

UNIVERSAL PERIODIC REVIEW OF VIET NAM



Presented by Boat People SOS, on behalf of the following organisations:

**Vietnamese Women for Human Rights
Defend the Defenders
Statelessness Network Asia Pacific
Institute on Statelessness and Inclusions
Con Dau Parishioners Association
Junior Sacerdotal Council of the Cao Dai Religion**

Contact person: Anna Guyot
Contact e-mail: anna_guyot@yahoo.com

Summary

Despite Viet Nam's commitment on observing International Treaties to which Viet Nam is a state-party (CCPR/C/VNM/Q/3/Add.1), its legal framework has yet to comply with any international human rights instruments and covenants. The "national security" provisions in the constitution remain broad, vague and unclear, allowing great latitude in its interpretation, and in practice, it legitimises government restrictions on citizens' political rights, validates abuses, and restricts freedoms, including freedom of speech (e.g. new Law on Cyber Security) and freedom of religion or belief (e.g. new Law on Belief and Religion), in lieu of safeguarding civil and political rights of all persons.

The national legal framework continues to authorise security officials to detain individuals for an unlimited period of time without trial and keep them under house arrest for years on grounds of national security. Peaceful political dissents, human rights defenders or practitioners of unregistered religious congregations continue to serve long sentences for simply exercising their right to freedom of expression, peaceful assembly and association.

Detainees and prisoners, while in custody, temporary pre-trial or after having been convicted, continue to experience torture and other cruel, inhuman and degrading treatments and punishments.

Ethnic minorities, especially from the Central and Northwest Highlands, continue to endure various forms of governmental harassment, including forced renunciation of faith, physical assaults, short-term detention and long-term imprisonment, surveillance, restrictions on travel, property seizure or destruction, and denial of household registration and/or other basic citizenship rights.

Considering the information presented, we respectfully make the following recommendations to country mission's representatives to assist the State of Viet Nam in fulfilling its obligations to respect, protect and promote human rights in Viet Nam:

- Ensure that freedom of expression is protected both offline and online and amend or remove vague national security provisions in the penal code and in all new legislations to make sure that limitations on freedom of expression are strictly in line with ICCPR;
- End harassment, surveillance, physical violence, including at the judicial level, against human rights defenders, non-registered religious believers and ethnic minorities;
- Facilitate the development of a safe and enabling environment for all civil society actors to freely express their views by ensuring that national legislative provisions and public order provisions are not invoked to stifle legitimate and peaceful dissent;

- 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;
- Reduce administrative obstacles and eliminate registration requirements applicable to peaceful religious activities by registered and non-registered religious groups in order to guarantee freedom of religion or belief and freedom of expression;
- Develop and implement civil documentation and registration campaigns that support people who are stateless or at risk of statelessness to acquire and confirm citizenship and obtain civil documentation, particularly with respect to ethnic and religious minorities such as the Hmong and Montagnard communities.
- Immediately and unconditionally release all human rights defenders, bloggers, and journalists, religious and political dissidents detained for their peaceful expression of their political and other opinions or religious beliefs.

Freedom of Religion or Belief

The right to freedom of religion is the right of individuals to act in accordance with conscientious beliefs, to worship (or not) freely, and to be able to enjoy life without discrimination on the basis of such beliefs. As a practical matter, the enjoyment of such primary religious freedom rights depends in critical ways on the legal structures available to religious communities to organise their affairs.

In November 2016, the National Assembly passed its first Law on Belief and Religion, which came into effect in January 2018. The new law streamlines processes for religious groups to obtain recognition or a certificate of registration for specific activities, significantly reduces the waiting period for a registered religious group to obtain recognition, and specifies the right of recognized religious groups to legal personality.¹

However, the new Law on Belief and Religion reinforces government control over religious organisations and practices and maintains many pre-existing restriction mechanisms such as prescribing a multi-stage painstaking registration process, and includes vague provisions that permit restrictions on religious freedom in the interest of “national security” and “social unity.”

The government often uses registered churches as instruments to suppress non-registered churches and force their members to abandon their faith and/or join government-sanctioned churches. The new law simultaneously strengthens these instruments of suppression while making it harder for non-registered religious communities to organize and defend themselves.

Consequently, Vietnamese who exercise their right to freedom of religion continue to be subjected to harassment, mistreatment and other forms of persecution at provincial and village levels, many of whom are Christians or independent Buddhists. These include, but are not limited to, the independent Cao Dai, independent Buddhists like the Unified Buddhist Church of Viet Nam (UBCV), Hoa Hao Buddhists, Khmer Krom, Montagnards, Hmong, and other ethnic and religious minorities² whom are prevented from holding religious ceremonies, summoned to meet with local authorities, pressured to cease practicing their faith, and physically abused when they refuse to denounce their faith. Pastors or monks are harassed or punished, some of whom have died while held in custody in 2017³.

¹ <https://www.worldwatchmonitor.org/2016/12/vietnams-law-on-belief-and-religion-deeply-flawed/>

² See the UPR joint submission of Buddhist Solidarity Association, Hoa Hao Buddhist Congregation Central Overseas Executive Committee, Junior Sacerdotal Council of the Cao Dai Religion, Hmong United for Justice Montagnard Evangelical Church of Christ at: <http://dvov.org/wp-content/uploads/2018/07/Vietnam-UPR-2019-FORB-Joint-Submission.pdf>

³ <https://www.uscirf.gov/sites/default/files/2018USCIRFAR.pdf>

Furthermore, the recent use of non-state actors involving the “Red Flag Associations” to harass and suppress independent catholic communities in Dong Nai and Nghe An provinces has raised concerns among rights groups for its violent characteristic⁴.

In this respect, the State of Viet Nam does not meet the requirement of Art. 18 of the International Covenant on Civil and Political Rights, nor Art. 27 on the treatment of the indigenous communities and their right to enjoy their religion.

⁴ See, Rights Group Calls Attention to Vietnam’s Violent ‘Red Flags’ Groups at <http://www.persecution.org/2018/03/29/rights-group-calls-attention-vietnams-violent-red-flags-groups/>

Statelessness in Viet Nam

Civil registration and documentation are often necessary to prove nationality and access other fundamental human rights, including the right to education, employment, health care and housing, land and property rights in Viet Nam.

Viet Nam has made significant progress towards addressing statelessness for various populations in Viet Nam, through extensive reforms to its nationality law framework and complementary initiatives⁵.

Despite these important steps, according to the latest statistics published by UNHCR, there were at least 29,522 stateless persons in Viet Nam.⁶ This number most likely does not include the thousands of Montagnard and Hmong Christians who have had citizenship documents revoked, and thus are rendered stateless, because they had refused to renounce their faith. Marginalised and disadvantaged, they continue to experience significant barriers in accessing birth registration - increasing statelessness risks amongst these communities.

The following are some of the populations in Viet Nam that are at risk of non-registration of births:

- Children born in remote and hard to reach rural areas,
- Children born to ethnic and religious minorities,
- Street children in urban areas of Viet Nam,
- Undocumented migrant families who do not hold a “household registration book” (and are not registered with the “household registration system”),
- Children born to parents who are not married, including parents who are under the legal age of marriage (18 years of age),
- Children born with two older siblings (the unofficial “two-child policy” in Viet Nam and associated social stigma against families with more than two children, can also result in families not registering children born if they are not their first or second born),
- Children of disputed nationality (including those living amongst the mountainous region of Viet Nam the borders China, Cambodia and Laos PDR and those born to fathers of foreign nationality).

In addition, Viet Nam has a restrictive, strictly enforced residential registration system, which determines access to social services, public benefits, land and utilities. The system stipulates that citizens must register their permanent residence in only one district. The criteria for gaining permanent residence in a new district is “by purchasing land, marrying into a family who already hold permanent residence, or renting a house with an official lease and a minimum amount of liveable space”.

⁵ For more details, please see the joint submission of BPSOS, Statelessness Network Asia Pacific and Institute on Statelessness and Inclusion at: http://www.institutesi.org/UPR32_VietNam.pdf

⁶ UNHCR, Global Trends: Forced Displacement in 2017 (25 June 2018) UNHCR, Annex Table 1.

This criterion is often unachievable for internal migrants and internally displaced persons, exacerbating the existing marginalisation and vulnerabilities of these populations. For example, individuals not registered with the residential registration system have limited access to State protection and are vulnerable to exploitation. Additionally, lack of registration within the residential registration system restricts access to education and health care. Therefore, even though the Vietnamese Constitution provides that all citizens enjoy equal rights, citizens in fact enjoy differing access to fundamental human rights depending on their status with respect to the residential registration system.

This is particularly true for the 25,732 Hmong households (91,703 individuals) that had moved from the Northwest to the Central Highlands, outside of the government's relocation plan, between 2005 and 2017: 11,642 households (45%) are still left out of government's relocation plan, did not receive government assistance nor have been issued household registration in their present locations of residence.⁷

⁷ According to the data collected by BPSOS in its forthcoming analysis on *Statelessness Among Indigenous Montagnard Highland Communities in Viet Nam*.

Freedom of expression online and offline

Viet Nam's 2013 Constitution stipulates that human rights and citizens' rights may only be restricted in "cases of necessity for reasons of national defence, national security, social order and safety, social morality and public health" (Constitution, Art. 14). At the 2014 UPR review the Vietnamese government pledged to align the Penal Code and other laws with international human rights laws and uphold freedom of expression and other fundamental rights as defined in the International Covenant on Civil and Political Rights (ICCPR). However, it has failed to undertake the comprehensive review of laws and practice this would necessitate.

In the amended 2015 Criminal Procedure Code and Penal Code that came into force on January 1, 2018, the vague definition of national security offences has permitted restrictions on fundamental rights as defined in article 2 of the ICCPR. These restrictions appear to be incompatible with the ICCPR, in particular Art. 19, freedom of opinion and expression and with other international human rights instruments and covenants that Viet Nam is a state-party of.

National security and national unity provisions have been regularly invoked to target human rights defenders (HRDs), bloggers, lawyers, trade unionists, land rights activists, political dissidents, environmental campaigners, or members of non-registered religious communities. There are currently 220 prisoners of conscience convicted in Viet Nam, with 190 of them for sentences against national security and public orders provisions⁸.

The State has systematically silenced its critics by arresting them for "plotting to overthrow the government," Art. 109; "sabotaging implementation of solidarity policies," Art. 116; and "conducting propaganda against the Socialist Republic of Viet Nam," Art. 117 (formerly Art. 79, 87 and 88 of the 1999 Penal Code).

While these 3 provisions are the most frequently used to suppress dissidents, other charges have been used: Art. 118, "disrupting security," and Art. 121, "fleeing abroad or defecting to stay overseas with a view to opposing the people's administration" (formerly articles 89 and 91 of the 1999 Penal Code)⁹.

Provisions in other chapters of the Penal Code used to suppress freedom of opinion and expression include: Art. 318, "causing public disorder"; article 320, "performing superstitious practices"; article 330, "resisting persons in the performance of their official duties"; and Art. 331, "abusing democratic freedoms to infringe upon the interests of the State" (formerly Art. 245, 247, 257 and 258 of the 1999 Penal Code).

⁸ <http://www.vietnamhumanrightsdefenders.net/2018/10/03/vietnam-holds-246-prisoners-of-conscience-nowcampaign/>

⁹ For more information, see The NOW! Campaign analysis, which is supported by a coalition of 15 human rights organisations calling upon the government of Vietnam to immediately and unconditionally release all prisoners of conscience: <https://www.vietnampocs.com/analysis>

The new Cyber security law, coming into effect on 1 January 2019, does not contain concrete initiatives to better protect internet users and/or government agencies from hackers, but contains many restraints on online freedom of speech and invades the privacy of internet and social media users. It authorises the government to request service suppliers to provide personal information of customers, and grants the government the power to monitor online communications, demand social media platforms to store Vietnamese clients' information on servers located in Viet Nam, and remove within 24 hours contents it deems offensive. The State again relies on national security provisions to arbitrarily infringe on the constitutional right to freedoms of speech, privacy, and information.

Freedom of peaceful assembly Arbitrary detention and prevention of torture and cruel, inhuman or degrading treatment

Under national law, civilians are prohibited from forming independent unions or associations, even though Art. 25 of the Constitution provides the constitutional basis for “freedom of speech, freedom of the press, freedom of association, freedom of assembly.”

On June 9 and 10, 2018 thousands of Vietnamese rallied to protest against the Special Economic Zones draft law and the Cyber security draft law. Despite the brutal and bloody crackdown, demonstrations broke out again on June 17. The peaceful demonstrators were again brutally assaulted by the police¹⁰.

In dealing with peaceful demonstrators, the public security police have grossly and massively violated Art. 137 and Art. 373 of Viet Nam’s Penal Code, which prohibit the intentional infliction of bodily harm and torture. Such gross and massive violations have been conducted with impunity, and there is no indication of improvement.

There were at least 21 reported incidents of torture in police custody associated with the June 2018 mass demonstrations. Yet, there has been no known investigation into any of these reported incidents.

Contrarily to the claim in Viet Nam’s state report that “there have not been many cases related to obtaining testimony by duress or applying corporal punishment in Viet Nam and each case has been strictly handled,” many of those detained following the June demonstrations were coerced into providing false testimony and physically abused for refusing to sign false statements as prepared or dictated by their police interrogators. At least one American citizen was among the victims – he was subjected to torture for two days for not disclosing information about his contacts and not signing a false confession prepared by the police.

Finally, 67 participants in peaceful demonstrations have been convicted in 2018 on charge of “disturbing public order”, 59 of whom were sentenced to between 8 months and 54 months in prison while the other 8 were given probation of between 5 and 24 months.

This is in blatant violation of their right to freedom of peaceful assembly as prescribed in the International Covenant on Civil and Political Rights, Art. 21, and in Viet Nam’s Constitution, Art. 25. The Socialist Republic of Viet Nam has failed to uphold its commitment under the UN Convention Against Torture, of which it is a state-party.

¹⁰ For more detail on the June protests, please see the joint submission to the United Nations Committee Against Torture for the Examination of the First State Report of the Socialist Republic of Vietnam by BPSOS and other organisations: *Vietnam’s Persecution against Protesters during June 2018 Mass Demonstration*, available at <http://dvov.org/wp-content/uploads/2018/10/Information-for-CAT-examination-of-Vietnams-state-report.pdf>