to bury the deceased as soon as possible and not to invite friends and neighbors to the funeral.

The relatives of Hoa Hao Buddhist Nguyen Huu Tan, who died in detention in May 2017 (please see section 7.1.e above), provided VN-CAT with a hand-drawn map showing up to 10 monitoring posts set up around their house,

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<sup>200</sup> *Vietnamese Rights Lawyer Stripped of His License to Practice*, Radio Free Asia, May 24, 2018, <https://www.rfa.org/english/news/vietnam/license-05242018152904.html>

<sup>201</sup> "Luật sư ở Việt Nam có thể bị kỷ luật bất cứ lúc nào?" (*Lawyers in Vietnam can get disciplined anytime?*), Radio Free Asia, March 15, 2018, [https://www.rfa.org/vietnamese/in\\_depth/lawyer-in-vietnam-can-get-disciplined-any-time-dt-03152018140303.html](https://www.rfa.org/vietnamese/in_depth/lawyer-in-vietnam-can-get-disciplined-any-time-dt-03152018140303.html)

<sup>202</sup> "Vietnam: New Law Threatens Right to a Defense," Human Rights Watch, June 21, 2017, <https://www.hrw.org/news/2017/06/21/vietnam-new-law-threatens-right-defense>

including security cameras, police posts, local government offices and coffee shops where police staged stakeouts. All male family members have been threatened with arrest and prosecution. They have been forced to confess their “anti-State activities”. On August 25, 2017, the UN Working Group on Arbitrary Detention and four Special Rapporteurs sent a communication to the Vietnamese government requesting their responses to the allegations.<sup>203</sup> The authorities then increased the intensity of the threats. Nguyen Huu Tan’s family members were so frightened for their own life and security that some fled their family home and went into hiding. According to a report by the US State Department, *“Reportedly, Vinh Long Province authorities harassed Tan’s family members after his death, for example, encouraging neighbors not to patronize their small restaurant or grocery store, following them when they visited the market, and calling on neighbors to socially isolate them. Tan’s mother and two of his brothers had to hide from local authorities. Local public security officers reportedly questioned all people visiting Tan’s family and asked close friends of the family to spy on the family and report back to them.”*<sup>204</sup>

In another case, the widow and relatives of Ma Seo Sung, a Hmong Christian who died while being detained at the Detention Center of Dak Lak provincial police, were frequently harassed and threatened by the authorities. The victim’s family filed complaints with responsible authorities requesting a reason for the arrest and detention that led to Ma Seo Sung’s death while in police custody. The authorities in Dak Lak province did not respond to the complaint, so the family submitted the complaint to the Ministry of Public Security twice. Not only did the victim’s widow and relatives not receive any response, but the local authorities intensified their harassment and intimidation against family members. Police frequently came to the family home where the widow stayed and forced her to reveal who had been assisting the family with filing the complaints. Ma Seo Sung’s widow and other family members were so frightened by the threats and intimidations that they had to escape to a neighboring country to seek safety.<sup>205</sup>

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<sup>203</sup> Mandate UA VNM 5/2017 on the case of Nguyen Huu Tan,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23245>

<sup>204</sup> Both cases of Nguyen Huu Tan and Ma Seo Sung (in the following paragraph) were listed in “Vietnam 2017 International Religious Freedom Report,” US Department of State, pages 11-12,

<https://www.state.gov/documents/organization/281116.pdf>

<sup>205</sup> VN-CAT in-person interview with the cousin of Ma Seo Sung’s widow, September 2018.

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## Recommendations to the UN Committee on Torture

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We recommend that the UN Committee Against Torture call on the Government of the Socialist Republic of Vietnam to promptly implement the following measures in order to comply with its obligations under the UN Convention against Torture (UNCAT):

### Legal Safeguards against Torture

- Ensure due process and fair trial rights as provided by the International Covenant on Civil and Political Rights (ICCPR). Detainees should have prompt access to a lawyer of their choice, be promptly brought before a court, be tried in trials that meet international fair trial standards, and not be subject to torture and other forms of cruel, inhuman, and degrading treatment.
- Amend domestic laws to comply with UNCAT, including national security provisions in the Criminal Code that criminalize peaceful exercise of internationally protected human rights.
- Repeal Circular 37 of the Ministry of Public Security to ensure prison regulations uphold and facilitate the rights of all people in detention or imprisonment, including prisoners of conscience arrested on national security charges, and comply with international standards on the treatment of detainees and prisoners.
- Prohibit the use of statements and “confessions” extracted by the use of torture in all trials and legal proceedings.

### Arrests, Police Custody and Detention

- Investigate and prosecute civilians who carry out violent attacks against human rights defenders and peaceful demonstrations at the instigation or acquiescence of authorities, and hold police and other authorities responsible when they are present but fail to intervene to stop assaults.
- Conduct prompt, thorough, and impartial investigations into all cases of injury and death in police custody, including forensic examinations by independent medical professionals, and hold to account any state or non-state actors found to have been directly or indirectly responsible.
- End the practice of incommunicado detention and enforced disappearances of detainees by ensuring that information about their whereabouts is made available immediately following their arrest to family, friends, legal counsel and courts.
- Ensure the right of all detainees, including those arrested on national security grounds, to immediate and continuing legal assistance from the first hours of custody, including the right to have a lawyer present during interrogation, through detention and imprisonment.
- Repeal all laws and subsidiary legislation authorizing the administrative detention without trial of people in compulsory re-education centers and mandatory drug rehabilitation centers, and abolish all forms of forced labor in such centers.

## **Prison Conditions**

- Fully apply international standards on the treatment of prisoners and conditions of detention, in particular by enacting into legislation and adhering to the UN Standard Minimum Rules for the Treatment of Prisoners.
- Provide routine medical check-ups to prisoners. For prisoners who are ill, provide prompt access to medical treatment and allow family members to deliver medication.
- Promptly notify prisoners' families in the event of a prisoner's serious illness, injury, death, placement in solitary confinement, or transfer to a different detention facility.

## **Prisoners of Conscience**

- Immediately and unconditionally release all persons arbitrarily detained or imprisoned for peaceful exercise of their internationally protected human rights.
- Cease the discriminatory treatment and punitive isolation of prisoners of conscience.
- End the practice of prolonged solitary confinement and ensure that all disciplinary measures conform to international law and standards.
- Ensure that all prisoners are placed in prisons close to their homes, and uphold their rights to regular visits, telephone calls, and correspondence with their families.

## **Religious and Ethnic Minorities**

- Allow all independent religious organizations to freely conduct religious activities and govern themselves. Religious groups that do not choose to join one of the officially authorized religious organizations with government-sanctioned boards should be allowed to operate independently.
- End harassment, forced renunciation of faith, arrests, prosecutions, imprisonment, torture, and ill-treatment of ethnic minority communities and/or followers of unsanctioned religions.
- Release all individuals detained or imprisoned for peaceful exercise of the rights to freedom of religion and belief.
- Ensure that all domestic legislation pertaining to religion is brought into conformity with international standards as set out in the ICCPR, and amend or repeal laws that criminalize peaceful expression of religion or belief such as Criminal Code Article 116, sabotaging the unity policy.
- Enforce provisions in domestic legislation that prohibit forced renunciations of faith by government officials and establish specific penalties for those who carry out such practices.

## **Death Row Prisoners**

- Immediately establish a moratorium on all executions with a view to abolishing the death penalty, in line with six UN General Assembly resolutions adopted since 2007 and the Second Optional Protocol to the ICCPR regarding abolition of the death penalty.

- Ensure that death row prisoners are protected from torture and other ill-treatment and are allowed frequent and regular access to their families, lawyers, and adequate medical care.
- Ensure that conditions on death row meet UN Minimum Standards for the Treatment of Prisoners.
- Increase transparency in the application of the death penalty by removing the classification of information regarding the death penalty as “state secrets” and making publicly available current data regarding the number of people on death row and the number of death sentences and executions carried out each year.
- Overturn the convictions and death sentences of Ho Duy Hai, Le Van Manh, and Nguyen Van Chuong, which resulted from proceedings that did not meet international fair trial standards.

## **Transparency and Monitoring**

- Publish a central registry of the names and locations of all persons held in pre-trial detention, administrative detention centers, and prisons, and the relevant charges or reasons for their detention and imprisonment.
- Provide access to independent monitoring bodies to all prisons and detention centers, permitting unannounced visits and private interviews with prisoners and detainees.
- Establish an independent domestic prison inspection mechanism that meets the requirements set out in the Optional Protocol to the Convention Against Torture.

## **Impunity**

- Strictly enforce provisions in UNCAT and Vietnamese law that prohibit torture as a punishable crime.
- Conduct prompt, thorough and impartial investigations into reports of torture and other human rights abuses by authorities in prisons and detention centers. Follow up with appropriate legal action, including criminal prosecution, of identified perpetrators of abuses.
- Establish impartial mechanisms for prisoners and detainees to submit complaints without the knowledge of prison guards directly responsible for them, and ensure that complainants are not subjected to punitive reprisals from authorities.
- Provide compensation and medical treatment to victims of torture and other ill-treatment and their dependents in accordance with Article 14 of the UNCAT.

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## Signatories

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