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Submission by Vietnam Coalition Against Torture (VN-CAT)



A. INTRODUCTION

1. Vietnam-Coalition Against Torture (VN-CAT) 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.
2. This submission seeks to draw attention to the following concerns:
 - The epidemic of impunity pertaining questionably high number of death in police custody;
 - The widespread violations of CAT against prisoners, detainees, human rights activists and even ordinary citizens;
 - The multiple layers of cruel punishments toward prisoners of conscience for the same conviction.

B. LEGAL FRAMEWORK PERTAINING CONVENTION AGAINST TORTURE (CAT)

- The Socialist Republic of Viet Nam signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 7th November 2013. Its National Assembly ratified CAT on 28th November 2014. On March 17th, 2015 the Prime Minister issued the Action Plan on the implementation of CAT via document 364/QĐ-TTG. On April 24th, 2015 the Minister of Public Security issued similar order via document 2139/QĐ-BCA-V19. The Supreme People's Procuracy introduced its program 384/QĐ-VKSNDTC on June 18th, 2015 and the Ministry of Justice also issued its version 1686/QĐ-BTP on September 21st, 2015.
- Article 19 and 20 of the Constitution of Vietnam (version 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 harms to body, health, honor and dignity.

- The Criminal Code (version 2015) 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);

C. VIOLATIONS

Despite the obligations as a member state of CAT and a wide range of Orders and Decisions of the country's leadership on the implementation of CAT, the situation of torture in Vietnam is widespread and systematic. While the legal framework contains articles guarantee protection against violence, torture, inhuman or degrading treatment, cover-up and impunity are prevalent at all levels of government. The Vietnamese citizens are being mistreated and tortured in increasing number and to a more severe extent by both state actors and non-state actors operating under the directions of government officials. To evade criticism by the international community, in many cases the authorities employed more discreet and sophisticated tactics to inflict harms to the victims without leaving evidence. In most cases of fatality while in police custody significant police force was deployed to block media access and to threaten the victims and their families to keep silent.

In this report, VN-CAT describes only three of the methods of sophisticated torture that the Vietnamese government is applying, causing serious consequences for the victims. There are many other forms of torture but we are not able to address in detail within the limit in length of this report.

1. *The number of death in police custody continue to be a matter of grave concern and showing no sign of decreasing.*

While Vietnam's legal framework stipulates protection of human life and prohibit acts of torture and, according to Vietnam's Initial Report on the implementation of CAT submitted in December 2017 ¹, several programs and training workshops related to CAT were organized at both central and provincial levels, torture, police brutality, and deaths while in police custody are still prevalent in Vietnam. Due to the strict restriction on information, very few cases were reported by state media accounts much less independently and impartially investigated. In March 2015, at a meeting with the Standing Committee of the National Assembly several lawmakers and members of the Assembly's judicial committee

¹ Vietnam's report CAT/C/VNM/1, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT/C/VNM/1&Lang=en

raised doubt about the reliability of a report by the Ministry of Public Security which put the number of deaths in police custody for the 3-year period (from October 2011 to September 2014) at 226 cases but concluded the main causes of death were illness and suicides.² While the Ministry of Public Security insisted that suicide was the major cause of death, the situation around many cases makes suicide almost impossible. For example, several of the deceased were said to have hung themselves using unusual items such as shirt, pants, drawstring from their pants, belt, and even shoelaces.

On 22nd September 2010, a report by Human Rights Watch documented 19 cases of police brutalities resulting in 15 deaths in 12 months.³

Research by VN-CAT, based on information published on state-controlled online media outlets, tallies 124 cases for the period from 2010 to 2017. Those include 8 cases of torture and police brutality and 116 fatalities. The number of alleged suicides accounted for 44% of all deaths. Of those 51 suicide cases, 43 were reported as hanging. 11 died from unknown cause, 17 from illness, 20 from serious injuries sustained while in police custody such as traumatic brain injury, collapsed lungs, fractured skull, broken jaw bones and punctured intestine, etc. Notably, under the leadership of Colonel Pham Van Ngan, the Deputy Chief of Vinh Long provincial police and the Head of Police Investigation, 5 cases of deaths in police custody were reported but 1 was said to be an accident and 4 were ruled suicide (3 by hanging and one by cutting his own throat with a small knife used to open the seals on police evidence). In one case, the name of the victim has not even been disclosed to the public.

In most incidents, police forces were quick to suppress the information and threaten the victim and/or their families into silence with criminal charges such as “disturbing public order” or “resisting public servants performing their official duty”, or even the serious charge of “activities opposing the State” such as the case of Hoa Hao Buddhist Nguyen Huu Tan, who died within 10 hours after being taken into police custody from a cut across his throat that severed the windpipe and exposed his neckbone. Concerned about the safety of the victim’s family, four Special Rapporteurs and the Chair of the Working Group on Arbitrary Detention sent a communication to the Vietnamese government about his case.⁴ Very few cases were reported in state-controlled media. None of the cases that were prosecuted resulted in appropriate level of punishments as stipulated in the Criminal Code. It is often the case that the perpetrators were simply reprimanded, demoted, or transferred to another position.

2. *Unlawful, widespread arrest and escalated violence.*

The forces who conducted the brutal suppression include not only the arm forces and uniformed police but also plainclothes agents and even large number of ordinary people

² Doubts linger as Vietnam reports causes of 226 deaths in custody, <http://www.thanhniennews.com/politics/doubts-linger-as-vietnam-reports-causes-of-226-deaths-in-custody-40112.html>

³ Vietnam: Widespread Police Brutality, Deaths in Custody, <https://www.hrw.org/news/2010/09/22/vietnam-widespread-police-brutality-deaths-custody>

⁴ UN Communication to Vietnam – Ref UA VNM 5/2017, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23245>

with close ties with the government who fiercely carried out the attacks without any fear of prosecution. In the first two weeks of June 2018, in order to suppress the protests by ordinary citizens requesting the National Assembly reconsider two legislations being introduced for a floor vote, the authorities arrested about a thousand demonstrators. Most arrests occurred in Hochiminh City, Hanoi, and Binh Thuan province. The enforcers swiftly and violently arrested anyone under suspicion of having the intention to join the rallies. Some bystanders and tourists got arrested in the chaos. Most of the detainees were severely beaten on the street, dragged into police vehicles, and beaten again multiple times while being transported and at police station or make-shift detention center. During interrogation, the victims were robbed of their money and personal property by the police. They were verbally insulted, viciously beaten, and even endured dead threats. A number of women reported being humiliated by having their clothes stripped off while being videotaped by the police. Several demonstrators were detained for 24 hours up to 10 days without any arrest warrant or legal document justifying legal basis for the arrest and detention. There are at least 2 female victims still being unlawfully detained until the time of this report, which is a month after their arrests, without contact with families or access to legal defense. About 150 people were served with prosecution orders on the fabricated charge of “disturbing public order”. Examples of some victims suffered 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 Mr. Trinh Van Toan in Hochiminh City who was viciously beaten several times during his interrogation that he suffered from brain hemorrhage. Two weeks after the incident, he was still hospitalized. Other victims who were beaten brutally are Hoai Diem, Nguyen Thi Mai, Pham Thi Thanh Truc, also in Hochiminh City. Those who were released continue to be closely monitored and threatened by the authorities. Some were forced to remove information they shared on social media about their unlawful detention, ill-treatments, and torture.

It is increasingly common for unidentified individuals or local mobs to commit harassment, verbal abuses, physical attacks, dead threats, and other acts of terrorization without any consequences. Radical groups such as the Red Flags Association frequently gather in large number and attack Catholic priests and parishioners in Vietnam while local police keep watch. They are, therefore, believed to be sponsored by the state.⁵

On June 22nd, 2018 a group of unidentified men in Duc Trong district, Lam Dong province, burst into the house of Dignitary Hua Phi, a religious freedom advocate and the Co-chair of the Interfaith Council of Vietnam, a religious organization not recognized by the Vietnamese government. They covered his head with a sack and beat him so brutally that he became unconscious. Mr. Hua Phi suffered from hemorrhage of the urinary tract and gastrointestinal tract, which required hospitalization and surgery. The attackers also humiliated him by cut off his long beard, a common tradition of his religion. Until the time of this report, the local police has not taken any action to investigate the serious assault.

⁵ Red Flag Associations: An emerging threat to Catholic communities in Vietnam, <http://dvov.org/wp-content/uploads/2018/03/BPSOS-Report-on-Red-Flag-Associations-03-27-18.pdf>

For a ten-day period, beginning on June 24th, 2018 the house of labor rights activist, founder of Viet Labor Movement, an organization advocating for workers' rights, were attacked at least 4 times by unidentified assailants. At first around a dozen men began throwing rocks at her family home. Two days later, the attack escalated badly 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 and rocks and unknown chemical was thrown at her house, breaking glass and roof tiles and damaged furniture. During this ten-day period, Ms. Hanh tried to call the police for help several times to no avail. Police failures to respond and protect Hanh are perceived as possible government sanction of the assaults.

3. *Prisoners of conscience are being punished in multiple different aspects for the same conviction.*

Statistics show that Vietnam has about 50 prison camps and 65 detention centers spread across provinces and regions. Non-political, non-religious prisoners are typically held at the prison closest to where they committed the offense or where they were residing prior to committing the offense. In contrast, prisoners of conscience in Vietnam are always sent to prison camps far away from their residence. Prisoners from the South are sent to the North and prisoners from the North are detained in the South. This causes severe suffering in many aspects: physically, emotionally, and financially, for the prisoners of conscience and their relatives due to difficult travelling, prolonged separation, and challenging adaptation to the local climate. This type of treatment and the serious affects it inflicts on the prisoners constitutes torture. The following prisoners are some of the many victims of this type of inhuman treatment: Tran Thi Thuy Nga, Nguyen Ngoc Nhu Quynh, Nguyen Bac Truyen, Truong Minh Duc ... Mr. Nguyen Bac Truyen, who is being held a thousand miles (1600 km) away from his home in Saigon, has filed the request with the authorities to have him transferred to a prison closer to where his family lives but so far the government of Vietnam has not responded to this legitimate petition.

In addition, prisoners of conscience are often put in solitary confinement, which can also cause mental breakdown. Furthermore, prison guards and officials can discipline prisoners of conscience on ground of bogus accusations and prohibit them to make phone calls to family or receive visits. It is often the case that the families are not notified when the prisoners of conscience are transferred to another prison camp. Denial of medical care is another cruel tactic employed to pressure prisoners of conscience to confess their alleged guilt and to punish those who refuse to bend to pressure. Amnesty International twice issued Urgent Action appeals (in 2015 and 2017) for the case of Tran Thi Thuy, a Hoa Hao Buddhist and a land rights activist sentenced to eight years' imprisonment and 5 years' house arrest for alleged "activities aimed at overthrowing the people's administration" ⁶. Mrs. Thuy was diagnosed with a tumor on her uterus, but she was denied medical treatment. A prison officer told her to admit her crimes or "die in prison". The intentional infliction of physical, mental and emotional suffer is in violation of CAT. Furthermore, Article 31 of the Constitution of Vietnam (version 2013) prohibits punish a person twice for the same offence.

⁶ Urgent Action: Growing health fears for prisoners of conscience,
<https://www.amnesty.org/download/Documents/ASA4157272017ENGLISH.pdf>

In our view, the above 3 methods fit the definition of the term “torture” as set forth in Article 1 of CAT. While the levels of torture and terrorization vary, they have the same common factor: the sense of complete powerlessness, defenselessness of the victim, which is completely in the torturer’s power (especially during detention). That causes incredible suffering and desperation and constitutes torture as explained by the UN Special Rapporteur on Torture, Professor Manfred Nowak at the International Workshop on CAT held in Hanoi on June 6th, 2014.

The Vietnamese authorities purposely inflict torture and cruelty on innocent citizens and seek to cover up evidence of violations of CAT. For example, the police always try to confiscate all mobile phones and recording devices of victims or bystanders at the scene of the arrest, abduction, or assaults. So, there is no proof can be found of the unlawful acts. They often deploy plainclothes agents to commit physical attacks or other violent acts. Thugs and mobs enticed by money or favors by the authorities often take part in the beating to avoid accusation of police brutality.

Article of CAT requires that each State Party shall ensure that all acts of torture are offences under its criminal law. However, up until the revision of the Criminal Code in 2015 and its amendment in 2017 the Vietnamese government still has not fulfil this requirement.

D. RECOMMENDATIONS

- It is not adequate that Vietnam has enacted a number of laws to meet international standard. It is more important for the country’s leadership to enforce broad application of the Constitution of Vietnam and the country’s legal framework and to allow its citizens to exercise their rights as protected by such rules.
- Vietnam should ensure that all acts of torture are defined as offences under its criminal laws. Impunity must be ended. The appropriate authorities should order prompt, independent, and impartial investigation of violations and ensure that the perpetrators are prosecuted and punished to the full extent of the law. Government officials at local, provincial, and national levels should publicly and strongly condemn violations of human rights, particularly of CAT, and make clear such acts are illegal under Vietnam’s laws and will not be tolerated.
- Vietnam must hold accountable any government official or non-state actor who violates the rights of other citizens. Vietnam should strengthen the judicial mechanism responsible for investigating and resolving complaints and denunciations by citizens to ensure fair and speedy resolution without retribution to the victims.