

**INFORMATION SUBMISSION TO THE UNITED NATIONS’ COMMITTEE AGAINST TORTURE FOR THEIR 65th SESSION (14 NOVEMBER 2018) REVIEW OF THE INITIAL COMPLIANCE REPORT OF THE GOVERNMENT OF VIET NAM UNDER THE INTERNATIONAL CONVENTION AGAINST TORTURE**

**SUBMITTED BY THE COUNCIL OF INDIGENOUS PEOPLES IN TODAY’S VIET NAM ON BEHALF OF A WORKING GROUP REPRESENTING THE MONTAGNARD, CHAM, KHMER KROM AND OTHER NATIVE POPULATIONS OF VIET NAM**

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**I. OVERVIEW: GENERAL BACKGROUND**

On 24 August 2018, a United Nations Independent Fact Finding Mission established by the Human Rights Council to investigate the situation of harsh repression of the Rohingya ethnic and religious minority and other ethnic and minority groups in Burma (Myanmar), issued a report finding widespread evidence of an ongoing pattern of discrimination and violence that evidenced an intent to commit genocide and other crimes against humanity. The report called for the United Nations, and the international community as a whole, to ”use all diplomatic, humanitarian and other means,” including referral of the case to the International Criminal Court, or establishing an ad hoc judicial mechanism, to hold accountable those military and government officials in Myanmar responsible for the intentional acts of genocide and the other international crimes directed against the Rohingya and other minority groups that are well documented in the report.

The indigenous peoples of Viet Nam, in the context of the United Nations’ Committee Against Torture’s initial review and assessment of the government of Viet Nam’s compliance with the provisions of the Convention Against Torture, wish to bring to the attention of the CAT Committee, and to the other human rights monitoring agencies of the U.N., including the Human Rights Council, the fact that very similar policies and practices amounting to the intentional infliction of torture and the practice of genocide currently are being carried out by the government of Viet Nam against its indigenous communities. We urge the UN Committee Against Torture, using the report and recommendations of the Fact Finding Mission on Myanmar as a model, take the following actions as part of its official review of the initial report of the government of Viet Nam under the Convention Against Torture, namely, to:

1. Give careful consideration to the well-documented torture policies and practices of the government of Viet Nam, including the systemic use of such practices as arbitrary arrests, long-term imprisonments, executions in custody, and forced abortions and other birth restrictions that have been specifically targeted against members of the Viet Nam indigenous communities, with the purpose of restricting the activities and eliminating the culture heritage and continued existence of Viet Nam’s native populations;

2. Take action to condemn the harsh policies and practices of the government of Viet Nam directed against its indigenous peoples, that constitute torture and amount to genocide;

3. Identify and hold accountable those officials of the government of Viet Nam who are responsible for these policies and practices of torture and genocide; and,

4. Work with the appropriate agencies of the United Nations, including the Human Rights Council, the Human Rights Committee, and the UN Office on the Prevention of Genocide, as well as with the international community more generally, to preserve and protect the native peoples and communities of Viet Nam from further acts of torture, genocide and repression that threaten their lives, and their ability to maintain their cultural identities and practices.

At the heart of the problem is that the government of Viet Nam sees the very nature of the continued existence of the indigenous communities as an inherent threat to the national government and its goal of achieving a fully integrated and unified nation without any elements that might be considered critical of its policies, or that might be viewed as undermining its authority and unity. Consequently, the government has been using increasingly harsh measures to repress and eliminate its native peoples and other groups that are considered potential sources of criticism or opposition. Since the indigenous communities are viewed as maintaining and practicing some type of independent identity, they are harshly repressed, and threatened with elimination. Even their identity and protected status as native peoples under the United Nations Declaration on the Rights of Indigenous Peoples, which Viet Nam voted in favor of when the Declaration was adopted by the UN General Assembly on 13 September 2007, are denied. Instead of acknowledging the existence of native peoples in their country, the government of Viet Nam refuses to recognize that native peoples subject to the protections set out in the UN Declaration live in its territory. Viet Nam treats its indigenous populations as merely “ethnic minority groups,” not covered by the protections of the UN Declaration on the Rights of Indigenous Peoples, and with fewer and much weaker rights under international law.

The first step in helping to protect the lives and cultural identity and existence of Viet Nam’s native peoples must be to require the government of Viet Nam to acknowledge their existence, and their protected status as indigenous groups under the Declaration on the Rights of Indigenous Peoples.

The second essential step that must be taken is that the CAT Committee must encourage the government of Viet Nam, at the CAT compliance review session on 14 November 2018, to acknowledge and recognize that the government’s policies and practices of torture against its native peoples and others who are viewed as challenging the primacy and political power of the government of Viet Nam are not, as the government claims on numerous occasions in its initial CAT compliance report, minor and infrequent actions of unauthorized officials acting outside of their official capacity. Viet Nam alleges in their initial report that no more than two dozen or so cases of torture took place over the previous three year period, and that all of these were rare, aberrant and unauthorized abuses by wayward law enforcement or prison officials. As Human Rights Watch and many other independent international observers have concluded and documented very extensively, nothing can be further from the truth. The extensive number and frequency of torture abuses carried out by government officials in their official capacities indicate very clearly and convincingly that the policies and practices of torture by the government of Viet Nam are in fact part of a deeply ingrained, comprehensive and systemic pattern and practice of torture applied by the government as a purposeful means of stifling dissent and criticism, and punishing any actions deemed to threaten the government’s power.

International observers have documented hundreds of cases of torture abuses being carried out by the government of Viet Nam every year, not just the handful of cases that the government cites in their initial compliance report. As Human Rights Watch noted in their recent 21 July 2018 submission to the UN Human Rights Council as part of the upcoming Universal Periodic Review session on Viet Nam scheduled for January of 2019, “the government of Viet Nam has shown little interest in improving its human rights record, … and continues to restrict basic freedoms of expression, association, assembly and religion” on a systemic basis. (Submission to the Universal Periodic Review of Vietnam, Summary, page 1, Human Rights Watch, July 23, 2018.) In particular, provisions of the Penal Code are cited, including Articles 109, 116 and 117, that are applied harshly and even more widely to critics of the government and members of the indigenous communities carrying out any actions deemed to “disrupt security,” or “undermine the unity” of the nation. (Id., Human Rights Watch at Summary, page 2.) Human Rights Watch notes that frequently, these laws are applied so that “those who are suspected of violating [them] … can be and are held in police custody without access to a lawyer as long as the authorities see fit,” often for two years or more. (Id., Summary, page 4.) As of June 2018, Human Rights Watch documents “at least 16 rights activists still held in police custody without trial,” including Nguyen Van Duc Do and Luu Van Vinh. (Ibid.) As both the Human Rights Committee and the Committee Against Torture have indicated, arbitrary, long-term detentions of this sort are deemed to fall under the definition of “torture” in international law.

In its Universal Periodic Review update on Viet Nam, Human Rights Watch also notes that the government of Viet Nam’s repressive policies fall particularly harshly on religious and ethnic groups, including Viet Nam’s native peoples. They note that “the government” engages in wide ranging practices to restrict religious and other minority groups, “through legislation, registration requirements, harassment, and surveillance” activities that are designed to treat minorities, by definition, as acting “contrary to the ‘national interest,’ ‘public order,’ or ‘national unity,’” in violation of the provisions of the Penal Code cited in the preceding paragraph. (Id., at page 8.) Arbitrary arrests, long-term imprisonments, and beatings and executions in detention, all of which fall under the definition of “torture” in international law, have been a key and all too frequent element of the government’s practices in this regard.

The government of Viet Nam must be forced to acknowledge the reality that they relentlessly carry out torture abuses as a systemic means of harsh repression and punishment of its critics and members of its indigenous and religious minority communities. The government also must be required to take specific actions to end these major abuses, with a particular focus on how this system of torture and repression is directed against the members of Viet Nam’s indigenous populations, as part of a policy to severely restrict the actions of, and reduce or eliminate, its native peoples.

**II. SUMMARY OF INFORMATION SUBMITTED -- ARE THE TORTURE PRACTICES OF THE GOVERNMENT OF VIET NAM MINOR AND ABERRANT INFRACTIONS OF A FEW UNAUTHORIZED OFFICIALS, OR PART OF A SYSTEMIC PATTERN AND PRACTICE OF HARSH REPRESSION AND ABUSE CARRIED OUT UNDER THE AUTHORITY OF THE GOVERNMENT ITSELF?**

In its Initial Compliance Report to the United Nations’ Committee Against Torture under the International Covent ion Against Torture (dated 13 September 2017, CAT/C/VNM/1) the government of Viet Nam claims that there have only been a few isolated and unauthorized instances of torture taking place in Viet Nam in the three to four year period covered by their report, starting around 2014, and that these aberrant abuses were the result of the actions of a few officials acting outside of their authority. In other words, to the extent that torture has taken place in Viet Nam, the government in its compliance report under CAT tries to assure the Committee Against Torture that these torture abuses are rare, and can be attributed to the unauthorized actions of a few “bad apple” officials. For example, on pages 44 and 45 of Viet Nam’s initial compliance report to CAT, the government alleges that “from 2011 to 2015, the Ministry of Public Security received [only] 24 cases …related to torture, …. [and] from 2010 to October, 2016, the Supreme People’s Procuracy [registered only] 82 [claims] of “corporal punishment” or other forms of physical duress. Similarly, on page 18 of Viet Nam’s initial compliance report to CAT, the government alleges that “from 2010 to 2015, People’s Courts had not handled any cases regarding” alleged improper duress, and only “10 cases with a total of 26 defendants who committed torture offenses” involving detainees in custody.

These efforts to minimalize and debunk the existence and practice of torture as a regular and systemic part of the government of Viet Nam’s policies and practices are not consistent with the factual record, compiled and extensively documented by numerous independent monitors and observers. These independent monitors have found that the government of Viet Nam has engaged in, and continues to engage in, an extensive and fully authorized pattern and practice of using torture abuses as an essential, inherent and ongoing part of its criminal justice and law enforcement systems, despite the many prohibitions against such practices in the national laws that the government of Viet Nam proudly cites in its initial compliance report to CAT. The sad reality is that torture, directed against anyone who criticizes the government, or acts in any way to challenge its authority and hegemony, is a regular, ongoing and very frequently used tool for preventing and punishing dissent and any form of perceived political activity contrary to the government’s authorized policies. This is widely reported and extensively documented reality challenges key elements of the claims of the government in its initial CAT compliance report that torture abuses are rare and the product of aberrant and unauthorized behavior.

In just the past six month period starting in April of 2018, Human Rights Watch published no less than four reports condemning the human rights practices of the government of Viet Nam, especially focused on widespread practices of arresting, detaining and torturing advocates who in the words of HRW did nothing but speak out peacefully in support of free expression rights of the Vietnamese people. Their “reward” was being viciously beaten and tortured, and charged with the criminal offense of “carrying out activities that aim to overthrow the people’s administration” under Article 79 of the penal code, when the only “crime” they committed was “to campaign tirelessly for democracy and defend victims of human rights abuses.” (Brad Adams, Asia Director of HRW.)

The compliance report submitted by the government of Viet Nam to the Committee Against Torture in September of 2017, not only fails to mention, acknowledge and address the hundreds of well-documented cases of unlawful and arbitrary detention and torture of human rights advocates that are referenced in the reports of Human Rights Watch and other independent monitoring groups, it has the audacity to claim that instances of torture are rare, and that they are carried out on isolated and unauthorized basis by individual officials acting in their own capacity on an unauthorized and aberrant behavior basis.

The minimalization of torture in Viet Nam that the government tries to convey in its report to CAT is false. In reality, arbitrary arrest, long-term detention and torture are part of a long-standing pattern and practice that is ingrained in the policies and procedures of the government of Viet Nam, aimed at intimidating human rights advocates, and members of the country’s indigenous communities, and preventing any form of criticism or opposition to the government and its policies. These torture abuses are carried out on an ongoing and regular basis, however peaceful the activities of the victims may be, and even when the forms of peaceful free association and expression that become the target of arbitrary detentions and torture are protected by international human rights standards embodied in human rights treaties that the government of Viet Nam has ratified.

As noted by the U.S. Department of State in the Viet Nam section of their 2017 Country Reports on Human Rights, “the most significant human rights issues” involving the government of Viet Nam included widespread and officially authorized practices involving: “arbitrary and unlawful deprivation of life; torture and cruel, inhuman, and degrading treatment; arbitrary arrest and detention of persons peacefully expressing dissent,” compounded by “systemic abuses in the legal system, including denial of access to an attorney, visits from family, and fair and expeditious trial” that made it impossible for detainees and those accused of crimes to receive due process and fair treatment from the courts and the law enforcement authorities. (Vietnam 2017 Human Rights Report, US Dept. of State Country Reports on Human Rights, Executive Summary, page 1.) The US State Department report goes on to make very specific and well documented findings that include “multiple reports indicating officials or other agents under the command of the Ministry of Public Security or [local] public security departments” carrying out numerous “arbitrary or unlawful killings” of those in custody, along with harassment and intimidation of family members of the deceased who had the temerity to raise questions about the questionable executions. (Ibid.)

A working group of high level United Nations human rights experts dealing with Viet Nam, led by Michel Forst, UN Special Rapporteur on Human Rights Defenders, and Jose Antonio Guevara Bermudez, Rapporteur and Chair of the UN Working Group on Arbitrary Detention, have made similar findings. On 12 April 2018 these UN experts came together to issue a warning that the “crackdown on civil society” by the government of Viet Nam aimed at stifling dissent had reached new and dangerous heights, after several new rounds of massive arrests by authorities of human rights defenders and activists for “conducting activities to overthrow the people’s government – a charge that carries the possibility of the death sentence or life imprisonment.” (“UN Human Rights Experts Urge Viet Nam Not to Stifle Dissenting Voices,” UN News, <https://news.un.org>.)

As another example of the systemic nature of the torture abuses carried out by the government of Viet Nam, the Montagnard Human Rights Organization, along with Amnesty International and Human Rights Watch, point out that “in 2001, 2004 and 2008,” the government conducted major campaigns to suppress and harass members of the Montagnard community. Large numbers of people were arrested for practicing their Christian religion, and for protesting the unlawful and uncompensated confiscation of their native lands and properties by government officials. (See, e.g., “Montagnard Christians in Vietnam: A Case Study in Religious Repression,” Human Rights Watch, July 16, 2016, and “Prisons Within Prisons” Amnesty International, June 2016, and “Minority Group’s Protest Met with Violence,” Amnesty International, July 22, 2016.) These actions were part of a pre-determined official government policy of repression, not the rare, random and aberrant actions of unauthorized officials.

Equally troubling, the torture committed against the indigenous peoples of Viet Nam has not been limited to traditional forms such as arbitrary arrest, long term imprisonment and physical abuse in custody. For many years, the government of Viet Nam has engaged in a determined policy and practice of killing and “disappearing” the members of native communities, with the specific intent of eliminating indigenous peoples in whole or in part, which is the very essence of the definition of “genocide” under international law. For example, the Montagnard Human Rights Organization estimates that between eighty thousand and two hundred thousand members of the Montagnards were executed at the end of the Viet Nam war in retribution for their support for U.S. forces during the military conflict with the U.S. Typical of the campaign of slaughter was the Dak Son massacre. Tribal lands were confiscated, and many indigenous peoples were forced to leave their tribal lands and seek asylum in other countries.

The Montagnard Human Rights Organization estimates that their 28 races of native peoples living in the Central Highlands of Viet Nam now number no more than 500,000 people, down from a population total of 3 million, as a result of the determined effort and policy of the government of Viet Nam to punish the native communities, and substantially reduce their number. Similar steep reductions in population are reported by the Khmer Krom, with a population of 4 million just a few years ago reduced to 1.2 million today, as a result of the government’s restrictions and repression directed against the native peoples.

Sadly, in recent years the government of Viet Nam has compounded the problem still further, by putting pressures on the governments of the nations where the Montagnards and other refugees have fled in order to avoid and escape persecution, such as Thailand, to secure their return so that they can be further repressed and prosecuted, in violation of the “non-refoulement” prohibitions and protections of the Convention on the Status of Refugees and other international refugee rights instruments.

But the government of Viet Nam’s genocide policy against its indigenous population has not been limited to forced relocations and executions of native peoples who were arrested and in custody. It was compounded by extensive and strictly enforced policies of forced abortions and sterilizations aimed at reducing the native populations on an ongoing and permanent basis.

For obvious reasons, no mention of these genocide practices was made by the government of Viet Nam in its initial compliance report under CAT. But the fact remains that the extermination of native peoples, along with the expropriation of their tribal lands, and the harsh restrictions imposed on their ability to exercise and practice their native religions and cultural traditions, including their right to use their tribal names, and to engage in group activities with their colleagues, have been basic parts of the policies and practices of the government of Viet Nam aimed at eliminating its native communities.

At its 65th session in November 2018, when the Committee Against Torture reviews the compliance report of the government of Viet Nam, it should forcefully and categorically reject the claim by the government of Viet Nam that it is in substantial compliance with the requirements of the Convention Against Torture, and that only a few isolated and officially unauthorized cases of torture exist. It also should call on the government of Viet Nam to more fully and accurately address the many findings by independent human rights monitoring groups documenting the extensive number of cases of arbitrary arrest, long-term detention and torture of those exercising and defending their human rights. The government should be presented with information on the extensive number of cases of torture that have taken place, and that were conveniently overlooked and ignored in the government’s initial compliance report under CAT, and asked to report back to the CAT Committee on each of the reported cases and the current status of the victims.

The government should also be required to specifically address the status and treatment of its indigenous peoples, and to report back to the CAT Committee on why the number of native peoples has been reduced in size so precipitously, and why such harsh restrictions have been imposed on meetings and gatherings of native peoples, and the exercise of their native cultures, including their use of native names, and why so many native peoples have been unlawfully forced from their ancient lands and properties without due process and without any form of reasonable compensation.

**III. RECENT REPORTS AND FINDINGS THAT DESERVE ATTENTION**

Rather than provide a paragraph by paragraph critique and rebuttal to the government of Viet Nam’s initial compliance report under CAT, it may be more useful and effective to treat the report as a whole, and to point out the obvious and most important discrepancies between the major claims of the government, and the realities documented by independent observers and monitors. These independent reports and case studies examining the extensive torture practices engaged in by the government of Viet Nam, explain in the most graphic terms why the government’s claims that the laws and legal structures now in place adequately deal with and protect against torture abuses, and that the instances of torture taking place in Viet Nam consequently are few and far between and are being dealt with adequately, do not reflect reality, and should be thoroughly questioned and challenged by the CAT Committee at the 13 November hearing.

Despite assurances to the contrary in its initial CAT compliance report, there is overwhelming evidence that the government of Viet Nam has been engaging in a widespread, ongoing and systemic pattern and practice of torture, and has made torture abuses a regular and inherent part of its official state policy, as a means of repressing and controlling its civilian population.

As noted in the preceding section, in recent months a large number of independent human rights monitoring groups, including those associated with the United Nations itself, have alerted the international community to the serious nature of the human rights abuses taking place in Viet Nam, including the widespread and systematic use of torture, that are carried out on a regular and fully authorized basis by government authorities.

Summarizing some of the current concerns, and some of the most recent numerous and well-documented findings by independent monitors, Michael Forst, on behalf of a panel of independent United Nations human rights experts, on 12 April 2018, issued a statement condemning the government of Viet Nam for engaging in a widespread campaign of major human rights abuses. The UN panel condemned “the use of Article 79 of the 1999 Penal Code” and other broadly worded provisions aimed at eliminating dissenting voices, and harshly repressing any form of criticism of the government’s policies. The panel noted that those arrested “were held in pre-trial detention with very limited access to legal counsel, in a clear breach of international human rights standards,” and that they were being prosecuted solely because of “their activities as human rights defenders and pro-democracy activists.” The case of Nguyen Van Dai, the founder of a pro-democracy group call the Brotherhood for Democracy, was spotlighted, noting that he had been sentenced to 15 years in prison and five additional years of house arrest for carrying out peaceful protests and for exercising his free expression and free association rights. (See UN OHCHR News Release of 12 April 2018, www: https:/news.un.org/en1007111)

This recent UN statement is reflective of numerous other reports and releases issued by independent human rights monitors making similar findings as regards the systemic use of torture and other major human rights abuses by the government of Viet Nam to repress dissent and criticism, and to prevent any groups, including indigenous communities, from meeting as groups, forming organizations to represent their views, or to otherwise take any actions that the government of Viet Nam views and labels as treasonous, because it may be viewed as against the interests of the government.

As noted in the previous section, in the past year Human Rights Watch has issued numerous major reports or statements condemning Viet Nam’s ongoing policy of major human rights abuses aimed at punishing and harshly repressing the peaceful activities of human rights defenders, environmental activists, and others voicing views and criticisms that the government does not like. In their statement: “Vietnam: Clean Up Abysmal Rights Record,” issued on 23 July 2018, Human Rights Watch encouraged the government to “release all political prisoners and uphold its pledges to respect basic civil and political rights.” The statement characterized the government of Viet Nam as “contending for the title of one of Asia’s most repressive governments.” It noted the government’s tendency to “use loosely interpreted provisions in its penal code and other laws to imprison peaceful political and religious activists,” citing at least 27 arbitrary arrests and imprisonments of peaceful protesters in the first seven months of 2018 alone. Human Rights Watch concludes that “Vietnam has a long history of trampling on rights while making weak excuses that it is upholding the rule of law,” using its penal laws and its criminal justice system to stifle dissent and punish anyone expressing views critical of government policies.

Other Human Rights Watch reports make similar, well-documented findings. It’s report, “No Country for Human Rights Activists,” issued on 5 June 2017 in conjunction withtheir “World Report on Human Rights for 2018,” finds that “The Vietnamese government has long arrested and prosecuted domestic human rights activists, …using Communist Party-controlled courts and police” to subject activists to criminal prosecution and arbitrary long-term imprisonments that amount to torture. “Some activists have been abducted …beaten” and even disappeared or executed, to discourage others from daring to exercise their free expression and free association rights. These “brutal instruments of state repression” are not used on a rare and unauthorized basis, but are part of a pattern and practice of systemic repression and torture that has become an intrinsic part of state policy and practice. The report cites 36 specific cases of arbitrary arrests, severe beatings in custody, and long-term imprisonments, all of which come under the definition of “torture” in international law. They include the cases of a number of well-known human rights activists and their defenders, and other prisoners of conscience, including: Ly Quang Son; Huynh Ngoc Tuan; Le Quoc Quan; Truong Minh Duc; Nguyen Bac Truyen; and many other listed in the report. Human Rights Watch notes that the more than100 named victims that their research identified in the Viet Nam section of their 2018 World Report are only the tip of the iceberg, because Vietnam censors the media, limits access to information and to detainees, and otherwise prevents monitors from operating freely. They note that simply participating in public meetings or events of any kind that are not officially approved will subject participants to potential arrest and beatings.

Members of the indigenous community and religious groups are among those specifically targeted. Human Rights Watch notes in particular that “Montagnards face [ongoing] surveillance, intimidation, arbitrary arrest, and mistreatment” in custody, with many being forced “to publicly denounce their faith” and their association with their native communities. As a result, many members of the Montagnard community were forced to flee their land and to seek refuge outside the country, where Viet Nam authorities unlawfully sought the rejection of their asylum claims and their forced repatriation to Viet Nam, in violation of their right to not be “refouled” under international law and the Refugee Convention. (Vietnam, Events of 2017, Human Rights Watch World Report for 2018, https://www.hrw.org/world-report/2018)

**IV. EXAMPLES OF SPECIFIC TORTURE ABUSE CASES REQUIRING ATTENTION AND FURTHER RESPONSIVE INFORMATION FROM THE GOVERNMENT OF VIET NAM.**

We would like to present detailed information on the case of Pastor Nguyen Cong Chinh, who recently was the victim of a determined campaign to prevent him from exercising his religious beliefs, and his right to express support for the native peoples of Viet Nam, as a concrete example of the methods and policies being used by the government of Viet Nam to repress and punish all forms of free expression and association involving religious and ethnic minorities, including members and leaders of the indigenous populations. Pastor Chinh is not himself a member of an indigenous community, but as part of his religious work in the Central Highlands, he ministered to, and spoke out on behalf of, ethnic minorities and native peoples in the region. He also founded the Vietnamese People’s Evangelical Fellowship, a charity administering to the needs of the minority and native peoples. It was because of these activities assisting and advocating for oppressed peoples, that he has been subjected to harassment, arbitrary arrest, long-term imprisonment and other forms of torture by the government of Viet Nam.

Pastor Chinh has indicated that he may be available to present information on his case, and the cases of torture inflicted on other long-term detainees in prison with him, directly to the members of the Committee Against Torture at their 13-14 November 2018 review session on Viet Nam, so his case history, and the many instances of torture that he observed directly, may be particularly instructive and useful to the members of the Committee. It provides a telling and very dramatic counter-weight to the spurious claims of the government of Viet Nam in their report to the CAT Committee that instances of torture are rare and are not officially authorized.

Pastor Chinh was a religious preacher and pro-democracy activist living and working in the Central Highlands region, which is where many minority group members and native peoples of Viet Nam had their homeland. In 2011 Pastor Chinh was arrested and imprisoned by the Vietnamese authorities on the charge of “sabotaging the great national unity policy,” and was sentenced to 11 years in prison after a one-day trial on 26 March 2012 . He had done nothing more than peacefully practice and preach his religion, and assist native and ethnic minority peoples living in the region by advocating their cause, and protesting their persecution by the government. While in prison he was treated very harshly, and was frequently beaten and tortured. He witnessed many other detainees being treated the same way. He reported that “several people died in front of me,” from the beatings and torture inflicted on a regular basis by security officers. While he was imprisoned his wife and family were subjected to a steady campaign of harassment and torture. Many international human rights groups around the world adopted him as a “prisoner of conscience,” including the United States Commission on International Religious Freedom, and the pressures they brought on his behalf resulted in his “early” release from prison on 28 July 2017, on the condition that he leave the country.

Pastor Chinh has promised to provide the Committee Against Torture with a list of other detainees that he had personal knowledge about their being tortured, and even executed in custody, by prison authorities. His personal experience of harsh persecution, arbitrary arrest, long-term imprisonment and torture at the hands of the government of Viet Nam, along with the other case histories that he can provide of other detainees subjected to torture, provide very graphic evidence that the claim by the government that torture in Viet Nam is rare, and does not take place as a matter of systemic government policy, is totally false, and does not deserve to be taken at face value by the Committee Against Torture. Torture in the forms applied to Pastor Chinh and other detainees he met in prison during his six year incarceration, is an ingrained and systematic element of the government of Viet Nam’s policies and practices aimed at repressing and punishing any and all critics, and any groups and communities, including native peoples, that seek to observe religions or cultural practices that might be deemed independent of the State, and therefore considered potential threats to power and authority of the government and its officials.

The case history of Pastor Chinh is only one example of the extensive and systematic policy of the government of Viet Nam to engage in long-term arbitrary detention and other forms of torture to suppress dissent. He was one of many political prisoners who have been detained for long periods of time in Viet Nam because of their political and or religious beliefs, the peaceful exercise of free speech and free association rights, and the simple fact of being part of religious or ethnic groups that the government of Viet Nam seeks to suppress, including the indigenous populations.

As recently as 4 April 2018, Amnesty International published a newly compiled list of 100 prisoners of conscience who are currently being detained by the government of Viet Nam, and frequently are tortured in detention, because they sought to exercise their free speech rights by criticizing the government. (“Viet Nam” New Research Reveals Almost 100 Prisoners of Conscience As Crackdown on Dissent Intensifies,” Amnesty International News, 4 April 2018.) Amnesty International warns that, “What is worse is that this number [100 political prisoners] is likely an underestimation. It is impossible to know the real figure, given the shroud of secrecy the Vietnamese authorities operate under ,” and the reality that many families are reluctant to discuss the cases of their detained family members because of fears of retribution against themselves or the detainees. (Id.) Also adding to the problem is that many of the detainees are kept in pre-trial detention for long periods of time without trial or any other form of due process. This in itself is another form of torture that is inflicted on prisoners, as a regular and systematic policy that is followed by the government of Viet Nam.

In their 4 April 2018 report, Amnesty International refers to the government of Viet Nam as “one of Southeast Asia’s most prolific jailers of peaceful activist – a shameful title no one should aspire to.” (Id.) This finding is totally at odds with the government of Viet Nam’s claim in its initial CAT compliance report that instances of torture are rare, and can be attributed to the excessive and unauthorized actions of aberrant officials, rather than the pre-determined and systematic policies of the state.

Typical of recent arbitrary arrests and long-term imprisonments that deserve to be considered are those of Dao Quang Thuc, who was arrested on 5 October 2017, and subjected to long-term pre-trial detention, based on charges of “overthrowing the people’s administration” under Article 79, stemming from his environmental protection statements; and the case of Y Than, a member of the Montagnard native community, who was arrested on 28 September 2018, and burned to death by authorities, because of his indigenous rights activities.

We recommend and urge the Committee Against Torture to request that the government of Viet Nam provide a case by case information review of every prisoner of conscience that presently is being held in custody, including the 100 cited in the Amnesty International 4 April 2018 report.

**V. Torture Issues in Viet Nam Identified by the United Nations’ Human Rights Committee Under the ICCPR.**

Further evidence of the fact that the torture problems in Viet Nam are related to officially authorized and widely practiced policies of the government of Viet Nam rather than to rare and unauthorized actions by aberrant officials, can be found in the “List Of Issues” adopted and published by the UN Human Rights Committee just a few months ago as part of their review of compliance by the government of Viet Nam with the torture related provisions of International Covenant on Civil and Political Rights (See, UN Human Rights Committee, List of Issues in Relation to the Third Periodic Report of Viet Nam, UN Document CCPR/C/VNM/Q/3, 16 August, 2018).

With respect to the provisions of the ICCPR focused on torture related abuses, the Human Rights Committee, for example, dealing with the numerous reports of violations of prohibitions against torture covered by Articles 2,6,7,9,10 and 26 of the Covenant, requests the government of Viet Nam to “provide data on the number of reported cases of torture and ill-treatment … the number of investigations and prosecutions initiated, the number of convictions, the sentences imposed and the remedies granted to victims.” (List of Issues, Ibid.) The CAT Committee should request similar, updated and more detailed information on actual torture related cases as reported by Amnesty International and other independent monitoring groups, and ask the government to explain in detail the substantial discrepancy that exists between the number of torture cases reported in the government’s initial CAT compliance report, amounting to approximately two dozen cases over a three to four year period, and the number of torture related cases reported by independent monitoring groups such as Human Rights Watch and Amnesty International, that place the actual number of torture cases in the hundreds annually.

Also of special significance for the CAT Committee, the Human Rights Committee’s List of Issues requests more detailed information on how the laws and regulations applying criminal penalties for acts of torture are being implemented, with particular emphasis on the substantial numbers of “allegations that torture and ill-treatment by law enforcement personnel are a widespread phenomenon used to obtain information or extract confessions,” and that “deaths in custody,” and “abuses committed by fellow prisoners …acting at the instigation or with the consent or acquiescence of police or [other] officials” are common practices. (List of Issues, Id. at paragraphs 10 and 11.)

Similarly, the List of Issues places emphasis on the issues of arbitrary, long-term pre-trial detentions, and the lack of independence on the part of the judges and courts whose activities are tightly controlled by the government, denying prisoners and those accused of crimes proper access to justice, and fair treatment. (List of Issues, Id. at paragraph 15.)

Finally, the Human Rights Committee’s August 2018 List of Issues makes specific reference to the special problems faced by ethnic minorities in Viet Nam, requesting more detailed information on how the provisions of Article 4 of Decree 12, defending the “great unity of the Vietnamese people,” is applied to force members of minority groups to “renounce their faith” and customs, and to punish them severely when they refuse to do so. (List of Issues, Id. at paragraphs 17, 18, 19 and 24.)

These are all areas that touch directly on torture related concerns, and on the special problems in that regard that are faced by the indigenous communities at the hands of the government. For this reason, they therefore also deserve the attention and careful consideration of the Committee Against Torture. The prior findings and questions issued by the Human Rights Committee as regards the government of Viet Nam in their three prior rounds of compliance hearings, including their concluding observations and list of issues for consideration, should be carefully reviewed by members of the Committee Against Torture, and used as a model for the CAT Committee’s compliance review of the government of Viet Nam’s torture practices at the CAT Committee’s 65th session.

**VI. CONCLUSION**

At its review of the initial compliance by the government of Viet Nam under the Convention Against Torture that will be conducted on 14 November, 2018, it is urgent that the Committee Against Torture forcefully question and reject the government’s claim that cases involving torture are few and far between, and are not authorized by the government. Vietnamese officials appearing before the CAT Committee should be asked to explain in detail the obvious and substantial discrepancies that exist between their report of “rare” and isolated cases of unauthorized torture by aberrant officials, and the extensive body of well-documented cases issued by Amnesty International, Human Rights Watch and other monitoring groups indicating that torture is widely and systemically carried out by the government as a matter of official policy and practice as a primary method for preventing and punishing dissent. Special emphasis should be given in this process to how torture practices have been heavily directed against members of the indigenous communities, as a means of suppressing their cultural heritage and identity, and promoting national unity and singular national identity at the expense of the internationally protected rights and status of Viet Nam’s native peoples.