

# **Submission to the United Nations Committee Against Torture**

## **The Socialist Republic of Vietnam**

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**65<sup>th</sup> Session, November-December 2018**



The Unrepresented Nations and Peoples Organization (UNPO) is an international, nonviolent and democratic membership organisation. Its Members are indigenous peoples, minorities, unrecognised States and occupied territories that have joined together to defend their political, social and cultural rights, to preserve their environments and to promote their right to self-determination.

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## 1. Introduction

This report is submitted by the Unrepresented Nations and Peoples Organisation (UNPO) on the occasion of the 65<sup>th</sup> Session of the Committee against Torture. As the Socialist Republic of Vietnam is under consideration, this report seeks to clarify Vietnam's involvement in torture and other ill-treatment, as prescribed by the Convention against Torture and other Cruel, inhuman or degrading Treatment or Punishment (hereinafter Convention against Torture).

As this report seeks to contextualise the experience of torture of the Khmer-Krom indigenous people living in Vietnam, this report analyses the Vietnamese domestic legislation since Vietnam signed and ratified the Convention against Torture. The scope of this report is defined by the following articles of the Convention: 1, 2, 4 and 20. In light of these articles, this report concentrates on Vietnamese national legislation adopted since Vietnam signed and ratified the Convention Against Torture. Specifically, this reports reviews the updated Penal Code and the Law on Enforcement of Custody and Temporary Detention. This report also clarifies the ways in which the Vietnamese authorities circumvent legal obligations carried both by their own national legislation and the Convention. Finally, this report will provide clear and tangible recommendations on how to improve the fight against systematic torture in Vietnam.

## 2. Background

Whilst this report is directly concerned with Vietnam's efforts and lack thereof regarding the Convention against Torture, it is suitable to portray the Khmer-Krom people as a people indigenous to the land of Kampuchea-Krom – the land of the Mekong delta. Before being given to Vietnam by the French, they used to form a part of the Khmer Empire.<sup>1</sup> The Khmer-Krom people constitutes a religious, ethnic and linguistic minority, plagued by systematic discrimination on the aforementioned grounds, resulting in environmental harm, enforced disappearances, lack of education and health.<sup>2</sup> Torture is an integral element in their interaction with Vietnamese authorities regardless of which grounds they are detained on. The worldwide population of Khmer-Krom is around 7 million, of which around 1 million reside in their native Kampuchea-Krom (now South-West of Vietnam).<sup>3</sup>

Vietnam signed the Convention against Torture on 7 November 2013 and ratified the said convention on 5 February 2015. In the list of 10 core human rights treaties, the Convention against Torture is the 7<sup>th</sup> that Vietnam has signed. It is also evident that whilst the Convention against Torture contains direct provisions regarding how it ought to be implemented, Vietnam has made little tangible progress in regards to its national legislation. As this is the first time Vietnam is being reviewed by the Committee against Torture, this report also includes some references to both national legislation and events regarding the torture of Khmer-Krom

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<sup>1</sup> UNPO, "Members: Khmer-Krom". Accessible here: <http://unpo.org/members/7887>

<sup>2</sup> UNPO, "Members: Khmer-Krom". Accessible here: <http://unpo.org/members/7887>

<sup>3</sup> Vietnamese Government, "2009 Census" - "POPULATION BY URBAN/RURAL RESIDENCE, SEX, ETHNIC GROUP, SOCIO-ECONOMIC REGION AND PROVINCE/CITY", p. 134. Accessible here: [https://web.archive.org/web/20131018040824/http://www.gso.gov.vn/Modules/Doc\\_Download.aspx?DocID=12724](https://web.archive.org/web/20131018040824/http://www.gso.gov.vn/Modules/Doc_Download.aspx?DocID=12724)

individuals prior to the signing or ratification of the Convention against Torture. Vietnam has not signed the Optional Protocol of the Convention.

### **3. Compliance with and violations of the Convention against Torture**

#### **a) Amendments to the national legislation after the Convention against Torture**

This sub-section concentrates on the following articles of the Convention against Torture: 1, 2.1, and 4.1. It also concentrates on the following laws and articles of the Vietnamese national legislation: articles 373.1 and 374.1 of the Penal Code, the Constitution (2013), and articles 4.1 and 8.1 of the Law on Enforcement of Custody and Temporary Detention.

According to Article 2.1 of the Convention against Torture, “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”. This is read in Conjunction with Article 4.1, which states that “each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.” Having voluntarily signed the Convention against Torture, Vietnam has the obligation to a) criminalise torture, and b) provide adequate measures in effectively eliminating torture from state functions.

One of the highlights concerning efforts since signing the Convention against Torture is the adoption of the new Penal Code, which came into force on 1 January 2018. In comparison to the previous penal codes of 1999 and 2009, the new Penal Code contains two new articles that contain a direct reference to the illegality of torture. According to Article 373.1 torture, if committed “in the course of proceedings, trial, or implementation of measures including mandatory attendance at a correctional institution or rehabilitation center” carries a sentence of 6-36 months. Article 374.1 states that “Any person who, in the course of proceedings, employs illegal methods to force an interrogated person to provide information about the case shall face a penalty of 06 - 36 months' imprisonment.” If found complicit according to the list of aggravating factors detailed in both articles 373.1 and 374.1, the punishment can extend to 15 years.

According to Article 4.1 of the Law on Enforcement of Custody and Temporary Detention, which came into force on 1 July 2016, “not to torture” is a principle in case a person is detained. According to Article 8.1 of the same law, torture is also a “prohibited act”. This article also conveys that torture and other cruel treatments are illegal on the basis of infringing on the lawful rights of detained people.

It is clear that under the new Penal Code and the Law on Enforcement of Custody and Temporary Detention, torture is *de jure* illegal in Vietnam – progress long awaited by the international community. However, it is also the case that neither law does not include a rigid definition of torture – a circumstance that considerably weakens the law. Evidently, the updated Penal Code provides little to no substance in effectively fighting torture. The lack of legislative rigour and consequent deliberate ambiguity greatly reduces the effectiveness of these measures. Resulting from the absence of a rigid definition, it remains the responsibility of the judicial

system to decide whether an act is torture or not in each and every single instance. This gives way to a uniquely disappointing situation, where the authorities (both local and central) are able to circumvent ethical responsibility whilst still technically complying with the Convention against Torture.

### *The case of the Venerable Thach Thuol*

This system of legal loopholes is evident from the experiences of Khmer-Krom individuals. The Venerable Thach Thuol was arrested on 20 May 2013 for practicing Theravada Buddhism, which must be practiced via a group belonging to Vietnam Buddhist Sangha – the only legitimate Buddhist institution recognised by the authorities – which is in itself a member of the Vietnam Fatherland Front, a grouping of people’s movements aligned to the Communist Party of Vietnam.<sup>4,5</sup> In some sense, the experience of the Ven. Mr Thuol is emblematic of the experience of Khmer-Krom people as a whole. In a broad sense, his treatment falls under psychological torture as defined by Article 1 of the Convention against Torture. The lack of legal definition for torture enables the Vietnamese authorities to exercise psychological torture against Khmer-Krom detainees.<sup>6</sup>

#### **b) Extra-judicial repressions – from overt to covert practices**

It is to be noted that Article 1 of the Convention against Torture places an emphasis on the involvement of a “state party” in torture. Recently there has emerged a practice where the authorities use either plain-clothes policemen or thugs working on behalf of the government in order to suppress peaceful assemblies.<sup>7,8</sup> The problem of extra-judicial repressions is closely associated with the definition of torture in Article 1 of the Convention against Torture, which states that on one end, torture has to involve a public official or a person acting in official capacity. Clearly, Vietnam’s strategy continues to be using plain-clothes personnel to carry out torture in order to still ‘technically comply’ with the Convention against Torture.

### *The case of the Venerable Lieu Ny*

Ven. Lieu Ny was arrested together with the Ven. Thach Thuol on 20 May 2013. As he was later released, his community organised a ceremony to re-ordain him as a monk. The event was disrupted by the authorities who issued threats to the Khmer-Krom community, stating that

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<sup>4</sup> The Law on Belief and Religion, passed in 2017, which requires all religious practices to be registered with the Vietnamese Government.

<sup>5</sup> Vietnam Buddhist Sangha Executive Council, “Result Report: Ensure and Promote the Rights of Religious Freedom in Vietnam Through the Actual Actions of Vietnam Buddhist Sangha”, 2013. Accessible here: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=661&file=EnglishTranslation>

<sup>6</sup> Vietnamese Political Prisoners Database – “Thach Thuol”. Accessible here: <https://vietnamprisoners.info/prisoner/83/thach-thuol>

<sup>7</sup> UCA News, “Vietnam religious groups condemn suppression of protesters”, 2018. Accessible here: <https://www.ucanews.com/news/vietnam-religious-groups-condemn-suppression-of-protesters/82669>

<sup>8</sup> Human Rights Watch, “Vietnam: Respect Rights to Free Expression, Assembly”. 2007. Accessible here: <https://www.hrw.org/news/2007/07/20/vietnam-respect-rights-free-expression-assembly>

anyone who participates in such activities will be arrested. Most notably, the Ven. Thach Thuol and Ven. Lieu Ny were arrested by people who were not in uniforms. The lack of clear identification subjects the Khmer-Krom community to immense psychological torture, as it creates an atmosphere of constant surveillance.<sup>9,10</sup> During his detention, the Ven. Lieu Ny was informed that his father had passed away, and he was also denied a period of mourning or the possibility to attend his funeral.

The experiences of the Ven. Thach Thuol and Ven. Lieu Ny are clearly indicative of psychological torture. The domestic legislation of Vietnam clearly provides the authorities the opportunity to deny that Ven. Lieu Ny was subjected to (psychological) torture during his ceremony to be re-ordained. To conclude, whilst the new direct references to torture in the Penal Code and the law on Enforcement of Custody and Temporary Detention are to be welcomed, it is also the case that these two laws operate in an extremely limited scope.

### **c) Refusal to co-operate with the Committee against Torture**

Vietnam's general lack of adhering to the international practices and standards of human rights plays a significant role in the daily lives of Khmer-Krom individuals. According to Article 20.1 of the Convention against Torture, "If the Committee receives reliable information [...] that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information. The Committee against Torture commenced an inquiry procedure under Article 20 of the Convention against Torture. Viet Nam rejected the inquiry on 2 May 2015, well after Viet Nam had both signed and ratified the Convention against Torture. This evident refusal to take part in international human rights procedures displays a blatant disregard to the commitments Viet Nam has accepted under the Convention against Torture."

Furthermore, Vietnam has not signed the Optional Protocol of the Convention against Torture.<sup>11</sup> The main significance of the Optional Protocol would be to move from the practice of addressing consequences of torture to preventing torture from happening in the first place.<sup>12</sup> In some sense, the Optional Protocol remains the best international standard in measuring whether a state is genuinely committed to the elimination of torture, as this measure would require Vietnam to establish the National Prevention Mechanism (NPM) and accept unannounced visits from the NPM to its detention facilities. As Vietnam has not signed the Optional Protocol, we can say that there is a lack of commitment to transparency, which further reinforces the sentiment of impunity in how Vietnam treats its prisoners of conscience,

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

<sup>10</sup> Khmers Kampuchea-Krom Federation, "Vietnamese Authority Disrupted Venerable Lieu Ny's Re-ordain Ceremony", 2017. Accessible here: <https://khmerkrom.org/2017/07/13/vietnamese-authority-disrupted-venerable-lieu-ny-s-re-ordain-ceremony/>

<sup>11</sup> UNOHC Website, "Ratification Status for Viet Nam", 2018. Accessible here: [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=192&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=192&Lang=EN)

<sup>12</sup> APT, "What is the OPCAT?", Accessible here: <https://www.apt.ch/en/what-is-the-opcat/>

including indigenous Khmer-Krom individuals who are detained on grounds pertaining to their religious and cultural practices or due to their activism.

#### **4. Conclusion**

To conclude, Vietnam's efforts since signing and ratifying the Convention against Torture have been insufficient in effectively combating the widespread practice of torture, as defined by the Convention against Torture. The authorities of Vietnam are evidently involved in a) making superficial attempts in trying to achieve the minimum required effort to comply with the Convention against Torture, b) refusing to co-operate with the Committee against Torture, which is evident from both refusing to sign the Optional Protocol of the Convention against Torture, and refusing to recognise its own obligations derived from Article 20 of the Convention against Torture, by refusing to cooperate with the inquiry procedure based on tangible concerns and worries of the international community, c) using legal loopholes, that the legislative body of Vietnam has created, in order to simultaneously carry out torture against ethnic minorities like the Khmer-Krom and put on a façade of compliance regarding the Convention against Torture.

Consequently, the livelihoods and human dignity of the Khmer-Krom people are under attack. As real people behind these legal problems, their interaction with the state consists of a mixture of psychological terror, denial of religious freedom and undermining of their identities.

#### **5. Recommendations**

UNPO recommends for the Socialist Republic of Vietnam to:

- Sign the Optional Protocol of the Convention against Torture. Only in this way can complete transparency be ensured. Transparency remains an integral aspect in the fight against torture.
- Accept requests from the Committee against Torture to visit Vietnam and report on commitments voluntarily taken under Article 20 of the Convention against Torture, as the Committee against Torture only acts under Article 20 should it receive credible information about systematic torture being practiced by the state party.
- Improve national legislation by providing a rigid definition of 'torture' in the scope of the Penal Code, which would be compatible with Article 1 of the Convention against Torture.
- Recognise the cultural and indigenous rights of Khmer-Krom people and stop using covert extra-judicial repression to silence dissenting voices.