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Unrepresented Nations and Peoples Organization

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.

With the support of the Khmers Kampuchea-Krom Federation

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This report is submitted by the Unrepresented Nations and Peoples Organization (UNPO) as part of the third Universal Periodic Review Cycle (UPR) of the Socialist Republic of Viet Nam (hereafter, 'Viet Nam'). It draws attention to human rights violations occurring in the country that affect its indigenous peoples and especially the Khmer-Krom. The report will open with a brief introduction to the Khmer-Krom and the Hmong peoples. In a second part, it will examine the compliance of Viet Nam with recommendations that were made during the country's last UPR cycle.

This report is based on the recommendations that were made by UNPO, the KKF and States on the occasion of Viet Nam's second UPR in 2014, as well as on the information provided by those same organisations in the mid-term reports in relation to the compliance of Viet Nam with previous recommendations.

This report is not meant to be comprehensive, rather focussing on the specific problematics affecting indigenous communities living in Viet Nam and their situation in terms of human rights. In this regard, the report will analyse the problematics linked to the recognition of ethnic minorities, the status of religious minorities in the light of the new legislation on freedom of religion and belief and restrictions imposed on legal and procedural rights to which activists, political dissidents and members of minorities are subject to, particularly in relation to recent legal developments.

The Khmer-Krom in Viet Nam

The Khmer-Krom have traditionally resided in southwestern Viet Nam, primarily in the Mekong Delta (Kampuchea Krom in the Khmer language), where approximately 80 percent of the eight million Khmer-Krom currently live. The Khmer-Krom represent one of the largest minorities in Viet Nam: around 1.2 million people with a distinct culture and language. Most members of the Khmer-Krom community practice Theravada Buddhism, which makes them not only an ethnic, but also a religious minority in Viet Nam.

The Khmer-Krom have traditionally been subject to multiple types of assimilation policies. Up until the departure of the French from Viet Nam, intermarriage was used as a tactic by the Vietnamese to continually diminish the Khmer population of the Mekong Delta. Under the presidency of Ngo Dinh Diem (1955-1963), all Khmer names were changed to Vietnamese and the Khmer-Krom experienced further displacement, including from their traditional center of commerce, Prey Nokor, currently known as Ho Chi Minh City.

Nowadays, Viet Nam continues to refuse recognition of the Khmer-Krom as a distinct indigenous people of the Mekong Delta. Together with this lack of recognition, cultural rights are subject to restrictions for this community, with education and language rights severely limited. Furthermore, the Khmer-Krom in Viet Nam suffer from a lack of access to basic public services, violation of their land rights and violation of their freedom of religion¹.

2. Examination of Vietnamese Compliance with Previous UPR Recommendations

¹ For more information on the Khmer-Krom community in Viet Nam, please read its [UNPO Member Profile brochure](#).

a. Ethnic Minorities Recognition and Status

Recommendations 207 to 214, among others:

Develop appropriate policies and measures to effectively support ethnic minorities (Islamic Republic of Iran)

Ensure without delay effective protection of the rights of ethnic and religious minorities (Cabo Verde)

The State of Viet Nam continues to fail in providing a comprehensive legal framework through which the protection of the rights of indigenous communities and ethnic minorities can be guaranteed, contravening the recommendations included in the 2014 Report of the Working Group on the Universal Periodic Review for Viet Nam² and accepted by this country³.

It must be recalled that, even though Viet Nam is part of the CERD, the CEDAW and the CRC, its decision not to ratify Convention 169 of the International Labor Organization on Indigenous and Tribal Peoples⁴, as well as not to implement the content of the United Nations Declaration on the Rights of Indigenous Peoples of 2007 (in favor of which it voted)⁵, translates into a lack of formal obligation to recognise minorities (including the Khmer-Krom) the official status of *indigenous minority*, something that would serve as a mechanism to ensure the protection of their cultural, linguistic and religious rights, among others^{6 7 8}.

This has allowed Viet Nam to develop throughout the years a normative body that, under a certain appearance of commitment towards the respect of indigenous rights, has been able to bypass some of the most important principles recognised to these communities in International Law and in some cases has served as an instrument used to legitimise assimilation policies⁹.

Even though there are more than 50 ethnic groups living in Viet Nam, comprising an estimated 13.4 million people, the Vietnamese government refuses to acknowledge the existence of “*indigenous peoples*” in the country, referring to these groups as ethnic minorities¹⁰. In the specific case of the Khmer-Krom community, the implications derived from the decision adopted by the government of Viet Nam to deny their identity as indigenous people range from a severe limitation of their religious and cultural rights to a lack of policies and legislation specifically aiming to guarantee the socioeconomic development and the protection of ancestral lands belonging to the Khmer-Krom¹¹.

In the absence of a legal framework capable of providing indigenous communities with adequate protection, the State of Viet Nam has created a legislative system based on

² [A/HRC/26/6](#)

³ [A/HRC/26/6/Add.1](#)

⁴ [Convention concerning Indigenous and Tribal Peoples in Independent Countries](#)

⁵ [United Nations Declaration on the Rights of Indigenous Peoples](#)

⁶ “The Indigenous World 2018”, IWGLA Report, April 2018, pgs. 323 to 331

⁷ Even though article 8 of the Vietnamese Constitution establishes that “*every ethnic group has the right to use its own spoken and written language to preserve its own identity and to promote its fine customs, practices, traditions and culture*”, neither enforcement agencies nor Vietnamese Laws have developed this principle. Furthermore, despite the fact that the right to study in minority languages is formally recognized in the Vietnamese legal system, “*ethnic minority-spoken and written languages are not taught in schools, hence, making it impossible for indigenous peoples’ and ethnic minority languages to be used in pursuit of legal protection*” (“Viet Nam: Indigenous Peoples in ASEAN”, AIPP Report, 2015, pgs. 12 to 14)

⁸ “*Although Vietnam has developed many programs and policies for the ethnic minorities, there is no specific law for their recognition as indigenous peoples with collective rights. The lack of recognition of the disadvantaged position of indigenous peoples with distinct cultural, socio-economic and political systems had led to the failure of government to enact special measures to address the development and rights gap. People always look at the ethnic minorities through the political prism. They are labelled “politically sensitive” and this has hampered the efforts in recognizing their human rights and fundamental freedoms. The ethnic minorities, especially in the border regions, meet difficulties in accessing external support, especially from NGOs. On the other hand, some indigenous territories are off-limits to outsiders, exacerbating the lack of visibility of these peoples and their conditions*” (“Viet Nam: Indigenous Peoples in ASEAN”, AIPP Report, 2015, pgs. 12 to 14)

⁹ “Khmer Krom: Human Rights Violations Facing the Indigenous People”, UNPO Report, June 2018

¹⁰ “Viet Nam: Indigenous Peoples in ASEAN”, AIPP Report, 2015, pgs. 12 to 14

¹¹ Khmers Kampuchea-Krom Federation, Report to the UN Office of the High Commissioner for Human Rights Universal Periodic Review: Socialist Republic of Vietnam 18th Session (Jan-Feb, 2014)

Government Decrees and Prime Minister's Decisions that have clearly failed to address in a correct manner the specific problems of the different ethnic groups living in Viet Nam. These normative mechanisms have not only shown inconsistency and incapacity to offer a systematic approach to the peculiar needs of indigenous communities, but have also left untouched crucial matters such as social investment and environmental protection, or have done it in a deficient manner, such as in the cases of land and forest allocation policies¹².

Furthermore, recent legislation approved on issues that directly affect indigenous communities in Viet Nam (mainly the Law on Referendum and the Law on Religion and Belief) lack specific provisions dealing with the particular needs of minorities, something that adds to the decision of the National Assembly not to approve a draft proposal of a law on ethnic minorities^{13 14}.

In conclusion, the decision of Viet Nam not to apply or ratify the main international agreements in the field of indigenous rights, which persists in spite of the recommendations resulting from the previous UPR Cycle, have allowed the Vietnamese government to limit the rights of these communities and establish barriers to their possibilities of development and growth.

b. Freedom of Religion

Recommendations 139 to 143:

Encourage Viet Nam to continue to improve conditions of worship for all, enhance exchange of laws, and disseminate values of tolerance and peace with a view to developing principles of interfaith dialogue (United Arab Emirates)

Adopt further measures aimed at better guaranteeing freedom of religion, particularly by eliminating bureaucratic and administrative obstacles, which hinder the activities carried out by religious communities and groups (Italy)

Since Viet Nam's last review in 2014, the situation in terms of freedom of religion protection has not improved, especially in relation to religious minorities. The passing of a new Law on Religion and belief has meant for these communities the perpetuation of a system based on governmental control of religious institutions and restriction of the possibility for minorities to freely exercise their faith.

The government of Viet Nam has created party-controlled supervisory bodies through which the activity of religious groups and clergy members is managed, being also charged with the issue of permits for the undertaking of those activities¹⁵. This has consolidated a situation in which *“the government monitors, harasses, and sometimes violently cracks down on religious groups operating outside government controlled institutions”*¹⁶.

These restrictions were confirmed by the approval on 18 November 2016 of a new Law on Belief and religion, through which the 14th National Assembly of Viet Nam has *“reinforced registration requirements, allowed extensive state interference in religious groups' internal affairs, and given the authorities broad discretion to penalize religious activities”*¹⁷. Even though article 24 of the Vietnamese Constitution states that *“everyone shall enjoy freedom of belief and of religion; he can follow any religion or follow none. All religions are equal before*

¹² “The Indigenous World 2018”, IWGIA Report, April 2018, pgs. 323 to 331

¹³ “The Indigenous World 2018”, IWGIA Report, April 2018, pgs. 323 to 331

¹⁴ According to Minority Rights Group, when it *“is not actively persecuting its minority communities, the Vietnam government still tends to view its minority and indigenous populations from a paternalistic standpoint as 'primitive' and in need of more civilized practices”* adding that *“as a result, while the state has provided some services such as bilingual education and access to health care, these programmes are not always implemented in a culturally appropriate manner”* (“State of the World's Minorities and Indigenous Peoples 2016”, Minority Rights Group, pgs. 154 and 155)

¹⁵ Freedom in the World 2017 – Viet Nam Profile, Freedom House.

¹⁶ World Report 2018 – Viet Nam, Human Rights Watch.

¹⁷ Freedom in the World 2017 – Viet Nam Profile, Freedom House.

the law” and that “*the State respects and protects freedom of belief and of religion*”¹⁸, this new regulation has strengthened the capacity of Vietnamese authorities to control the activity of religious minorities, reinforcing mechanisms of registration, supervision, reporting and authorisation of religious activities already present in previous legislation¹⁹.

Even though the restrictions imposed on minorities to freely exercise their religious rights have been recurrently pointed out as a severe breach of Viet Nam’s compliance with human rights obligations²⁰ and addressed by several recommendations during the last UPR Cycle, this new regulation is regarded as a step backwards by ethnic and religious minorities in Viet Nam, as well as by religious organisations, as it is considered that it will “*effectively limit the practice of religion according to the whims of the government, allowing it to ‘intervene in the internal affairs and administration’ of ‘religious organizations’*”²¹.

The new Law on Belief and Religion, under the pretext of protecting national security and social unity, continues to consolidate the control of governmental instances on religious practices, while allowing restrictions on religious freedom in cases considered to “*undermin[e] national defense, national security, national sovereignty, public order, public safety, and the environment*”; are considered harmful to “*social ethics or other’s health, life, dignity, honor, or property*”; or are seen as acts “*sowing division among the people*”²².

Furthermore, this piece of legislation conditions to authorisation and registration not only the possibility to conduct educational, health, social protection, charitable, and humanitarian activities by religious groups, but also subjects to the acquisition of the status of “registered religious organisation” the possibility to “*preach, organize religious ceremonies, and conduct religious classes at approved locations; organize conferences to approve its charter and bylaws; elect or appoint leaders; repair or renovate religious facilities; and conduct charitable or humanitarian activities*”, actions that in most cases also require prior approval from governmental authorities²³.

In the particular case of the Khmer-Krom community in Viet Nam, a Buddhist minority that practices its religion outside the official Patriotic United Buddhist Association (PUBA - Hội Đoàn Kết Sư Sãi Yêu Nước) and Vietnam Buddhist Sangha (VBS - Giáo Hội Phật Giáo Việt Nam)²⁴, the new regulation on religion and belief has meant a tightening in the capacity of this people to freely exercise its faith and increasing control by the Vietnamese government over Khmer religious institutions and temples (which complements the informant network made of monks who monitor and inform about the activities of the Khmer-Krom²⁵).

More specifically, the system of permissions strengthened by the Law on Belief and Religion passed in 2016 imposes severe limitations for members of this community to exchange information with the diaspora either by travelling or through overseas-based media. Together with that, the need to obtain special permission from the PUBA in order to perform any kind

¹⁸ Final Constitution of the Republic of Vietnam Adopted by the National Assembly 28 November 2013.

¹⁹ Prior to the approval of this Law on Belief and Religion, the legal framework on the issue of freedom of religion in Vietnam was based on the Ordinance on Belief and Religion of 2004, and its implementing Decree 92 of 2013.

²⁰ UNPO Submission to the UN Office of the High Commissioner for Human Rights for the consideration of the 2nd Universal Periodic Review of the Socialist Republic of Vietnam (2014); Khmers Kampuchea-Krom Federation, Report to the UN Office of the High Commissioner for Human Rights Universal Periodic Review: Socialist Republic of Vietnam 18th Session (2014); UNPO Submission to the UN Office of the High Commissioner for Human Rights for the consideration of the 2nd Mid-term Universal Periodic Review of the Socialist Republic of Vietnam (2016).

²¹ “State of the World’s Minorities and Indigenous Peoples 2016”, Minority Rights Group, pg. 154.

²² “USCIRF Annual Report 2018 - Tier 1: USCIRF-recommended Countries of Particular Concern (CPC) – Vietnam”, United States Commission on International Religious Freedom, 2018.

²³ ‘2016 Report on International Religious Freedom – Vietnam’, (Section II. Status of Government Respect for Religious Freedom: Legal Framework), US State Department (USSD-IRF), 2017.

²⁴ Both of them entities with strong links to the committee of the Vietnamese Communist Party.

²⁵ “Khmer Krom: Human Rights Violations Facing the Indigenous People”, UNPO Report, June 2018

of ritual or to be ordained as a monk represents an enormous limitation to the capacity of the Khmer-Krom community to autonomously exercise its faith²⁶.

c. Judicial Rights

Recommendations 127 to 135, among others:

Take the necessary measures to guarantee its citizens' right to equality before the law, to be presumed innocent until proven guilty, and to a fair and public trial, as well as the right to freedom from arbitrary arrest or detention (Canada)

Guarantee the right of all persons to a fair trial and, in particular, allow for the presence without restriction of observers at court hearings (Luxembourg)

The adequate recognition of judicial rights and the articulation of a judicial system that fully complies with international human rights standards and ensures the configuration of an independent judiciary, the respect of the rule of law and the guarantee of a separation of powers remains an issue to be addressed by the Vietnamese government.

Following the recommendations issued in 2014 by the Working Group on the Universal Periodic Review for Viet Nam on this matter, accepted by Vietnam, the Vietnamese government opted for undertaking a judicial reform aiming to “*raise the living standards of its people, build a Rule of Law State, promote social justice and further ensure fundamental freedoms of the people*” by accelerating “*the development and improvement of its legislation to establish a solid legal basis for the respect, protection and promotion of all human rights*”²⁷. In order to achieve that result, between 2015 and 2016 “*the National Assembly adopted a number of important laws related to human rights such as (...) [a new] Criminal Code, [an] amended Criminal Procedural Code [and a] Law on the implementation of custody and temporary detention*”²⁸. The entrance into force of these laws was postponed due to technical reasons until 2018.

Even though these laws are expected to make some advancement towards the configuration of an independent judiciary²⁹, the new regulation also maintains and strengthens the possibility of establishing limitations to human rights and civil liberties under reasons of “*national defence, national security, social order and safety, social morality and community wellbeing*”³⁰, reproducing legal mechanisms used under previous laws to justify repressions exercised against political dissidence and religious minorities. Furthermore, the new Criminal Code still includes the crimes of *undermining the unity policy or propaganda against the Socialist Republic of Viet Nam*, punishing activities consisting in “*making, storing, disseminating information, document and materials against the Socialist Republic of Viet Nam*”³¹.

In spite of these legal reforms, whose real effect and capacity to achieve their goals are still unclear due to the short time since their entering into force, the country continues to be the witness of severe violations of legal and procedural rights: arbitrary detentions affecting human rights activists and representatives of minorities, often based on national security-related legal

²⁶ “Khmer Krom: Human Rights Violations Facing the Indigenous People”, UNPO Report, June 2018

²⁷ “New developments in national legislation on human rights and updates on the implementation of 2nd UPR Cycle recommendations accepted by Viet Nam”, Viet Nam mission to the UN Human Rights Council, 2017.

²⁸ “New developments in national legislation on human rights and updates on the implementation of 2nd UPR Cycle recommendations accepted by Viet Nam”, Viet Nam mission to the UN Human Rights Council, 2017.

²⁹ The new legislation aims at restricting the application of imprisonment penalties and increasing the protection offered to vulnerable groups by the judicial system. Together with that, the new Procedural Code revises and adds some basic principles of criminal procedures such as presumption of innocence, *non bis in idem* and adversarial process during the trial while specifying the functions and powers of procedure-conducting bodies, delimiting the competences of judicial and administrative authorities or restricting the application of measures limiting human and citizen rights, among other things.

³⁰ “New developments in national legislation on human rights and updates on the implementation of 2nd UPR Cycle recommendations accepted by Viet Nam”, Viet Nam mission to the UN Human Rights Council, 2017, pg. 4.

³¹ “New developments in national legislation on human rights and updates on the implementation of 2nd UPR Cycle recommendations accepted by Viet Nam”, Viet Nam mission to the UN Human Rights Council, 2017, pg. 5.

provisions, remain an issue in the country^{32 33}; the right to a fair trial, as well as the access to legal counsel and the respect of the presumption of innocence, are regularly ignored^{34 35}; the resort to torture and other degrading treatment is frequent against detainees, who are also subject to deprivations constituting violation of basic human rights while being in detainment^{36 37}.

All this questions the capability of the recently passed legal reforms to overturn the current context of systematic violation of legal rights affecting activists, political dissidents and members of minorities based on the structural deficiencies of the Vietnamese State rather than on the lack of formal recognition of these rights.

3. Conclusions

The information previously analysed shows that the Socialist Republic of Vietnam has failed to implement the recommendations issued by the 2014 UPR working group, despite the efforts of the Vietnamese government to prove the opposite: indigenous groups remain to be recognized by the State, whose incapacity to design and implement adequate policies aiming to guarantee the respect of ethnic communities in the country translates into a restriction of rights and an impossibility to ensure these groups' socio-economic development; limitations imposed on freedom of religion will be exacerbated by the new regulation passed in 2016, with religious minorities being especially vulnerable to the tightening of the governmental control system derived from this legislation; finally, the restriction of fundamental legal and procedural rights continue to be a reality in Viet Nam, something which the formal reforms introduced by the

³² Only in 2017 at least 29 people were subject to arbitrary detention, including human rights lawyer Nguyễn Văn Đài, Lê Thu Hà and other activists accused of undertaking activities aiming to overthrow the government and conducting propaganda against the State (Annual Report 2017/2018 – Viet Nam, Amnesty International)

³³ “On July 30, former political prisoner and democracy activist Pham Van Troi was arrested, reportedly based on his connections to the group Brotherhood for Democracy; he remained in pretrial detention. On May 15, authorities arrested labor rights activist Hoang Duc Binh for “abusing democratic freedoms” after posting online content about the government’s response to the Formosa spill that significantly affected workers. He remained in pretrial detention” (Country Reports on Human Rights Practices for 2017 United States Department of State, Bureau of Democracy, Human Rights and Labor).

³⁴ Viet Nam’s Judiciary is considered to be “subservient to the Communist Party of Viet Nam, which controls the courts at all levels”. Even if the constitutional right to legal counsel is formally recognised, the limited number of lawyers and their reluctance to work on sensitive cases for fear to State retribution imposes severe limitations to this right in practice. Furthermore, the Vietnamese legal system constrains the possibility of defense lawyers to assist their clients, who can remain in detainment as suspects for up to 20 months without being allowed to have contact with a lawyer in cases of national security (Freedom in the World 2017 – Viet Nam Profile, Freedom House).

³⁵ According to the 2017 US Country Report on Viet Nam, “the law provides for an independent judiciary and lay assessors, but the judiciary was vulnerable to influence by outside elements, such as senior government officials and CPV leadership. During the year there were credible reports that political influence, endemic corruption, and inefficiency strongly distorted the judicial system. Most, if not all, judges were members of the CPV and underwent screening by the CPV and local officials during their selection process to determine their suitability for the bench. The party’s influence was particularly notable in high-profile cases and other instances in which authorities charged a person with challenging or harming the party or state. Defense lawyers routinely complained that in many of their cases, it appeared judges made a determination of guilt concerning the accused prior to conducting the trial. There continued to be credible reports that authorities pressured defense lawyers not to take religious or democracy activists as clients and questioned their motivations for so doing. Authorities also restricted, harassed, arrested, disbarred, and, in some cases, detained human rights attorneys who represented political activists” (Country Reports on Human Rights Practices for 2017 United States Department of State, Bureau of Democracy, Human Rights and Labor)

³⁶ Torture and cruel, inhuman or degrading treatment or punishment continue to be a reality in Viet Nam, where activists often suffer these kind of practices by the hand of Security Forces. In this regard, the Vietnamese government admitted to have important challenges and difficulties to comply with the obligations derived from the UN Convention Against Torture -ratified by the country in 2014- due to, among other reasons, its incomplete human rights legislation. It is frequent for prisoners of conscience to be isolated during the pretrial period -which can last up to 2 years-, while the denial of medical treatment is often used as a punishment -such as in the cases of activist Đinh Nguyễn Kha or hòa hảo buddhist activist Trần Thị Thúy (Annual Report 2017/2018 – Viet Nam, Amnesty International)

³⁷ “The law prohibits physical abuse of detainees, but suspects commonly reported mistreatment and torture by police, plainclothes security officials, and compulsory drug-detention center personnel during arrest, interrogation, and detention (...) Prison conditions were austere and occasionally life threatening. Insufficient diet and unclean food, overcrowding, lack of access to potable water, and poor sanitation remained serious problems. According to Amnesty International and former prisoners of conscience, prison authorities singled out political prisoners and ethnic minority prisoners, particularly in the Central Highlands and other sensitive ethnic minority regions, for physical abuse, solitary confinement, denial of medical treatment, and punitive prison transfers” (Country Reports on Human Rights Practices for 2017 United States Department of State, Bureau of Democracy, Human Rights and Labor)

new criminal legislation will be unable to change unless they are complemented with a structural reform touching upon the main elements of the Vietnamese State.

4. Recommendations

In the light of all the aforementioned, UNPO urges the Vietnamese authorities:

- *to ratify Convention 169 of the International Labor Organization on Indigenous and Tribal Peoples, and to implement the content of United Nations Declaration on the Rights of Indigenous Peoples of 2007;*
- *to acknowledge the indigenous status of the Khmer-Krom people;*
- *to allow Khmer-Krom children to freely study their native language in public schools starting from kindergarten, and to particularly improve the access to education for Khmer-Krom girls and women;*
- *to recognise the Khmer language as an official language in Kampuchea-Krom;*
- *to ensure the protection of freedom of religion, expression and association in compliance with the corresponding ICCPR rights; in particular, to repeal or amend the 2016 Law on Belief and Religion;*
- *to allow the free formation of religious, social and professional associations outside the control of the Vietnamese Fatherland Front;*
- *to implement the necessary reforms to ensure the respect of the right to a fair public trial and to guarantee that torture, arbitrary deprivation of life or detention, or violations of human rights derived from poor detention conditions are not suffered by the Vietnamese people.*