



## Submission to the Universal Periodic Review of the Socialist Republic of Vietnam

### Boat People SOS (BPSOS)

Website: <http://bpsos.org>

#### Methodology and consultation process

1. Founded in 1980, Boat People SOS is a US-based organization with operations in 11 locations in the US and 3 locations in Asia. As part of our refugee protection work, we have since 1990 monitored country conditions in Vietnam.
2. We will focus on recommendations to the Socialist Republic of Vietnam (SRV) relating to the Convention Against Torture (CAT): “Accede to CAT in a timely manner (Australia) (Sweden) (Nigeria); consider acceding to CAT (Algeria); consider ratifying CAT (Chile).”
3. Our submission is based primarily on detailed interviews that we conducted with 54 former political and religious prisoners from Vietnam. We found that all of them had been subjected to torture – the deliberate infliction of severe mental and physical pain and suffering – by police or prison officials during their interrogation in pre-trial detention. Most of these interviews were conducted through our legal team, which operates in Bangkok, Thailand.

#### Developments since 2009 UPR

4. The Vietnamese government’s practice of torture in “re-education” camps has been well documented and reported by research institutions such as the Harvard Program in Refugee Trauma. As most re-education camps were closed in the 1990’s, we observed fewer reports of torture. However, since early 2007 the incidents of torture have increased -- a trend that continues to this day.
5. The practice of torture by police and security forces in Vietnam not only is pervasive, but is a systematic and intrinsic part of the investigation and interrogation phase of detention. It is used to force the detainee to sign a confession or provide information, to punish the detainee, or to intimidate the detainee from engaging in future acts of peaceful dissent or independent religious activity. In a disturbing number of cases, the torture and abuse is so severe that victims die in custody or shortly after their early release from custody. The latest such incident involved Hmong Deacon Hoang Van Ngai of the Bui Tre Protestant Church in Dak Nong, Vietnam. He was tortured to death at the police station on March 17, 2013.

#### Systematic Torture in Pre-Trial Detention Centers

6. Detainees in Vietnam — common criminal suspects as well as political and religious detainees — are regularly subjected to torture. Political and religious detainees are routinely denied access to legal counsel and family visits and subjected to prolonged solitary confinement during the initial investigatory phase of their detention, which lasts from several weeks to more than one year. International human rights experts have found that incommunicado detention and prolonged solitary confinement not only facilitate and perpetuate the practice of torture of detainees, but in themselves can be forms of torture.

#### Methods of Torture

7. During interrogation sessions, which can take place at any time of day or night, detainees are subjected to a number of different types of torture by police and prison officials. They are beaten with truncheons 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.

8. Detainees describe being hung up by their handcuffed wrists to the ceiling or upper ledge of a window while being beaten with batons or shocked with electric rods. One man was forced to crawl on their knees on rough gravel with a piece of prickly fruit on their back, while balancing a piece of wood on their upraised arms. A woman was burned by a piece of heated metal placed against her leg, leaving a three-inch scar.
9. Many are forced to maintain uncomfortable positions, such as sitting, squatting, lying down or standing 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 setting two legs of a chair on the detainee's foot and then sitting on the chair while interrogating the detainee.

### **Harsh Detention Conditions**

10. The majority of the former prisoners we interviewed were held in isolation cells during the initial investigatory part of their detention. Many spend this period of solitary confinement in complete darkness, while others become sleep deprived because the lights are never turned off.
11. Detainees in isolation are not provided bedding, blankets or mosquito nets but must sleep on the concrete floors of the cells which are freezing in winter and baking hot in summer. Some are shackled with leg irons fastened to a steel bar 24 hours a day for months at a time; others are shackled just at night. During this time, most detainees remain in the clothes in which they were arrested, or are stripped down to their underwear. A squat toilet or a bucket in the cell serves as a toilet. For most, the only time they leave these cells during the investigation period is when guards take them out for interrogation. This can happen at any time of day or night. Medical care is rarely provided.
12. After the initial investigation period, the prisoner is usually moved out of solitary confinement and transferred to a group cell together with common criminals.<sup>1</sup> Conditions in group cells are overcrowded, filthy, and airless, and not much better than in solitary. Conditions routinely fail to meet even minimum international standards in regard to cell size, lighting, heating, sanitation, medical care, ventilation, and contact with the outside world.
13. After detainees are convicted under laws and in closed trials that violate international human rights standards, they are then sent to remote prisons, often far from their families, where they are forced to conduct backbreaking and sometimes hazardous jobs. Through interviews with asylum seekers in Thailand we have discovered that many individuals imprisoned because of their political opinions or because of their faith have been subjected to forced labor. One Montagnard, jailed from 2002 through 2009, had to process cashews for 7 years. His hands were eaten by the acid from the cashew nuts because he was not allowed to use gloves. Another Montagnard jailed from 2005 to 2009 at Dai Binh Prison in Lam Dong described prisoners being divided into production teams (cashew production, farming, vegetation, packaging fish for exporting). Those failing to meet quota were beaten with a whip and kicked. A Vietnamese dissident sentenced to 2.5 years in prison for promoting democracy over the internet reported having to break cashew shells during his incarceration at the Z 30A Xuan Loc prison, at 22 kilograms per day. Human rights lawyer Nguyen Van Dai, a former prisoner of conscience, also reported the widespread use of forced labor in prison to manufacture products that were then exported to Western countries.

### **Victims of Torture in Vietnam**

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<sup>1</sup> While a political prisoner may be mixed with common criminals at this point, often there is not more than one political prisoner per cell and most are not allowed to mix with other political prisoners until after trial.

14. The victims of torture in detention include people abducted, arrested or detained for peacefully exercising their basic rights to peaceful expression, association, assembly, and religious belief. Among them are non-violent activists who have been arrested and detained for:
- using the Internet to criticize the government,
  - distributing leaflets or hanging banners calling for democratic reforms or human rights,
  - launching independent labor unions, newspapers, political parties, or human rights organizations;
  - participating in independent religious groups that are banned by the government;
  - conducting peaceful protests calling for land rights, better pay and working conditions, or religious freedom; or
  - attempting to seek protection and political asylum abroad.
15. Relating to the last category, we have documented about a dozen Vietnamese asylum seekers whose claims for refugee protection were rejected by the Office of the UN High Commissioner for Refugees in Thailand. They were told by the UNHCR that they could safely return to Vietnam. However, upon return they were arrested, detained and tortured. Five of these returnees subsequently made it back to Thailand.
16. We estimate that more than 600 people are currently imprisoned in Vietnam for peaceful expression of their political and religious views.<sup>2</sup> They are dissenting intellectuals, human rights defenders, land right advocates, labor union organizers, environmental justice activists, leaders of indigenous peoples, bloggers, journalists, college students, and religious leaders.

### **Lack of Due Process and Legal Safeguards**

17. 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 political and religious prisoners in Vietnam. In addition, detainees are rarely brought before a judge until the day of their trial, denying them the right to challenge the unlawfulness of their detention or their treatment, including torture, in custody.
18. The lack of due process and access to legal representation, along with incommunicado detention, perpetuates the practice of torture of suspects during interrogation to obtain forced or fabricated confessions. Most political and religious detainees are not brought before a judge until the day of their trial, although they may be shown (but not given) court papers listing the charges against them. Trials of political and religious dissidents are usually closed to the public, foreign journalists, and sometimes even to family members.
19. Only one of the 54 former political and religious prisoners we interviewed had legal representation present during their interrogation, although this right is provided for in the ICCPR and Vietnam's criminal procedure code.<sup>3</sup>
20. One young activist told us she never saw a court official or a lawyer during her nine months detention at B34 Detention Center in Ho Chi Minh City. "The police chief said I wasn't allowed a lawyer," she said. "I was never taken to a court house, nor was I given any papers on release." The arrest and conviction of most religious and political prisoners is based on Vietnamese laws that criminalize a range of peaceful activities, many on the grounds that they violate or threaten national security, public order, and national unity.

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<sup>2</sup> This number is based on interviews with former prisoners and families of current prisoners, media reports in the official, state-controlled press in Vietnam and by foreign news agencies, and reports by the UN, foreign governments, NGOs, and independent human rights groups.

<sup>3</sup> Article 58 of the Criminal Procedure Code provides that defense counsels shall participate during each stage of criminal proceedings.

## **Lack of Independent Monitoring**

21. One of the most effective preventive measures against torture is regular and unannounced inspection of places of detention, according to the Special Rapporteur against Torture. The Vietnamese government does not allow UN experts or international human rights organizations to monitor and report on human rights violations in Vietnam, with prisons and political and religious detainees particularly off limits. Vietnamese citizens known to have provided information to human rights organizations or foreign media face detention and imprisonment themselves on national security charges of “spying”.
22. Vietnam’s prisons and detention centers operate as hermetically-sealed systems. Except for the occasional sanitized and orchestrated tour for donors, diplomats, and members of the Vietnamese state media, outsiders are not allowed to visit prisons and detention centers, and certainly not allowed to conduct confidential interviews with prisoners or document conditions and abuses that take place there. During the rare visits by UN human rights experts and foreign diplomats to Vietnamese prisons, Vietnamese authorities prevent them from freely and privately meeting with religious and political prisoners.
23. Vietnam’s judicial system similarly lacks transparency, with politically-sensitive trials routinely closed to the public and foreign media representatives, and official documents such as indictments, verdicts, and other judicial decisions often not made available to defendants or their legal representative.
24. A closed system invites abuses of the detainees. Prison authorities, guards, even inmates themselves, know they can carry out beatings and mistreatment of prisoners with impunity, out of view of journalists, diplomats, UN experts, and international rights monitors. In the same way, police and judicial officials know they can routinely violate due process and international fair trial standards if the public does not know about it.
25. 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. None of the 54 political and religious prisoners with whom we spoke to was able to successfully lodge complaints about their unlawful or arbitrary detention or their torture and mistreatment in custody. To the contrary, those who did raise complaints or asked for legal representation were often harshly disciplined.

## **Key Recommendations**

26. To address the widespread practices of torture documented in this report, we urge the Vietnamese government to end the arbitrary arrest and incommunicado detention of people who peacefully exercise their rights to freedom of expression, association, assembly, and religious belief.
27. The government should immediately and unconditionally release all persons arbitrarily detained for peaceful expression of their political and religious views. The government should also publish the names, locations, and charges against all people held in detention.
28. The government should ensure that all detained suspects and prisoners are treated in accordance with international human rights standards. Detainees should have prompt access to a lawyer of their choice, be promptly brought before a court, and not be subject to torture and other forms of cruel, inhuman, and degrading treatment.
29. Specifically, to prevent torture and other abuses of people held in pre-trial detention, the government should ensure that the following safeguards are carried out:
  - End the routine practice of holding prisoners and detainees for prolonged periods in incommunicado detention and solitary confinement.
  - Ensure the right of detainees to have family members or a third party informed of their whereabouts following their arrest. Permit detainees to make contact with their families promptly after arrest and enforce mandatory, prompt notification by police of relatives of detainees.

- Ensure the right of all detainees to immediate and continuing legal assistance after arrest, including the right to have a lawyer present during interrogation.
  - Ensure that detainees undergo a routine medical examination upon arrival at a detention facility.
  - Restrict the length of interrogation sessions and provide adequate periods for rest and refreshment, and provide medical examination before and after interrogation.
  - Maintain detailed recording of all relevant facts concerning interrogation (including the length and times of sessions, names of interrogators and guards, the results of medical examinations, etc.)
  - Require that all arrested persons are brought before a magistrate or judge within 24 hours to ascertain the legal basis for the arrest and whether pre-trial detention is genuinely necessary; maintaining the person in custody thereafter only under order and supervision of the court.
  - Provide unhindered access to all detention facilities by independent bodies, UN monitors, and the International Committee of the Red Cross so that they can conduct regular and unannounced monitoring visits.
  - Provide adequate remedies for detainees to bring complaints of illegal detention or ill-treatment before the court without delay.
30. We urge Vietnam to demonstrate its commitment to legal reform by bringing its Penal Code and other laws into compliance with international standards, vigorously supporting rule of law and ensuring due process in the courtroom. In particular, Vietnam should repeal articles in the penal code relative to “national security” offenses that criminalize the exercise of civil and political rights on the grounds that they violate or threaten national security, public order, and national unity.<sup>4</sup>
31. We call on the Vietnamese government to follow through on its pledge to ratify and adhere to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment. The government should also ratify the Optional Protocol to the Convention against Torture. It should establish an independent domestic prison inspection mechanism that meets the requirements set out in the Optional Protocol.
32. We also urge the government to fully apply international standards on the treatment of prisoners and conditions of detention, in particular by enacting into legislation and adhering to the U.N. Standard Minimum Rules for the Treatment of Prisoners.
33. Finally, we call on the Vietnamese government to publicly and unreservedly condemn any use of torture and other ill-treatment of detainees. It should make clear to all law enforcement officials that these practices are unlawful, they will not be tolerated, and those who use them will be subject to criminal sanctions. It should stipulate that an order from a superior may not be invoked to justify torture and make inadmissible in legal proceedings evidence that is gathered through the use of torture. Authorities should promptly respond to reports of torture and deaths in custody by conducting prompt, thorough and impartial investigations and holding legally accountable all those responsible.
34. The UN High Commissioner for Refugees and countries assessing the claims of asylum seekers from Vietnam should take into consideration the fact that those returned to Vietnam face the serious risk of being arrested, detained, and tortured. In compiling country information regarding torture in custody, consideration should be given not only to widespread acts of torture perpetrated by prison officials, but also to the harsh and degrading conditions of detention in Vietnam, including placement in solitary confinement and incommunicado detention, which may amount to torture or cruel, inhuman or degrading treatment or punishment.

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<sup>4</sup> In accordance with the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Vietnam should decriminalize peaceful promotion of human rights, and democratic and constitutional reforms—including peaceful advocacy for a multi-party system or, in ethnic minority areas, peaceful advocacy for management of their own religious organizations, greater self-rule, or even formation of an independent state. As forms of political discussion, these topics are strongly protected forms of speech under freedom of expression.