

Alternative Report on the Implementation of the
UN International Convention on the Elimination of All Forms of
Racial Discrimination (ICERD)



Violations of the Rights of Ethnic and Religious Minorities In the Socialist Republic of Vietnam



Report by

Vietnam Committee on Human Rights

Member Organisation of the

International Federation for Human Rights (FIDH)

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Implementation of the UN International Convention on the Elimination of All Forms of Racial Discrimination in the Socialist Republic of Vietnam

**Committee on the Elimination of Racial Discrimination (CERD)
80th Session, 13 February – 9 March 2012, United Nations, Geneva**

Contents

Introduction	5
Background	6
Visits by the UN Independent Experts on Minority Issues and Extreme Poverty	7
Legal Framework	8
History of Discrimination against the Montagnards	12
Article 2: Eliminating Racial Discrimination	13
Article 5: Protection of the Right to Equality before the Law	15
A. Equal treatment before the Tribunals and other Judiciary Organs	15
B. The Right to Security of the Person	17
C. The Right to Participate in the Conduct of Public Affairs	18
D. The Protection of Civil Rights	19
(i) The right to freedom of movement and residence	19
(ii) - The right to leave, and return to one's country	20
(v-vi) The right to own property and the right to inherit	21
(vii). The right to freedom of thought, conscience and religion	22
(viii) The right to freedom of opinion and expression	25
(viii) The right to freedom of peaceful assembly and association	26
E) The Protection of Economic, Social and Cultural rights	26
(i) - the right to work, free choice of employment, equal pay	26
(i) - the right to form and join trade unions	27
(iv, v) - The right to public health, medical care, social services and education	28
Recommendations	28

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EXECUTIVE SUMMARY

Since Vietnam acceded to the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in June 1982, this is only its fourth reporting to the CERD. This failure to comply with UN reporting obligations is seriously prejudicing Vietnam's ethnic and religious minorities. At a time when minority communities are facing a surge in racial discrimination due to new and complex economic, social and political challenges, it is deeply regrettable that CERD experts have just one opportunity per decade to monitor implementation of the ICERD and recommend ways to eliminate these trends.

The Vietnamese government has told the CERD that discrimination is prohibited in Vietnam. However, the Vietnam Committee on Human Rights is deeply concerned that ethnic and religious minorities currently suffer serious violations of their political and economic rights, including expropriation from ancestral lands, population displacement, spontaneous or State-sponsored migration of Kinh people into minority regions, forced implementation of unsuitable development programmes, religious persecution, arbitrary arrest and disappearances.

Recent statistics show that wealth disparity is increasing alarmingly between the ethnic minorities and the majority Kinh people in Vietnam. Two United Nations' experts who visited Vietnam in 2010, Ms. Gay McDougall and Ms. Magdalena Sepúlveda Carmona, both observed "*glaring disparities*" in income, employment, access to education, health coverage and other government services, as well as serious violations of civil and political rights.

Vietnam claims that disparities are due to the geographic remoteness of ethnic minorities, who live mainly in the mountainous regions. However, deep-rooted stereotypes of ethnic minorities as being "backward" or "uncivilized" strongly influence government policies at national and local levels. Poverty reduction programmes often include campaigns to eradicate the culture, traditional lifestyle, religious beliefs and practices of minority peoples, resulting in even greater marginalisation. Discrimination is also rooted in political factors. In Vietnam's one-Party state, there is no privately-run media, no free trade unions, no civil society and no independent judiciary. Without these safeguards, ethnic minorities have no means to claim or defend their rights.

Religious discrimination persists on a widespread scale, especially concerning ethnic minority Christians. In May 2011, scores of ethnic Hmong people were arrested and many killed in a brutal government crack-down on a peaceful religious gathering. Montagnards in the Central Highlands are suffering intense persecution. In one trial alone in April 2011, eight Montagnards were sentenced to a total of 75 years in prison for their religious beliefs. The outlawed Unified Buddhist Church of Vietnam (UBCV) continues to be systematically repressed, as well as Khmer Krom and Hoa Hao Buddhists. UBCV leader Thich Quang Do remains under house arrest without charge after some 30 years in detention. Vietnam attempted to mask this situation by denying free and unfettered access to the UN Independent Expert on Minority Issues during her visit to Vietnam. She was only allowed to meet officials from State-sponsored religious movements and could not meet people outside the presence of government officials.

We urge the CERD to recommend urgent reforms in Vietnam's legal system to combat racial discrimination and guarantee all human rights as enshrined in the ICCPR and the ICESCR to which Vietnam acceded in 1982; cease religious persecution, including forced renunciations of faith and detention of religious followers on trumped-up "political" accusations; dismantle the discriminatory household registration system, or *hộ khẩu*; take effective steps to eradicate negative stereotypes that stigmatise ethnic minorities; and recognise the complaints mechanism for victims of racial discrimination in accordance with article 14, paragraph 1, of the ICERD.

Violations of the Rights of Ethnic and Religious Minorities in the Socialist Republic of Vietnam

An Alternative Report to the 80th Session
of the Committee on the Elimination of Racial Discrimination (CERD) on the
Combined Tenth to Fourteenth Periodic Reports of Vietnam
United Nations, Geneva, January 2012



Children from the Hmong ethnic minority in Dien Bien province.

Introduction

The Vietnam Committee on Human Rights (VCHR) welcomes the Report submitted by the Socialist Republic of Vietnam on its implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The organisations nevertheless regret that, whereas States Parties have an obligation under Article 9 of the Convention to submit periodic reports to the Committee every two years (following an initial report filed one year after the ICERD's entry into force for the State concerned), this is only the fourth report submitted by Vietnam since it acceded to the ICERD on June 9, 1982. By grouping its reports over ten year periods, Vietnam is not only failing to comply with UN reporting obligations, but it is hampering elimination of racial discrimination. At a time when Vietnam's minority communities have witnessed a surge in racial discrimination due to new and complex economic, social and political challenges, it is grossly insufficient to provide CERD experts with only one opportunity per decade to evaluate the situation and make relevant recommendations on how to eliminate these trends.

It is regrettable, moreover, that during the Universal Periodic Review of Vietnam in May 2009, Vietnam rejected 45 recommendations made by UN member states to improve its human rights record, many of which pertained to the arbitrary detention of human rights defenders and members of minority religious groups, issues of freedom of expression,

association assembly and the use of torture. Vietnam also rejected a recommendation to issue an invitation to the UN Special Rapporteur on Freedom of Religion.¹

Background

Vietnam's 89 million-strong population is made up of over 54 ethnic communities with unique religious, linguistic and cultural characteristics and identities.² The majority group is the Viet, or Kinh people (over 85%), who traditionally live in the lowlands. The minority ethnic communities (14.3% of the population, 12.25 million people) live mainly in the mountainous and highland regions. Because of their remote geographical situation, these regions are traditionally amongst the poorest areas of Vietnam.

The Vietnamese government has made considerable efforts to reduce poverty across all population groups, yet the ethnic minorities remain amongst the poorest and most vulnerable citizens of Vietnam, and wealth disparities are increasing alarmingly. Whilst ethnic minorities accounted for only 18% of those living in poverty in 1990, they averaged 56% of poor people by 2008, and over 80% within some groups.³ According to the World Bank, the extreme poverty rate for ethnic minority groups in 2008-9 was 29%, over nine times that of the Kinh, and wealth disparity between ethnic minorities and the Kinh majority has more than doubled over the past decade.⁴ The UN Independent Expert on Human Rights and Extreme Poverty, Ms. Magdalena Sepúlveda Carmona, warned that *"if patterns are not reversed, poverty will remain a phenomenon dominated by ethnic minorities."*⁵

The Vietnamese government explains that this disparity results from the geographical remoteness of ethnic minorities and poor infrastructural development. However, its country report also acknowledges that more than 20 years of *"doi moi"* (renovation policy) – which combines free-market capitalism under one-Party political control – *"have had negative effects, such as the increasing income gap, urban-rural disparity in living standards, and the diminishing capacity of integration by vulnerable groups, such as women, children, ethnic minorities, persons with disabilities etc."*⁶

These "negative effects" are exacerbated by many factors, such as official corruption and power abuse at the national, district and local levels, forced implementation of unsuitable development policies and the perpetuation of stereotypes that stigmatise ethnic minorities as backward, ignorant, superstitious, and "less civilised" than the Kinh. But they are also rooted in political factors such as the lack of civil and political rights, absence of a free press, free trade unions, independent civil society movements or an independent judiciary in Vietnam's one-Party state. Without these crucial mechanisms and safeguards, ethnic and religious minorities have no means to defend their rights.

¹ Report by the Working Group on the Universal Periodic Review: Vietnam. A/HRC/12/11/5 June 2009.

² Report of the Independent Expert on Minority Issues, Gay McDougall, Mission to Vietnam, 5-15 July 2010, A/HRC/16/45/Add.2.

³ *Viet Nam MDG National Report 2010*, p. 144, and World Bank, data from the General Statistics Office of Vietnam, quoted by the UN Special Rapporteur on Minority issues, see note 2.

⁴ World Bank, Viet Nam Development Reports for 2008 and 2009.

⁵ Mission to Vietnam, Report by the UN Independent Expert on the question of human rights and extreme poverty, Ms. Magdalena Sepúlveda Carmona and Press Release on conclusion of the visit. www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10282&LangID=E

⁶ Vietnam country report on implementation of ICERD, 21 September 2011, CERD/C/VNM/10-14, Paragraph 5.

As a result, the Vietnam Committee on Human Rights is concerned that ethnic and religious minorities suffer serious violations of their economic and political rights due to implicit or deliberate policies of discrimination which include expropriation from ancestral lands, population displacement, State-sponsored migration of Kinh people into minority regions, religious persecution, arbitrary arrest and disappearances.

The organisation's findings, based on articles from the State-controlled media, interviews with members of minority groups, reports of NGOs, UN and governmental agencies and academic research, were confirmed by two important reports issued in 2011 by the UN Independent Expert on Minority Issues and the Independent Expert on Issues of Human Rights and Extreme Poverty following *in situ* visits to Vietnam.

Visits by the UN Independent Experts on Minority Issues and Extreme Poverty

Direct access to information is extremely difficult in Vietnam. The government prohibits foreign journalists and independent NGOs from travelling to the Central or Northern Highlands where many of the ethnic groups live, and routinely "seals off" areas where unrest has taken place. This lack of transparency is inconsistent with Vietnam's pledge to respect Article 7 of ICERD to adopt effective measures in the field of information to combat prejudices and promote understanding amongst nations and ethnic groups.

In this context, the visits to Vietnam by the UN Independent Expert on Minority Issues, Ms. Gay McDougall (5-15 July 2010) and the UN Independent Expert on the question of human rights and extreme poverty, Ms. Magdalena Sepúlveda Carmona (23-31 August 2010) provided an invaluable opportunity for impartial assessment of the situation of minority groups in Vietnam. Both experts, whilst commending Vietnam for its overall achievements in poverty alleviation, echoed deep concern about "*stark inequalities*" between minority groups and the majority Kinh and Hoa (ethnic Chinese), and serious violations of civil rights, notably the right to freedom of religion, freedom of expression and the right to peaceful assembly.

Ms. Gay McDougall, UN Independent Expert on Minority Issues was able to visit provinces in the Central and Northern highlands and the Mekong Delta, but she regretted that she was "*largely confined to meetings arranged by the Government*" and encountered "*obstacles that limited opportunities for unaccompanied meetings outside the presence of government officials*". Her access to religious leaders was "*closely controlled by the government*" and she did not have "*full, free and unfettered access to all parties whom she wished to consult*". Ms. McDougall was only allowed to meet officials of State-sponsored religious groups. They expressed unanimous satisfaction with Vietnam's religious policies, denied the existence of restrictions and avoided comment on specific allegations. In her report, Ms. McDougall said that this lack of access "*impeded her ability to obtain perspectives other than those in consonance with official Government positions.*"⁷

The UN expert was nevertheless able to gather extensive information on the situation of ethnic and religious minority groups in many areas of Vietnam. She observed "*sizeable socio-economic gaps... between disadvantaged minority groups and the Kinh population*", with inequalities in access to education, health care, land-rights issues, and "*denial of religious freedom and other serious violations of civil rights*", notably regarding the Unified Buddhist Church of Vietnam (UBCV), some Protestant churches, Hoa Hao Buddhists, some Cao Dai

⁷ Idem, note 2.

groups as well as Hmong Christians and Khmer Buddhists. Although Vietnam affirms that racial discrimination is prohibited, the UN expert noted that “*discrimination is nevertheless identified as a social problem*”, and concluded that “*many belonging to minority groups continue to experience serious disadvantages... in all aspects of life*”. Ms. McDougall urged Vietnam to extend invitations to UN experts concerned with civil and political rights, such as the Special Rapporteur on freedom of religion or belief, freedom of opinion and expression, freedom of peaceful assembly and of association and the Working Group on Arbitrary Detention, stressing that they “*should be allowed free and unfettered access to all parties they wish to meet and to all regions of the country*”.

Ms. Magdalena Sepúlveda Carmona, UN Independent Expert on the question of human rights and extreme poverty, visited Vietnam from 23-31 August 2010. She also observed that “*the most glaring disparities in income, employment, health coverage, education and access to other government services have formed along ethnic lines*”, with “*deep-rooted inequality*” affecting vulnerable groups such as ethnic minority women and children. Ms. Sepúlveda agreed with the conclusions of the UN expert on minority issues that Vietnam should “*ensure that efforts to address poverty of minorities take fully into account their views [of minority groups], preserve their unique cultures, languages, traditions and lifestyle, and respect their rights to own and use the lands and territories that are essential to their livelihoods.*”

In particular, Ms. Sepúlveda stressed that Vietnam should not see extreme poverty as a purely economic issue that could be solved solely by boosting household incomes. “*Effective poverty reduction strategies must be always framed by the overall premise that everyone in Vietnam must enjoy the full range of civil, cultural, economic, political and social rights.*”⁸ She urged Vietnam to “*take into account the universality and indivisibility of all human rights, and promote simultaneously and harmoniously all civil, political, economic, social and cultural rights*”. Whilst urging Vietnam to ratify a number of UN human rights instruments, the UN expert reminded the government that “*being party to international human rights instruments is not sufficient: international standards must be incorporated into domestic legislation.*”⁹

The Legal Framework

In its report, Vietnam lists extensive laws and policies adopted in the last decade as evidence that the State protects minority rights. In practice, however, many of these laws are not implemented, or arbitrarily interpreted at local levels due to vague and imprecise wording, often resulting in actions that contravene both the spirit and the letter of the Convention. Others are totally inconsistent with human rights guarantees enshrined in the UN International Covenant on Civil and Political Rights (ICCPR) or the UN International Covenant on Economic, Social or Cultural Rights (ICESCR) to which Vietnam acceded in 1982.

For example, the 1992 Constitution guarantees “*equality, solidarity and mutual assistance among all nationalities, and forbids all acts of national discrimination and division*” (Article 5). However, it also contains a number of provisions that curtail the rights of ethnic minorities and effectively condone the practice of racial discrimination.

Article 4 of the Constitution stipulates that “*the Communist Party, (...) acting upon the Marxist-Leninist doctrine and Ho Chi Minh thought, is the force leading the State and*

⁸ UN News Centre, Hanoi, 31 August 2010: *Vietnam : UN expert urges stepped-up efforts to combat poverty.*

⁹ *Idem*, note 5.

society". The political mastery of the Vietnamese Communist Party is routinely evoked by the State to justify the suppression of opinions and thinking at odds with Communist Party doctrine. As such, it is the principle tool of repression against political or religious dissent. Since the traditional culture and thinking of ethnic minorities are alien to Marxist-Leninist doctrine, these provisions inhibit their freedoms and rights.

Moreover, in the light of Article 4, constitutional guarantees of freedom of expression and religion are severely curtailed. The UN Special Rapporteur on Religious Intolerance, Mr Abdelfattah Amor, expressed concern about this in his comment on **Article 70** of the Constitution which guarantees religious freedom, but states that "*no-one can misuse freedom of belief and religion to contravene the law and State policies*":

*"The Special Rapporteur has some queries about this provision, which establishes the principle of the priority of the policies of the State, a vague and extendable concept... This concern proves to be quite legitimate when... reference is made to article 4 of the Constitution, which states that "The Communist Party of Viet Nam ... following Marxism-Leninism and the thought of Ho Chi Minh, is the guiding force of the State and of society". (...) State Policies are therefore those of the Communist party, which has its own ideology with regard to religion, initially perceiving religion to be the opium of the people and therefore to be combated (...Par. 103). These two articles, by their wording and their association, are likely to impede freedom of religion or even reduce it to very little indeed."*¹⁰

Article 30 of the Constitution, on the promotion of Vietnamese culture, imposes similar restrictions which are inconsistent with international human rights standards on freedom of expression. Pledging to promote "*the thought, morality and lifestyle of Ho Chi Minh, the quintessence of human culture*", it stipulates that "*the State undertakes the overall administration of cultural activities. The propagation of all reactionary and depraved thought and culture is forbidden; superstition and harmful customs are to be eliminated.*" Since it is the one-Party state which decides which customs are "*reactionary*" or "*harmful*", this provision imposes inadmissible restrictions on the cultural practices of the ethnic minorities and condones State-enforced discriminative policies which can even lead to imprisonment. Under the **Vietnamese Criminal Code (article 247)** "*performing superstitious practices*" incurs prison sentences of up to ten years. Mr Amor noted in his Report (op. cit) that Vietnam makes no attempt to define the concept of "superstition".

Vietnam's **Criminal Code** contains a whole chapter on "*crimes infringing upon national security*" (**Chapter IX**). This "*catch-all*" concept is used to sanction acts of peaceful dissent, and severely restricts the freedoms and rights of ethnic minorities. It provides harsh penalties (up to life imprisonment or the death penalty) for vaguely worded offences such as "*activities aimed at overthrowing the people's administration*" (**article 79**); spying (**Article 80**); "*circulating propaganda against the Socialist Republic of Vietnam*" (**article 88**). Article **87** on "*undermining national unity, sowing divisions between religious believers and non-believers*" (from two to 15 years imprisonment) and **Article 91** on "*fleeing abroad or defecting to stay overseas with a view to opposing the people's administration*" (three years

¹⁰ Report to the 55th Session of the UN Commission on Human Rights (*Doc. E/CN.4/1999/58/Add.2*). The title of Special Rapporteur on Religious Intolerance has since been changed to Special Rapporteur on Freedom of Religion or Belief.

to life imprisonment) are frequently used to detain Montagnards and members of other ethnic groups for demanding religious freedom and restitution of their lands.

Chapter XX of the Criminal Code on “*crimes of infringing upon administrative management order*” hands down lesser sentences (fines, non-custodial reform or imprisonment from six months to seven years) on crimes such as “*illegally leaving or entering the country*” (**article 274**), which has been invoked to detain Montagnards and other ethnic peoples fleeing Vietnam to escape persecution; “*abusing democratic freedoms and rights to infringe upon the interests of the State, the legitimate rights and interests of organizations and/or citizens*” (**article 258**). This article sanctions all those who “*abuse the rights to freedom of speech, freedom of the press, freedom of belief, religion, assembly, association and other democratic freedoms*”, and thus virtually nullifies guarantees enshrined in Article 50 of the Constitution that “*human rights in the political, civic, economic, cultural and social fields are respected*” in Vietnam.

During the Universal Periodic Review of Vietnam in May 2009, several countries denounced the incompatibility of these national security provisions and called for their revision or abrogation. Vietnam rejected these recommendations.¹¹ Since the visit of the Working Group on Arbitrary Detention to Vietnam in 1994, several UN mechanisms have warned against the inconsistency of national security provisions with international human rights laws, in particular article 79, which makes no distinction between acts of violence - such as terrorism - and peaceful acts of expression or association.¹² The WGAD strongly emphasized the ambiguities of Article 79 (then article 73) and the prejudice they bear on the legitimate exercise of the right to freedom of expression, thought and belief.¹³

Ordinance 44 on “Regulating Administrative Violations” (2002) empowers local-level Policemen and officials to detain suspected “national security” offenders for six months to two years under house arrest, in mental hospitals or in “education and rehabilitation camps” without any due process of law. It is routinely used to detain religious and political dissidents exercising legitimate peaceful activities, e.g. land rights activist **Bui Thu Minh Hang**, arrested on 28 November 2011 and interned in Thanh Ha Education Centre for 24 months of administrative detention simply for staging a silent protest in Ho Chi Minh City. At its Universal Periodic Review in 2009, Vietnam rejected a proposal by Poland to abrogate Ordinance 44.

There are a number of **control mechanisms** which severely restrict the exercise of human rights. Ethnic and religious minorities are especially penalised by “*hộ khẩu*”, or **system of household registration**. This is an obligatory prerequisite for access to housing ownership, health care, education and other key public social services. Persons who do not have *hộ khẩu* are virtually illegal citizens.¹⁴ The local security warden (*công an khu vực*) is responsible for

¹¹ Idem, see note 1.

¹² Concluding Observations of the UN Human Rights Committee: Vietnam. Geneva, 26.7.2002, Ref. CCPR/CO/75/VNM;

¹³ Report to the 51st Session of the UN Commission on Human Rights, (*Doc E/CN.4/1955/31/21 Dec. 1994*).

¹⁴ Each household is given a household registration book (so *ho khai*) which lists the names, sex, date of birth, occupation of all household members and their relationship with the household head. All residents are exclusively categorized into five groups, namely:

- KT1: Residents (including both non-migrants and migrants) with permanent household registration at place of current residence;
- KT2: Intra-district migrants who have permanent household registration at the province/city of current

delivering the *hộ khẩu*, and he can grant or refuse it at will. This gives the local policemen immense and discriminatory powers over the residents under their charge (approx. 300 people), which they use and abuse at will.¹⁵

Although there have been reforms of this system, it remains one of the government's most pervasive and discriminative means of control, and it confronts ethnic Christians with a Kafkaesque dilemma. If they write "Protestant" in the religion category when applying to obtain a *hộ khẩu*, their application is routinely refused. If they put their religion as "none", Security Police prevent them from gathering for prayers and religious services. In many cases, ethnic Christians are denied the right to obtain any legal documents at all. This is especially enforced on members of "unrecognised" Protestant house churches who do not wish to worship in the State-sponsored Evangelical Church of Vietnam.

Discrimination on religious grounds is a deliberate policy, orchestrated at the highest levels of the government and State. Religious activities are regulated by the "**Ordinance Regarding Religious Beliefs and Religious Activities**" (21/2004/PL-UBTWQH11) which came into effect on 15 November 2004 and the "Decree on Religion" (22/2005/ND-CP), known as "Decree 22" which gives guidelines for the implementation of the Ordinance. The Ordinance imposes strict controls on religions, including a system of registration for religious organizations and congregations. Those "not recognised" by the state are considered illegal. Under the Ordinance, religious education is subordinated to the "*patriotic*" dictates of the Communist Party; worship may only be carried out in approved religious establishments; it is forbidden to "*abuse*" religious freedom to contravene prevailing Communist Party policies (article 8§2). Religious activities deemed to "*violate national security... negatively affect the unity of the people or the nation's fine cultural traditions*" are banned (art. 15)¹⁶.

Numerous government regulations, decisions and directives impose arbitrary controls on the activities of the ethnic minorities. Many of these are aimed at stemming the rise of Protestantism in minority areas. Although forced renunciations of faith are officially banned, a series of "**Training Manuals for the Task Concerning the Protestant Religion**" prepared by the Government Committee on Religious Affairs instructs local religious officials and security police to "*encourage ethnic minorities to return to their traditional beliefs if they need to*", allowing arbitrary implementation at the local level, and condoning a policy of discrimination against ethnic minorities who convert to Christianity or any other religion.¹⁷

residence;

- KT3: Migrants who do not have permanent registration at the place of current residence but have temporary registration for 6-12 months with the possibility of extension;
- KT4: Migrants who do not have permanent registration at the place of current residence but have temporary registration for 1-6 months;
- Non-registered residents: Those who do not belong to any of the above category.

Despite recent relaxation, conditions for changing status from temporary to permanent residents are strict, requiring migrants to have formal employment, home ownership, and in residence for at least three years.

Le Bach Long, Institute for Social Development Studies, *Social Protection for Rural-Urban Migrants to Large Cities in Vietnam* published in Social Protection in Asian Cities, UN ESCAP 2009.

¹⁵ Buddhist dissident Thich Quang Do called for the dismantling of this "*discriminatory and anti-democratic*" system in http://www.queme.net/eng/docs_detail.php?numb=573 "**Appeal for Democracy in Vietnam**", 21.2.2001.

¹⁶ FIDH and VCHR Submission to the Universal Periodic Review on Vietnam, 3.11.2008.

¹⁷ Christian Solidarity Worldwide, Briefing paper, October 2010. See also CSW briefing on the 2008 Training Manual, http://dynamic.csw.org.uk/article.asp?t_report&id=10

A number of internal, secret VCP documents give explicit instructions for religious persecution, not only against Christians but against all other religions in Vietnam. The VCHR has obtained a secret document entitled *“On Religions and the Struggle against Activities Exploiting Religion.”* The document, which has a print-run of one million numbered copies, is dated 1997, but reports confirm that it is still in use today. A veritable instruction manual on religious persecution, it is distributed to *“all top-level Security cadres, ranking officers, police, research cadres and instructors directly or indirectly participating in the struggle against religions”*. A chapter on the Unified Buddhist Church of Vietnam (UBCV) instructs Party cadres at all levels to *“oppose, repress, isolate and divide”* UBCV members, promote only State-sponsored *“Buddhism with socialist orientations”*, and make concerted efforts to *“wipe out the [UBCV] once and for all.”* The Communist Party, it states, will *“take pre-emptive action to prevent Western countries from “making human rights investigations”* or seeking to *“visit dissident religious personalities”* in Vietnam.¹⁸

These policies of discrimination, which gravely violate the provisions of Article 1 of the ICERD, led in 2001 to one of the most serious outbreaks of popular unrest ever known in unified Vietnam, in which thousands of ethnic minority highlanders known as the **Montagnards** staged unprecedented demonstrations in the provinces of Gia Lai, Dak Lak and Kontum (Central highlands) to demand religious freedom and the restitution of confiscated lands. The authorities deployed armed troops, helicopters and riot police to brutally quell the protests, but they broke out again in 2004, with thousands taking to the streets and at least eight people killed in the ensuing crackdown. Despite tightened security measures and a series of government crackdowns, unrest has continued to simmer over the past decade, and remains a serious problem today.

History of Discrimination against the Montagnards

Political origins: State repression of the Montagnards was implemented systematically after Communist unification in 1975, but its origins date back to the 1960s when 40,000 Montagnards were recruited by the United States for military service during the Vietnam War. The Montagnards had formed a resistance movement named *FULRO (Forces Unies pour la Libération des Races Opprimés)*, which continued to militarily resist the Communist authorities until 1992, when *FULRO*’s last 400 members surrendered to the United Nations in Cambodia. Between 1975 and 1979, some 8,000 Montagnards were killed or captured by the Vietnamese military.¹⁹ Although *FULRO* no longer exists, the government continues to arrest and imprison Montagnards on charges of pro-*FULRO* activities or “splittism”, in reference to an activist church movement called Dega Protestantism (Tin Lanh Dega) which the authorities believe has aspirations for self-rule. In



¹⁸ *“On Religions and the Struggle against Activities Exploiting Religion” – Internal Document for Study and Circulation in the People’s Security Services*, published by the Institute of Public Security Science, Hanoi 1997.

¹⁹ Carlyle Thayer, *The Forgotten Army*, Far Eastern Economic Review, 10.9.1992.

fact, according to a study by the UN High Commissioner on Refugees based on interviews with Montagnard asylum seekers in Cambodia, few Montagnards who identified themselves as “Dega Protestants” were calling for political autonomy, simply for improvements in human rights and the right to worship freely, outside State-sponsored religious bodies.²⁰ Most Montagnards prefer to worship in independent house churches because they are suspicious of the official Evangelical Church of Vietnam²¹ which is a State-sponsored organisation controlled by the Communist Party and the Vietnam Fatherland Front.

Religious origins: Many ethnic minority people in the Central and Northern highlands converted to Protestantism during the Vietnam War, and despite a government ban on conversion after 1975, the number of ethnic Christians, especially among the Hmong ethnic group, considerably increased in the following years. “*Since the time of renovation (doi moi) [i.e the late 1980s], the Evangelical religion has literally exploded in the Western Highland Provinces.*”²² Today, hundreds of thousands of members of ethnic minorities in the highlands follow evangelical Protestantism. Although Protestantism is now legally recognised in Vietnam, the Communist Party still perceives the Montagnards’ adherence to Christianity as part of a political strategy which they call “*peaceful evolution*” - a scheme devised by “*hostile forces*” to overthrow the Communist regime by undermining it from within.²³

Implementation of the International Convention on Eliminating Racial Discrimination

Article 2: Eliminating racial discrimination

1.(a) - States Parties to ICERD undertake to pursue a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.

Misperceptions and Stereotypes

In its report to the 59th Session of CERD in 2001, the Vietnamese delegation claimed that “*there is no racial discrimination in Vietnam*”. During the session, however, they circulated a list of the names of ethnic minorities to CERD experts taken from a book published in Vietnam. Fifteen of these bore the prefix “*mọi*”, a derogatory term which means “*savage*” in Vietnamese.²⁴ This anecdote reveals the extent to which deeply-ingrained stereotypes about ethnic minorities prevail in the every-day language and thinking of the Kinh majority, even

²⁰ US Commission on International Religious Freedom Annual Report, Washington D.C. 2011. <http://www.uscirf.gov/reports-and-briefs/annual-report/3594-2011-annual-report.html>

²¹ The State-sponsored Evangelical Church of Vietnam (ECV) has two branches, North and South. They are known as the ECV-S and the ECV-N.

²² Top Secret Document, Steering Committee 184, Hanoi, May 3, 1999, “*Developing the Economy and Culture, Normalising Society and Building Political Infrastructure in the Mountainous Regions where the Minority Peoples are Christian believers.*”

²³ “*Protestantism in North America is the root source of support for Protestantism in Vietnam. Therefore, since we have widened our relationships of international exchange and cooperation, especially normalising our relationship with the United States, Protestantism in our country has been influenced directly by a scheme of exploiting religion to oppose and undermine Vietnam by «peaceful evolution» - both by the United States and other international reactionary forces*”. Steering Committee 184, Top Secret, Programme 184A – Development of Policy on Protestantism in some Provinces and Cities », Hanoi, March 5 1999.

²⁴ Ethnic Minorities in Vietnam, Hanoi, page 277-282.

amongst diplomats and government officials. The World Bank also observed the use of such derogatory language by “many officials, researchers and the media” in Vietnam.²⁵

In its 2011 report, Vietnam lists extensive legislation, policies and programmes that have been adopted to protect ethnic minorities, and declares that all manifestations of stigma are prohibited (paragraph 39). In practice, however, many government policies are conceived on the basis of stereotypes about the “backwardness” of minority groups, including the very development policies that are aimed to improve their living standards:

*“The attention paid to poverty reduction in upland areas by the government and international donors has served to reinforce the longstanding perception that minorities are economically backward and should be assisted to “catch-up” with the Kinh... Some ethnic minority development programmes and policies... have included campaigns to change the “cultures” of minority areas, including eradicating religion, primitive beliefs, superstitious taboos and wasteful social ceremonies. Such interventions are intended to move the ethnic minorities up the “civilization ladder” and to facilitate their “catching-up” with the Kinh majority or even promote “Kinh-isation.”*²⁶

The UN Independent Expert on Minority Issues emphasized this problem in her report (paragraph 77): *“Minorities are burdened further by perceptions of them as backward, passive, ignorant, and the architects of their own poverty and under-development. Besides constituting unfortunate stereotypes, this perception is used to lend justification to a top-down model of decision-making about minority issues and development models that undervalues genuine consultative processes and traditional knowledge.”*²⁷

The perpetuation of these stereotypes, and the lack of government initiatives to combat them at a national or local level, explains in part why, although Vietnam has devoted significant resources to ethnic minority development, its programmes have not only failed to improve the living standards of minority groups, but have sometimes further disadvantaged them. Moreover, studies reveal that exposure to these negative attitudes undermines the self-esteem of minority groups, and discourages their participation in public life.²⁸ *“When policies are additionally imbued with prejudice and majority group ethnocentrism, they further result in a fraying of indigenous customs and identity and can lead to greater marginalization.”*²⁹

As a state party to the ICERD, Vietnam undertakes to ensure that public authorities at national and local level refrain from discriminative attitudes and practices. Yet government officials in charge of poverty reduction programmes for ethnic minorities told the UN Experts visiting Vietnam in 2010 that persisting inequalities were due to “backwardness” and “superstitious practices” of minority groups.³⁰

1.(c) – States parties undertake to review legislation and amend, rescind or nullify laws and regulations which perpetuate racial discrimination:

²⁵ “Explaining ethnic poverty in Vietnam, a summary of recent trends and current challenges”, Rob Swinkels and Carrie Turk, World Bank, Vietnam 2006.

²⁶ *Ethnic minority poverty in Vietnam*, Working Paper, February 2010, Chronic Poverty Research Centre, UK, Vietnam Academy of Social Sciences, Hanoi and National Economics University, Hanoi.

²⁷ *Idem*, note 2.

²⁸ *Idem*, note 24.

²⁹ Sources of ethnic inequality in Vietnam, Dominique van de Walle and Dileni Gunewardena, *Journal of Development Economics*, 2000. www.elsevier.com/locate/econbase.

³⁰ *Idem*, note 2.

Despite recommendations by the UN Special Rapporteur on Religious Intolerance (1998), the Chairman of the Working Group on Arbitrary Detention (1994), the UN Human Rights Committee (2002) and many UN member states during the 2009 Universal Periodic Review (2009), Vietnam has not only made no moves to rescind restrictive legislation, but continues to adopt new legislation that is grossly inconsistent with international human rights standards and norms. Recent legislation includes **Media Decree 2/2011** which curbs freedom of the press and blogs, **Decree 97 (2009)** which bans scientific research organisations from publishing results bearing on government policies, **Decree 11 (2008)** which obliges workers to pay compensation to their employers if the strike is deemed “*illegal*”, **Decree 38/2005** which bans demonstrations outside government buildings, **Directions for Implementing Decree 38** (2006), which prohibit gatherings of more than 5 people without authorisation from the authorities, **Ordinance 44 (2002)** on “administrative detention” and many others.³¹

Article 5: Protection of the right to equality before the law and enjoyment of human rights:

A. Equal treatment before the tribunals and other judiciary organs

The Courts are not independent in Vietnam, and trials are routinely unfair. Under the provisions of the 1992 Constitution, justice is administered through the People’s Courts, the People’s Office of Supervision and Control, and by Military Tribunals. Their role is to “*safeguard socialist legality, the socialist regime and the people’s mastery*” (Article 126). Trials are presided over by Judges and People’s assessors. Although nominally independent “*during trials*” (article 129), Judges and assessors at all levels are elected under a system closely supervised by the Vietnamese Communist Party, the National Assembly and the Fatherland Front. Prisoners often have no access to defence counsel of their own choice, and when they do, their defence counsel cannot sincerely defend them without risking reprisals and even imprisonment. On 12 August 2011, lawyer **Huynh Van Dong** was disbarred from the Dak Lak Bar Association on accusations of “*advocating for the behaviour of accused individuals*” (sic) because he protested against being denied access to vital legal documents and custody files whilst defending land-activists at a trial in Ben Tre in May 2011. Trials are often held *in camera*, without access to the public and press. In several cases, diplomatic observers have asked to attend trials, but have been refused.

Recent unfair trials of ethnic minority members: On 15 November 2010, **Pastors Y Du** and **Y Co** were sentenced to six years in prison followed by three years house arrest at a trial in Phu Yen Province on charges of “*undermining the state*”. They did not have access to a lawyer, and were tried together without regard for their individual circumstances, in violation of domestic law. They had refused to renounce membership of an “unrecognized” house church denomination and join the official ECV-S. They were brutally beaten in prison after their arrest on 27 January 2010, and Pastor Y Du told family that he thought he was going to die from the beatings.³²

³¹ See “*Rule of Law or Rule By Law: Crime and Punishment in the Socialist Republic of Vietnam*”, Vietnam Committee on Human Rights, 2011. http://www.queame.net/eng/doc/Crime_and_Punishment_in_Vietnam.pdf.

³² Christian Solidarity Worldwide, Briefing Paper, May, 2011.

As part of government crack-downs in the Central highlands, provincial Courts have also conducted “mobile trials” of ethnic Christians charged with national security offences, such as affiliations with FULRO or Dega Protestantism. Whereas most trials are closed to the public, these mobile trials are held before hundreds of local people, reportedly in the aim of frightening people and discouraging them from following Dega Protestantism. On 19



Montagnard Siu Thai at a mobile trial in Chu Se District, Photo Báo Gia Lai Online.

December 2011 in Chu Se district, Gia Lai, hundreds of local people attended the mobile trial of **Siu Thai**, a Christian Montagnard sentenced to 10 years in prison for “undermining national solidarity”. He was accused of forming an unofficial congregation called “The Cross of Jesus” and holding prayers at his home “as a front to hide his FULRO activities”. The state-controlled press said his harsh sentence was “a warning for all local people not to follow FULRO and undermine national solidarity.”³³

NGO sources report that more than **350 Montagnards** have been sentenced to long prison sentences since 2001 for participating in demonstrations, attempting to flee the country or attending prayers in “unrecognized” house churches. **At least 250 are reportedly still detained**, including pastors, house church leaders and land rights activists. Arrests are continuing as the government pursues its crackdowns, with more than 70 Montagnards arrested or detained during 2010 in the sole province of Gia Lai province.³⁴ In one trial on 5 April 2011, eight Montagnards were sentenced to a total of **75 years in prison** for alleged



Eight Montagnards sentenced to a total of 75 years in prison at Gia Lai People’s Court on 5 April 2011. Photo Báo Gia Lai.

adherence to Dega Protestantism and pro-FULRO activities (see photo on left). They are **Siu Hlom** (sentenced to 12 years), **Siu Nheo** (10 years), **Siu Brom** (10 years), **Rah Lan Mlih** (9 years), **Rơ Mah Pró** (9 years), **Rah Lan Blom** (9 years), **Rơ Mah Klít** (8 years) and **Ia Phang** (8 years). The Montagnard Foundation has issued a list of 80 Montagnards reportedly detained in Ba Sao Prison in Nam Ha province.³⁵

³³ Báo Gia Lai Online, 6 January 2012, <http://baogalai.com.vn>.

³⁴ Human Rights Watch, “Montagnard Christians in Vietnam, a case study in religious repression”, 2011.

³⁵ MFI: <http://montagnard-foundation.org/wp/category/press-release/mfi#.TxZsSoHN7Mo>

B. The Right to Security of the Person and Protection by the State against Violence or Bodily Harm

Ethnic minorities, particularly Montagnards in the Central Highlands and the Hmongs in the Northern Highlands, have been brutally beaten, harassed and tortured by the Police, local authorities and the militia. Members of ethnic groups who peacefully resist assimilation policies, practice the faith outside State-sponsored churches, refuse pressure to recant their faith or peacefully advocate political and economic rights for their community are routinely subjected to threats, harassments, fines, arbitrary expulsion from their homes and public denunciation sessions organized by the military, police and local authorities.

Since the demonstrations in 2001, NGO sources report that “*at least 25 Montagnards have died in prisons, jails or police lock-ups after beatings or illnesses sustained whilst in custody, or shortly after being prematurely released by prison authorities to hospital or home.*”³⁶ **Y Ben Hdok**, a Montagnard from Dak Lak, died in detention in 2008. Police told his wife that he had hanged himself in prison, but family members who came to collect his body said that his head, ribs and leg were “broken”, and his teeth were knocked out.

Reports indicate that “*contract thugs*” and “*citizen brigades*” are routinely hired by the police or local officials to harass and beat dissidents and religious worshippers, including ethnic Christian Montagnards and Hmongs, Buddhists from the Unified Buddhist Church of Vietnam, Catholics, Protestants, Hoa Hao, Khmer Krom Buddhists and members of other religious communities perceived as “undesirable” or a “threat” to public security.

Former political prisoners in Vietnam confirm that Montagnards have suffered beatings and torture in prison. Former political prisoner Nguyen Khac Toan, counted 224 Christian Montagnards in just one section of Ba Sao prison camp (Nam Ha) before his release in 2006. They all bore scars and traces of beating and torture. Nguyen Dinh Toan said that many of the Montagnards were detained in cells for “*dangerous opposition elements*” measuring merely 10 m², with four prisoners per cell sleeping on cement floor with no bed and one tiny ventilation hole, their feet in shackles. Nguyen Khac Toan, who was subjected to several months of this “harsh regime” treatment, said that prisoners were unable to walk for six months after detention in these cells.³⁷

In mid-2010, scores of Montagnards were beaten and several arrested during a series of protests in the rubber plantations in Gia Lai province, where working conditions are extremely harsh. The government accused the Montagnards of “inciting riots”, and seeking to revive FULRO sympathies and illegal worship. State-controlled media reported that Public Security teams had “*forced criminals to confess to conspiring and using tricks to take advantage of Protestantism to act for FULRO to oppose the government’s authority*”.³⁸



Bao Sao prison in Nam Ha

³⁶ Idem, note 34.

³⁷ *Vietnam: Twelve human Rights Defenders have the floor*”, FIDH & Vietnam Committee for Human Rights, Paris, April 2007.

³⁸ Báo Gia Lai, August 21, 2010, quoted by Human Rights Watch.



Special units of Mobile Police arrest a Montagnard in Gia Lai.
Photo An Ninh Thủ Đô, Hanoi.

Violations of the right to security of the person are especially disturbing in the light of Vietnam's **leniency towards police and officials who brutalise citizens**, in gross contradiction of the ICERD and Article 9 of the ICCPR. Under the Criminal Code, whereas the crime of murder carries the death penalty (article 93), officials who beat or torture to death suspects or detainees risk a maximum 12-year sentence (Article 298). This perpetuates a climate of impunity and has led to

endemic police brutality in Vietnam.³⁹ In September 2011, four prison wardens stood trial for beating a prisoner to death in the Central highlands because he smuggled a mobile phone into his cell. They were condemned to pay compensation to the prisoners' family (over US\$6,000), but served no prison sentence.⁴⁰

C. The Right to Participate in the Conduct of Public Affairs

Article 53 of the Vietnamese Constitution guarantees the right of all citizens *"to participate in the administration of the State and management of society, the discussions of problems of the country and region."* The right of all citizens over 21 to stand for election *"regardless of nationality, sex, social background, religious belief, cultural standard, occupation and time of residence"* is enshrined in Article 54.

However, under Vietnam's one-party system, the election process is controlled at all levels by the Vietnamese Communist Party (VCP). Citizens are not free to stand for election, to elect representatives of their choice, nor to participate in public affairs. Non-party members may also stand, but they must be approved by the Fatherland Front, a VCP-controlled umbrella organisation. The number of party members and non-party candidates approved is determined by the Party.

The participation of ethnic minority groups at a local level is very low. As Vietnam states in its report (paragraph 98), ethnic minorities accounted for only 11% provincial people's committees in 2004-2009. Whereas many ethnic minorities have their own village constitution and regulations, these are not recognised in Vietnamese law.⁴¹ Ethnic minorities have little say in the selection of their representatives, nor opportunity to participate in the decision-making process about policies that affect them. The World Bank has warned that *"this top-down approach of making assumptions about what people want and what they need without asking them has failed almost everywhere in the world and is outdated. Indigenous knowledge and local practice should be informing the work of scientists and researchers*

³⁹ See FIDH and VCHR, "From Vision to Facts, Human Rights in Vietnam under its chairmanship of ASEAN", September 2011. http://www.queme.net/eng/doc/From_Vision_to_Facts_-_Human_Rights_in_Vietnam.pdf

⁴⁰ *Four prison wardens indicted for deadly beating in Vietnam*, DPA, September 15, 2011.

⁴¹ *Idem*, note 2.

*should clearly be taking local knowledge into account when designing new technologies to make them locally suitable.*⁴²

D. The Protection of civil rights

(i) The right to freedom of movement and residence

The government implements a policy of population transfer specifically targeting the ethnic minorities. Montagnards and hill-tribes people have been forced to leave their ancestral lands for New Economic Zones (NEZs), often in the lowlands, to which they are traditionally unsuited. Population transfer is regulated by the 1995 Labour Code, under which the State management of labour includes “*to draw up and implement national programmes for employment, migration for work in new economic zones, and for employment in foreign countries*” (Article 180/3) and a number of government Decisions and Decrees.

In the past, population displacement to NEZs was used as a means of political discrimination or for reasons of national defence. Tens of thousands of Vietnamese were sent to form human buffers in NEZs along the Sino-Vietnamese and Cambodian borders during periods of conflict, and 900,000 indigenous Montagnard people were deported from strategic military regions in the Central highlands in a move to disband religious groups or perceived autonomous independence movements such as the FULRO.⁴³ In the 1980-90s, the government reportedly displaced a total of 6 million people to NEZs⁴⁴, and planned to send two million Kinh people into NEZs in the Central highlands before 2010 in a plan to marginalise ethnic tribes-people.



A mobile trial outside a communal hall in Gia Lai province, 2011. Photo Bao Gia Lai.

The UN Expert on Minority Issues, Ms. Gay McDougall expressed concern about the displacement of minorities and the confiscation of ancestral lands on which

their livelihoods depend. She noted that “*large areas of fertile lands have been turned over to industrial crops, including coffee and rubber, whilst massive in-migration of ethnic Kinh has put additional pressure on scarce available land.*”⁴⁵

Displacement from traditional villages because of **economic projects** has negatively impacted ethnic minority communities in many areas. One example is the Son La hydro-power plant which required the forced displacement of some 91,000 people, most of them minorities, from the provinces of Son La, Lai Chau and Dien Bien. In its report (paragraph 71) Vietnam describes this as a success story, citing a government Decision on compensation and resettlement support. However, according to the Vietnam Union of Science and Technology,

⁴² Explaining Ethnic Minority Poverty in Vietnam, idem, note 24.

⁴³ *Nhan Dan*, The People, Hanoi 6.2.1986 and *Quan Doi Nhan Nhan*, The People's Army, Hanoi, 2.4.1986 – and Wain, *Vietnam keeps its people on the move*, Asian Wall Street Journal, 20.7.1999.

⁴⁴ *Dai Doan Ket*, Great Solidarity, No 61, Hanoi 29 July 1996.

⁴⁵ Idem, note 2.

this relocation caused trauma and increased hardship for minorities, who often found themselves without basic infrastructures or agricultural land. *“Resettled communities are not given adequate assistance in their transition to alternative forms of upland agriculture production suitable to their new localities, leading to greater food insecurity and signs of increased poverty.”*⁴⁶

Population displacement caused by the **massive influx of Chinese workers** flooding into Vietnam to work on huge China-funded industrial projects in the electricity, cement, building and chemical sectors. One construction project in Quang Ninh province has as many as 2,000 Chinese workers. According to statistics from the Ministry of Labour, War Invalids and Social Affairs (MOLISA), in May 2011 there were 74,000 foreign workers in Vietnam, of which 90% of employees are Chinese. This influx of mostly unskilled labourers has directly impacted minority groups, as many of these projects are exploited in areas where ethnic minorities live.

One particularly controversial project is that of **bauxite mining in the Central highlands**. The US\$15 billion project tendered by the Vietnamese government to Chinese mining giant Chinalco entails open-cut mining of bauxite ore to make alumina (the powder used to produce aluminium). This costly and dangerous process has stripped vast mountainsides of vegetation, laying waste to entire valleys and leaving mounds of toxic red sludge. Entire villages of Chinese workers have mushroomed in the region, and communities of ethnic minorities have been displaced. Experts, scientists and even VCP icons such as General Vo Nguyen Giap have decried the project as an *“environmental disaster”*, and Buddhist dissident Thich Quang Do warned that it would *“destroy the culture and life-style of thousands of ethnic minority people living on this fertile plateau.”*⁴⁷



Bauxite mine in the Central highlands
Photo 3s-vn.com

However, the government is continuing bauxite exploitation, which Prime Minister Nguyen Tan Dung has described as *“a major policy of the Communist Party.”*

The **system of household registration or *hộ khẩu*** gravely infringes the right to freedom of movement. Local authorities routinely refuse to deliver, or ignore applications for ID cards or *hộ khẩu* to ethnic Christians who worship in non-recognised house churches. Without this document, they cannot travel outside their district or province.

(ii) - The right to leave, and return to one's country

Although the Vietnamese Constitution guarantees the right to *“freely travel abroad and return home from abroad”* (article 68), the Criminal Code provides sentences ranging from two years to life imprisonment for *“fleeing abroad or defecting to stay overseas with a view to opposing the people's administration”* (article 91). Following the 2001 demonstrations in the Central highlands, Montagnards escaped massively to Cambodia, and some 1,000 were

⁴⁶ Follow-up study on impacts of resettlement of Son La hydropower plant, VUSTA, Hanoi 2008.

⁴⁷ See IBIB Press Release http://www.queme.net/eng/news_detail.php?numb=1184

granted refugee status and resettled in the United States. However, Cambodia no longer grants asylum to ethnic minority asylum seekers from Vietnam, and has signed a MOU with the UN High Commission for Refugees to “facilitate” their repatriation. Many Montagnard Christians, Hmongs and other members of religious and ethnic minorities who flee to Cambodia have been forcibly returned to Vietnam, where they risk imprisonment and other forms of reprisal, such as police repression and denial of citizenship rights. A number of Montagnards forcibly returned to Vietnam have since disappeared. In December 2010, Khmer Krom land-rights activist **Chau Heng**, was arrested upon re-entering Vietnam after being denied political refugee status by the UNHCR in Thailand. He had reportedly organized large-scale protests in 2007 and 2008 against land confiscation by the local authorities.⁴⁸

Vietnamese Police are known to operate on both sides of the border with Cambodia to intercept and repatriate asylum seekers, resulting in police beatings and detentions. In 2002, Buddhist monk **Thich Tri Luc** was kidnapped by Vietnamese and Cambodian security agents in Phnom Penh after he had obtained refugee status from the UNHCR, and forcibly escorted back to Vietnam. He was imprisoned in Vietnam for one year in total secrecy before standing trial for illegally leaving the country. Article 91 is grossly incompatible with the right to freedom of movement enshrined in Article 12 of the ICCPR.



Montagnards hiding in the jungle as they escape to Cambodia to seek asylum (2005).

(v-vi). The right to own property and the right to inherit

The right to land ownership is one of the basic problems facing ethnic minority groups today. Under Vietnam’s socialist system “*land is the property of the entire people*” but it is “*uniformly managed by the State*”. The State thus owns the land and leases it to the people through a system of “Land Use Rights Certificates” (LURC). The UN Independent Expert on Ethnic Minorities observed: “*Land is a vital asset for ethnic minority livelihoods and a key component of rural poverty reduction. Landlessness has, however, increased in minority areas.*”⁴⁹

Forestry land is a particular problem. Ethnic minorities, who live primarily in wooded, highland areas are far more dependent on forestry than the Kinh. Yet in the Central Highlands, only 3% of households have long-term rights to forestry land.⁵⁰ State Forestry Enterprises currently control 40% of the 11 million hectares of land classified as forests, and only a fraction of this is allocated to households. Major government programmes to protect the forests and prevent deforestation, such as the Forest Strategy 2006-2020 have also negatively impacted ethnic minorities. Decided at a national level with very limited consultation with local residents in these areas, these programmes take little or no account of

⁴⁸ US Department of Democracy, Human Rights and Labor, 2010 country reports on human rights practices, April 2011.

⁴⁹ Idem, note 2.

⁵⁰ Statistics collected by Vietnam Household Living Standard Survey, 2004, cited by World Bank, see note 24.

poverty and livelihood improvement. Many ethnic minorities live in forests which are now under strict protection. They find themselves deprived of their livelihood, with very few alternatives to survive.⁵¹

Ethnic Khmer minorities who were relocated massively from ancestral farmlands in the fertile Mekong Delta during the war between Vietnam and Cambodia are also victims of confiscation of lands. During their absence, their lands were occupied by ethnic Kinh, and they returned home to find themselves landless. A study by the Institute of Ethnic Minorities describes the landlessness and seasonal migration of this Khmer Krom population in the Mekong Delta.⁵² Vietnam's Hunger Eradication and Poverty Reduction Programme (HEPR) has not targeted this group for assistance, and many Khmer households live in poverty (Ravillon and van Walle, 2006).

Overall, the government's policies of forced resettlement, State-appropriation of land, expropriation and population displacement have effectively deprived the ethnic minorities of the right to own and inherit ancestral homelands. This widespread policy, coupled with the spontaneous and State-sponsored migration of ethnic Vietnamese into highland areas, is undermining the traditional culture and social organisation of ethnic minorities. The State confiscation of ancestral Montagnard lands to plant cash crops such as coffee is also a discriminative policy, since the profits from these crops enrich ethnic Kinh rather than the Montagnards.

(vii). The right to freedom of thought, conscience and religion

“Religious freedom is not a gift that governments can bestow or withdraw at will, but a fundamental and inalienable human right.”

4th UBCV Supreme Patriarch Thich Huyen Quang, 1992

Religions in Vietnam are subjected to a system of recognition and control. Only “recognised” religions or State-sponsored religious groups belonging to the Vietnam Fatherland Front are allowed to practice religious activities, which are closely controlled by the Communist Party and the State. Religious groups whose applications for registration are denied, who do not meet the Ordinance's vague standards or who do not apply for registration are technically “illegal”. They can be disbanded without warning, and their followers exposed to all manner of harassments, repression, arrest and detention.

In its Report to the CERD (Section I on the right to freedom of religion, paragraphs 116 and 120), Vietnam asserts that religious freedom of “*lawful religious organisations*” is protected including in ethnic minority areas. This careful wording enables Vietnam to confine its report to religious bodies sponsored or “recognised” by the Communist Party and state, whilst obscuring the persecution suffered religious and ethnic minorities who worship outside State structures. In the same way, Vietnam sought to conceal reality from the UN Independent Expert on Minority Issues, Ms. Gay McDougall, during her visit to Vietnam by arranging meetings only with “State-sponsored” religious officials, and preventing her access to members of unrecognised groups.

⁵¹ Idem, note 24.

⁵² Institute of Ethnic Minorities/World Bank

The 2004 Ordinance on religions and Decree 22 (*see section on the legal framework*) set down provisions for unrecognised religions to apply for registration. This has been hailed as progress by the international community, and was a factor in Vietnam's removal from the US list of "Countries of Particular Concern" for religious freedom violations in 2006. In fact, many of these provisions impose controls and state interference that are inconsistent with the right to religious freedom. Moreover, NGO sources report that they are applied unevenly, and often with political motives. Christian Solidarity Worldwide comments that "*a large number of applications for registration were submitted, accepted and given registration during the period leading up to Vietnam's ascendency to the WTO in 2006. Following this date, the registration system slowed down*" and today has "*even come to a standstill for certain groups*".⁵³

Vietnam's whole religious policy is founded on the Communist Party's perception of which activities are "*purely religious*" and which "*abuse religion to threaten the interests of the State*". On the basis of this arbitrary distinction, Vietnam may arrest and detain religious followers, then declare in international forums that "*there are no religious prisoners in Vietnam, only people who violate the law*".

For example, **Instruction No. 1 on "Some Tasks in Regard to Protestantism"** (01/2005/CT-TTG) draws a line between "*purely religious activities*", which are to be encouraged, and the "*plots and manoeuvres of hostile forces to abuse religion*", which must be "*resolutely exposed and opposed*". Regarding the Central Highlands, it prohibits religious followers from following "*FULRO reactionaries*" or "*Dega Protestantism*" (Article 4). Regarding the Northern Highlands, it urges local authorities to "*create conditions for Christians to return to their traditional beliefs if they wish to do so.*" (Article 5).



Party officials in Ia Chia-Ia Grai (Gia Lai) warn Montagnard villagers against following Dega Protestantism. *Photo Tap Chi Dan Toc.*

Although Decree 22 specifically prohibits forced recantations of faith, the vague wording of Instruction No. 1 has been used by certain local authorities as a justification to use threats, pressure and public denunciation sessions to make people denounce their faith. The UN Special Rapporteur on Freedom of Religion or Belief raised the cases of three ethnic minority Christians, Sung Cua Po, Sung A Sinh

and Hang A Xa in Dien Bien province. The local police threatened to beat Sung Cua Po to death unless he recanted his faith.⁵⁴

⁵³ *Idem*, see note 30.

⁵⁴ Annual Report, UN Special Rapporteur on Freedom of Religion or Belief, Mr. Heiner Bielefeldt, A/HRC/16/53/Add.1. 2010.

Articles in the State-controlled media documented by Human Rights Watch⁵⁵ show that since early 2010, local authorities have organised widespread public criticism sessions in which hundreds of “*reactionary Dega Protestants and FULRO*” have renounced their faith in the Central Highlands. Following one such session in October 2010, 567 households committed to renouncing the religion in Krong Pa district in Gia Lai province. On November 24, 2010, a public denunciation session was held in Hring village, Cu Mgar district in Dak Lak province in which followers of the Ha Mon Catholic sect “volunteered” to confess their wrongdoings and sign commitments pledging to abandon the “false” Ha Mon religion. In the Northern Highlands, Hmong Protestants have been pressured to renounce their faith through fines, beatings, threats of property confiscation and expulsion, and even death threats. For example, in June 2010, several Hmong Protestants from Trung Phu village in Dien Bien province were threatened with death and beaten severely unless they renounced their faith; 25 ethnic Christians in Xa Tong village, Dien Bien province were threatened with confiscation of property and beatings.⁵⁶

Crack-down on ethnic Hmongs in the Northern Highlands: On April 30, 2011, some 7,000 ethnic minority Hmongs gathered in the Muong Nhe district of Dien Bien province in the Northwestern highlands near the border with Laos, one of the poorest regions in Vietnam. The Hmongs, including Protestants, Catholics and Animist believers, had reportedly flocked to the area following a rumour that a coming of a “messiah” was imminent. Sources also reported that it was an explosion of deep unrest caused by violations of land ownership and religious freedom, since many Hmongs have been driven out of their ancestral lands and forced to recant their faith.



Although this was a strictly peaceful gathering, on May 3, 2011, the government deployed armed military and police units in an aggressive crack-down on the pretext that “*extremists*” were conniving with “*hostile forces*” to establish Hmong self-rule. In the ensuing violent clashes, at least 60 Hmongs were killed, hundreds wounded, and hundreds of others fled for hiding in the jungle or attempted to

escape across the border to Laos. Armed helicopters were reportedly used to open machine-gun fire on the unarmed crowds, and special force units of the People’s Army were mobilised to track, arrest, interrogate and even summarily execute suspected Hmong demonstrators. The number of people arrested is not known, but many Hmongs have disappeared since then. The government sealed off the area and prohibited access to foreign journalists.”⁵⁷ The brutal repression of this peaceful gathering is a grave violation of the right to peaceful assembly of ethnic peoples guaranteed in Article 5 (ix) of ICERD.

⁵⁵ *Idem*, see note 30.

⁵⁶ US Commission on International Religious Freedom, Annual Report, May 2011.

⁵⁷ “*Many Vietnamese Hmong “in hiding”* and “*Vietnam seals ethnic Hmong Protest site*” BBC Vietnamese Service, 12 May 2011.

Other religious minorities subjected to repression

The **Unified Buddhist Church of Vietnam** (UBCV), Vietnam's largest religious organisation before Vietnam's reunification in 1975 is a target of systematic government repression. The UBCV has been outlawed since the creation of the State-sponsored Vietnam Buddhist Church in 1981. Although it has never been officially banned, the government declares that it "*does not exist*" and is therefore "*illegal*". UBCV followers are systematically harassed, persecuted, detained or placed under Police surveillance UBCV Patriarch Thich Quang Do has been detained for almost three decades for his peaceful advocacy of religious freedom and human rights, and he is currently under house arrest at the Thanh Minh Zen Monastery in Ho Chi Minh City without any justification or charge. UBCV monks, nuns and followers belonging to more than 20 UBCV provincial committees set up in the Central and Southern provinces to provide spiritual and humanitarian aid to poor people are subjected to continuous harassments, surveillance and Police interrogations. Celebrations of major Buddhist festivals such as the Vesak (Buddha's Birth) and Vu Lan (Wandering Souls' Day) in UBCV pagodas are banned. Local authorities threaten Buddhist followers with reprisals such as eviction from their jobs or expulsion of their children from school if they worship in UBCV pagodas or bring offerings to the monks. During the Vesak Festival in 2011, Buddhists at the Giac Minh Pagoda in Danang laid offerings before the pagoda's gates at dawn to avoid Police reprisals.



Security Police outside the Thanh Minh Zen Monastery where Thich Quang Do is under house arrest (5 June 2011, Photo VCHR/ IBIB).



Security Police prevent Buddhists attending prayers at Phuoc Hue Pagoda in Quang Tri (21.5.2011, Photo IBIB/VCHR).

Religious minorities including the **Hoa Hao** Buddhists, **Khmer Krom** Buddhists, and unrecognised **Cao Dai** groups also suffer persecution. Two Hoa Hao followers, Nguyen Van Lia and Tran Hoai An were sentenced respectively to five and three years in prison on 12, December 2011 by the People's Court in An Giang province for "*abusing democratic freedoms to infringe upon the interests of the state*" under article 258 of the Penal Code, and at least fourteen others are serving harsh prison sentences. In Tra Vinh, Soc Trang province, authorities defrocked and arrested Khmer

Buddhist abbot Thach Sophon in September 2010. He was sentenced to a nine-month suspended sentence and remains under house arrest.⁵⁸

Members of the **Falun Gong** religious sect in Vietnam, **Vu Duc Trung** and **Le Van Thanh** were sentenced to two and three years imprisonment on 11 November 2011 for “illegally broadcasting” a radio programme to China about persecution of the Falun Gong sect. Some 30 Falun Gong practitioners were beaten and arrested for staging a sit-down protest against the arrests outside the Chinese Embassy in Hanoi.

(viii) The right to freedom of opinion and expression

The right to freedom of opinion and expression is guaranteed in the Vietnamese Constitution. However, Article 4 of the Constitution (on the mastery of the Communist Party) as well as the Criminal Code, the Press Law, Media Decree 2/2011 and an arsenal of domestic regulations, decrees and decisions virtually nullify these fundamental freedoms and rights. Members of religious and ethnic minorities expressing grievances or peacefully criticising State discrimination policies may be accused of “threatening national security” and subjected to harsh prison sentences.

Over the past two years, Vietnam has operated systematic and harsh crack-downs against members of ethnic and religious minorities, human rights defenders, land rights activists, worker rights advocates and peaceful demonstrations by young people and intellectuals against China’s encroachments on Vietnamese sovereignty. In 2011 alone, over 30 peaceful dissidents have been arrested and condemned to a total of 185 years in prison and 75 years of house arrest (*see section on the right to security of the person*) simply for peacefully exercising their right to freedom of expression and calling for respect of their constitutional rights.

Vietnam routinely jams overseas radio stations such as Philippine-based Vatican radio “**Veritas**” which broadcasts to Vietnam in several minority languages, and **Radio Free Asia**. Communications with individuals or groups “overseas”, either by Internet or other means may be sanctioned by imprisonment. Pastor **Duong Kim Khai**, member of an unrecognised branch of the Mennonite Church in Ho Chi Minh City was sentenced to six years in prison in June 2011 for giving interviews on Radio Free Asia and advocating land rights. This is inconsistent with Article 5 of the ICERD and Article 19 of the ICCPR which guarantees the right to “*seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print.*”

Freedom of opinion and expression is further inhibited by the lack of press freedom in Vietnam. In its report (paragraph 124), Vietnam details 706 print press agencies, scores of radio and TV stations, electronic newspapers and news websites. However, these are all controlled by the government and controlled by the Communist Party. There is not one independent, privately-owned newspaper in Vietnam. Under Vietnam’s 1990 Press law, the press “*constitutes the voice of the Party, of State and social organisations.*” The 1993 Law on Publications stresses that publication aims to “*oppose all schemes and acts harmful to the national interests, destroying human dignity, morality and fair mode of life of the Vietnamese people*”... “*The State integrates the management of publication for the entire country*”.

⁵⁸ Idem, note 56.

The State-controlled media perpetuates discriminative stereotypes by routinely describing ethnic minorities as lazy, backward people with alcohol and drug problems who live off government support.⁵⁹ Ethnic minorities have no independent press organ through which they can redress these derogatory attitudes or express their opinions and grievances.

(ix) The right to freedom of peaceful assembly and association

As with other civil rights in Vietnam, guarantees of the right to “*assemble, form associations and hold demonstrations*” enshrined in Article 69 of the Constitution is followed by the provision – “*in accordance with the provisions of the law*”. This apparently legitimate provision in fact restricts the exercise of internationally-recognised human rights. Under Vietnam’s domestic legislation, peaceful assembly and association may be perceived as a “threat to national security”, punishable by administrative detention without trial (Ordinance 44) or harsh prison sentences under the Criminal Code. Ethnic Montagnards, Hmongs and other minorities who gather for meetings or prayers risk arrest under laws that prohibit gatherings of more than five people without permission.⁶⁰ Peaceful and legitimate demonstrations of Montagnards for religious freedom and restitution of ancestral lands have been brutally crushed by Police.

Suppression of associative freedom: There are no independent NGOs in Vietnam. All associative activity is strictly controlled by the Communist Party. Ethnic affairs are regulated by the government’s Committee for Ethnic Minority Affairs. Ethnic minorities who experience abuses of their rights have no access to independent mechanisms in order to defend themselves or seek remedies. They dare not raise their grievances with government bodies because of language barriers and fear of reprisals.

E) Economic, Social and Cultural rights

(i) - the right to work, free choice of employment and equal pay

Government-enforced policies in the Central and Northern Highlands, including population displacement and State-sponsored migration of Kinh people have deprived ethnic minorities of the right to free choice of employment and created serious inequalities in income, employment and pay. The average ethnic minority worker earns 15% less than the average ethnic majority worker.⁶¹ Ethnic minority households which have the same endowments of education, land, capital and other assets receive returns between a half and two thirds lower than Kinh or Hoa people living in communes with similar characteristics. In rural areas, ethnic minorities are much less likely to have written work contracts, receive pay-slips or have social security benefits. They are also two-and-a-half times less likely to be wage earners than the Kinh.⁶²

⁵⁹ Idem, note 2.

⁶⁰ Decree 38/2005/ND-CP on “*Stipulating a number of measures to ensure public order*” prohibits demonstrations outside State agencies and public buildings, and Circular 09/2005/TT-BCA “*Guiding the Implementation of a number of Articles of the Government Decree No 38*” prohibits gatherings of more than five people without permission from the State.

⁶¹ World Bank, *Ethnicity and Development in Vietnam*, 2009, p.48.

⁶² *Ethnic minority Poverty in Vietnam*, 2010, idem note 25, page 24.



Hmong women at a market.

Ethnic minorities also have less access to credit than Kinh peoples. The UN Independent Expert on Minority Issues noted that ethnic minorities have “*not been sufficiently targeted by credit schemes, receive smaller loans and are vulnerable to predatory lending.*”⁶³ This is also due in part to negative stereotypes and discriminative practices, such as the refusal by commercial banks to grant large loans to members of ethnic minorities because they believe they are too “backward” to handle them, as reported by Ede minorities in Dak Lak.⁶⁴ Because of this discriminatory

attitude, Ede people do not ask for large loans, knowing that they will never obtain them.

Language ability is also a factor of discrimination that maintains ethnic peoples in poverty. Rural ethnic minority households who cannot speak Vietnamese are 1.9 times more likely to be poor than those who can speak Vietnamese, and 7.9 times more likely to be poor than Kinh and Hoa people living in the same areas.⁶⁵

(ii) - The right to form and join trade unions

There are no independent trade unions in Vietnam. All unions are under the umbrella of the "Vietnam General Confederation of Labour" (VGCL) which functions under the control of the Communist Party. Free trade unions outside VGCL structures are prohibited. The 1995 Labour Code gives workers a restricted right to strike, principally in foreign-owned factories. But strikes are prohibited in sectors considered by the Government to be of "public service" or important to the national economy or defence, and the Prime Minister can "terminate" any strike perceived as "*detrimental to the national economy or public safety*". During a grave financial crisis in 2008, when inflation reached 27% and prices of food, housing and fuel rocketed, many workers staged strikes to demand better pay and working conditions. In response, the government adopted **Decree 11** which obliges workers to pay three months wages to their employers if their strike is deemed to violate the Labour Code.

Members of ethnic communities living in the Central and Northern Highlands are mostly farmers and peasants working under State-sponsored development plans. Since they have no form of independent representation, they have no mechanisms to protect them against exploitation or mismanagement by the State.

(iv, v) - The right to public health, medical care, social services and education

Economic liberalisation under the policy of renovation (*doi moi*) has seriously restricted the access of poor people – especially the ethnic minorities – to basic social services such as health and education. With the introduction of “*user fees*” over two decades ago, health and

⁶³ Idem, note 2.

⁶⁴ Idem, note 55.

⁶⁵ Idem note 25.

education have become “paying commodities”, thus seriously penalising ethnic communities in the poor areas, and leading to alarming disparities between ethnic minorities and the Kinh-Hoa people.



Child poverty is widespread in the minority areas.

Disparities in terms of health care are apparent from the earliest age. According to recent studies⁶⁶ ethnic minority children are three times as likely as Kinh-Hoa people to die before their first and fifth birthdays. The rate of stunted children – those who are shorter than they should be – is twice higher for ethnic minority children than amongst their Kinh or Hoa peers. Overall, one in every three ethnic minority children does not receive secondary education, and only 50% of children in the North-western highland regions complete primary education, compared to 90% in the Red River Delta.

Whilst 22% of Kinh or Hoa children are identified by UNICEF as living in poverty, the figure is 62% for ethnic minority children⁶⁷. Ethnic minority girls are particularly disadvantaged: up to one-fifth of young women from ethnic minorities report that they have never attended school.⁶⁸ As the UN Independent Expert Ms. Sepúlveda stressed in her report, these glaring disparities are not due to geographical isolation alone.⁶⁹

One cause of disparities in health and education access is the **system of household registration**, or *hộ khẩu* (see above). People without permanent residence status (“temporary migrants” of KT3 and KT4 status) have to pay higher prices for electricity and pipe water consumption compared to local residents. The *hộ khẩu* is also required to obtain birth certificates for newborns (Decree 81/1998/ND-CP). Parents who are refused *hộ khẩu* cannot obtain birth certificates, and thus cannot register their children for schooling. They also cannot obtain government-provided financial support for disadvantaged pupils to cover textbook or learning aids, nor access free medical care and other welfare bonuses, since these all require that pupils have permanent household registration status. Ethnic minorities who are denied *hộ khẩu* because of their religious affiliations or non-sedentary lifestyle thus suffer grave denial of economic and social rights in all aspects of their daily lives.

Recommendations

In view of the persisting inequality and violations of the rights of ethnic minorities in Vietnam, the Vietnam Committee on Human Rights urges the Vietnamese government to:

- Immediately and unconditionally release members of ethnic and religious minorities and all others detained for the peaceful exercise of their religious or political beliefs, or peaceful traditional cultural practices;

⁶⁶ Multiple Indicator Cluster Survey (MICS4) 2010-2011

⁶⁷ UNICEF, *An analysis of the situation of children in Viet Nam*, 2010, p.45.

⁶⁸ UN Independent Expert on Issues of Human Rights and Extreme Poverty, see note 5.

⁶⁹ *Idem*, note 5.

- Make public the names of all prisoners detained under “national security” provisions and allow visits by the International Red Cross and other international observers;
- Re-establish the legal status of the Unified Buddhist Church of Vietnam (UBCV) and all other non-recognised religious organisations, and allow them to operate freely without restrictions or harassment; release UBCV leader Thich Quang Do, detained without charge at the Thanh Minh Zen Monastery in Ho Chi Minh City;
- Promptly study and take effective measures to mitigate the negative impacts of economic liberalization on ethnic minorities which have led to increasing disparities in the areas of health, education, employment and other economic, social and political participation;
- Observe its obligations under international law to protect against human rights abuses by third parties, including business enterprises, and facilitate access to judicial and non-judicial remedy for victims of business-related abuses, through policies, regulation, and adjudication;
- Initiate political reforms to protect ethnic minorities against these negative effects and create a climate of diversity and political pluralism so that all citizens may participate in the process of social, economic, intellectual and political development in Vietnam;
- Recognise the universality and indivisibility of human rights, and promote and protect simultaneously and harmoniously all civil, political, economic, social and cultural rights, as recommended by the UN Independent Expert on the Question of Human Rights and Extreme Poverty;
- Adopt a rights-based approach to economic development, trade and investment and to respect and protect the right of all ethnic minorities to genuine consultation and negotiation in economic and development decision-making processes that affect them;
- Ensure that efforts to address poverty of minorities take fully into account their views, preserve their cultures, languages, traditions and lifestyle, and respect their rights to own and use the lands and territories that are essential to their livelihoods;
- Adopt legislation that fully respects freedom of association and facilitates the establishment and operation of independent NGOs and civil society organizations outside the framework of the Vietnam Fatherland Front to enhance the protection of ethnic minority peoples’ rights;
- Adopt legislation that fully respects freedom of peaceful assembly and the right to hold demonstrations, consistent with international human rights law, and repeal Decree 38/2005 and Circular 09/2005/TT-BCA which prohibits gatherings of more than five people without permission from the authorities;
- Authorise the publication of an independent press and the establishment of free trade unions which provide invaluable safety nets to prevent discriminatory practices and provide alternative mechanisms to defend ethnic minority rights;
- Enable United Nations’ experts and independent international human rights organizations to have full access to religious followers and religious and ethnic

minority groups in Vietnam, including members of congregations and denominations that are not recognised by the government;

- Extend a standing invitation to all UN Special procedures, in particular the Special Rapporteur on Human Rights Defenders; respond to requests for visits by the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression and Opinion and the Special Rapporteur on Religious Freedom;
- Declare without delay, in accordance with article 14, paragraph 1, of the Convention, that Vietnam recognises the competence of the CERD Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction, and to ensure that individuals or groups of individuals are not subject to reprisals for communicating with the Committee.

