



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
20 November 2018

Original: English

Committee against Torture Sixty-fifth session

Summary record of the 1688th meeting

Held at the Palais Wilson, Geneva, on Thursday, 15 November 2018, at 3 p.m.

Chair: Mr. Modvig

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Initial report of Viet Nam (continued) (CAT/C/VNM/1)

1. *At the invitation of the Chair, the delegation of Viet Nam took places at the Committee table.*
2. **Mr. Le Quy Vuong** (Viet Nam) said that human rights were consistently respected, protected and guaranteed in Viet Nam, and particular attention had been paid to training public officials in the effective implementation of the Convention against Torture. Nevertheless, certain shortcomings had been observed in the implementation of the Convention, as noted in the delegation's first meeting with the Committee. The delegation was keen to provide responses to the Committee's questions and recommendations in order to help it better understand the initial periodic report of Viet Nam.
3. **Mr. Nguyen Ngoc Anh** (Viet Nam) said that the Government planned to criminalize the act of abetting torture. While there was no single definition of torture in national legislation, the Constitution and many articles of the Criminal Code prohibited acts that could constitute torture and ill-treatment. If such acts led to the death of the victim, anyone who assisted in committing the crime could be considered an accomplice. The Government was examining how to improve the definition of torture contained in the new Criminal Code, which had increased the maximum prison term for crimes related to torture. The statute of limitations for the most serious crimes was 20 years.
4. Viet Nam intended to accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at an appropriate juncture.
5. While Viet Nam was one of dozens of States parties to the Convention that continued to practise capital punishment, the number of offences that could incur the death penalty had fallen from more than 50 in 1985 to 18 at the current time. Accordingly, the death penalty could only be imposed on those found guilty of the most serious crimes. Efforts were under way to reduce the number of crimes punishable by death still further.
6. The Code of Criminal Procedure provided that evidence collected unlawfully was null and void, which meant that evidence extracted under torture was not admissible in criminal trials.
7. While the Government recognized the progressive nature of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), it considered their implementation to be optional. Nevertheless, every effort was made to comply with the rules within the economic and social limitations of the country.
8. The various prison regimes were clearly explained in the 2015 Law on Execution of Temporary Custody and Detention. The prison system did not discriminate between individuals on the basis of the offences that they had committed: prisoners convicted of violations of national security were treated like any other inmates. All places of detention observed standards designed to protect the life and health of detainees. The following people could be held in separate quarters: pregnant women, foreigners, people with dangerous transmittable diseases, prisoners with signs of mental illness, lesbian, gay, bisexual, transgender and intersex persons, and persons sentenced to death.
9. House arrest was not practised in Viet Nam. However, individuals placed on probation were not allowed to leave a given locality without the permission of the authorities.
10. The Code of Criminal Procedure provided that persons arrested or held in detention must be informed of the reason for their arrest or detention and notified of their rights and obligations. The information on their arrest was recorded in their case file. They were free either to defend themselves or to hire a lawyer, and had the right to submit complaints on the conduct of law enforcement officials. All arrests must be approved by the People's

Procuracy and the family of the person concerned must be informed of their detention in writing within 24 hours.

11. The independence of lawyers was enshrined in law, as were their rights and responsibilities. The Vietnamese Lawyers Association was recognized as the organization that represented the legitimate rights and interests of lawyers, who numbered more than 13,000 across the country and had, between 2015 and 2017, participated in some 110,000 cases of legal aid.

12. Prisoners had the right to receive parcels from their families, to send letters, to make telephone calls and, if they abided by the prison rules, to meet their spouses in a private room. Prisoners had the right to receive cash, which was sent to the prison administration for safe-keeping. Detained minors could receive visits from their families more frequently than adult prisoners, and the State encouraged their families to send them various items such as writing materials.

13. The work performed by prisoners was not forced labour as defined in the International Labour Organization (ILO) Abolition of Forced Labour Convention, 1957 (No. 105), but rather a means of educating prisoners and preparing them for rehabilitation. It was adapted to the particular requirements of the prisoner; minors and those with disabilities could be exempted. Profits from the prisoners' output were re-invested in the prison, including in prison facilities and food rations.

14. There were three rehabilitation facilities for drug addicts in Viet Nam. The Provincial People's Courts could send individuals to those facilities to help them reacquire a capacity for work following drug abuse. No one had ever been consigned to such facilities for violations of national security.

15. Personal files were created for arrested persons as soon as they were taken into custody, and those records, as well as files on their behaviour and medical files, accompanied them if they were transferred to another facility.

16. Inmates in prisons were accorded at least 2 square metres per person for their sleeping space; those raising infants under the age of 3 years had between 3 and 4 square metres. When foreign nationals were detained, the relevant embassy or diplomatic representative was informed. Prisoners were assessed on a regular basis to ensure that their rehabilitation needs were met. All prisons were equipped to ensure the adequate provision of food, water, clothing, training, cultural activities, sports and health care, as well as compliance with hygiene standards. Prisons also had their own medical facilities and libraries, and cells were equipped with televisions.

17. Solitary confinement was not common practice in Viet Nam, but those who repeatedly broke prison rules were sometimes held in separate quarters, often in pairs, for reasons of safety. While overcrowding had, historically, been a problem in prisons, facilities had been improved to ensure that prisoners had room to live, work and attend rehabilitation sessions. Moreover, prisons were currently running at only two thirds of their capacity.

18. Reports that prisoners awaiting execution had been shackled or tortured were unfounded. Physical restraints were only employed if a prisoner was trying to escape, commit suicide or harm other prisoners.

19. Stringent procedures governed the handing down of death sentences. It was untrue that the first prisoner to be executed by lethal injection, in August 2013, had suffered for hours. The entire procedure, from the formal identification of the prisoner to the prisoner's final meal and death, had taken 120 minutes. Similarly, reports that Dien Cay had been transferred between facilities 20 times in six years were inaccurate: he had been transferred just twice.

20. Article 48 of the 2010 Law on Execution of Criminal Judgments established the right of detainees to access medical care and treatment. Physicians and nurses working in the penitentiary system were independent and fully trained. All prisons had a medical centre and, when the centre could not provide the necessary treatment, prisoners were transferred to a hospital. Prisoners with mental health problems could receive care from

external physicians if the attending physician saw fit to submit a request to that effect to the court. Persons living with HIV/AIDS received frequent visits from health-care personnel: such visits took place in private. The costs of medical care for prisoners were borne by the State.

21. The number of prisoners who died in detention represented a modest percentage of the overall prison population, and more than 96 per cent of fatalities were caused by diseases contracted prior to detention. Investigations into deaths in detention included comprehensive and independent forensic examinations.

22. Prison doctors were recruited by the Ministry of Public Security and were fully qualified. Seriously ill inmates were transferred to hospital, where independent physicians could identify signs of torture, if any, for subsequent investigation. The claim that government agencies did not investigate complaints of torture was unfounded. The allegation that the use of torture was on the increase in Viet Nam was false and based on unverifiable sources. In its report to the Committee, Viet Nam had comprehensively detailed its legal framework and its wide-ranging efforts to protect prisoners from torture. It had gone to great lengths to disseminate the Convention and train judicial officials. Moreover, it had introduced audio and video recordings of police interrogations and had made provision for the guaranteed access of suspects to legal counsel. Any officials who committed acts of torture were sanctioned.

23. There was no such thing as a prisoner of conscience in Viet Nam. Prisoners were serving sentences for crimes set out in the country's legislation: as a sovereign State, Viet Nam had the right to decide what constituted a crime and what sanctions were appropriate in each case.

24. Sentences to a period of detention in a re-education centre were handed down by the administrative courts in accordance with the law. Certain categories of person, such as pregnant women, were not detained in such centres, while others were sent to different facilities depending on the nature of their offences. Detainees in re-education centres had access to education, employment and entertainment and enjoyed the same rights as any other citizen, such as the right to vote. They could also receive visits from their relatives.

25. Training on the Convention against Torture had been mainstreamed in various training programmes with the assistance of the United Nations and various partner countries. For instance, a collaborative project was under way with the Netherlands to familiarize the Vietnamese security forces with the content of the Convention. A handbook on the prevention of torture was being finalized by the Government and would be issued to a wide range of investigative and judicial officials in late 2018 or early 2019.

26. **Mr. Le Tien** (Viet Nam) said that the power of the State was delegated to the judiciary and the authorities, in accordance with the law. The Supreme People's Procuracy derived its authority from the Constitution and the Law on the Organization of the People's Procuracies, among others, and played both a prosecutorial and a monitoring role. For instance, it was empowered to order the re-examination of evidence and the immediate release of wrongfully convicted persons. The National Assembly and People's Councils and the Viet Nam Fatherland Front were authorized to monitor the activities of the People's Procuracies. There was no crossover between the functions of prosecution and investigation.

27. The People's Procuracies and the Military Procuracies were authorized to investigate violations of the law by State officials. Between 2015 and 2018, the People's Procuracies had investigated six such cases relating to the use of corporal punishment.

28. The procedures for temporary detention and alternatives to detention were enshrined in the Criminal Procedure Code. The People's Procuracies could authorize temporary detention, or release from such detention, during investigations. The period of detention was determined by the court and was extended only in very complex cases to give the authorities time to fully investigate the facts and avoid convicting innocent parties. Both the courts and the People's Procuracies were empowered to order alternatives to temporary detention where the latter was deemed unsuitable.

29. A number of bodies were involved in the monitoring of prisons, including the National Assembly, the Viet Nam Fatherland Front, State inspectorates and even the media. The People's Procuracies were responsible for regularly inspecting prisons: they had carried out 4,000 inspections in 2016 and some 3,000 in 2017.

30. The People's Procuracies and heads of detention facilities, among others, were responsible for handling complaints of torture. Between 2013 and 2018, the People's Procuracies had handled 31 such cases. Under the Law on State Compensation Liability, persons injured at the hands of public officials were entitled to compensation.

31. **Mr. Chu Trung Dung** (Viet Nam) said that court judgments were based on examination of the evidence in accordance with the Criminal Code and were not influenced by any interaction or agreements prior to proceedings. Since 2015, four cases relating to the use of corporal punishment and the extraction of testimony under duress had been brought before the courts. Evidence in support of such complaints, including audio and video recordings, was examined in court. Where the use of torture to extract a confession was confirmed, the case was dismissed.

32. **Ms. Hoang Thi Thanh Nga** (Viet Nam) said that the declaration submitted by Viet Nam upon ratification of the Convention was not a reservation, although the Committee appeared to interpret it as such. Virtually no countries had expressed opposition to the declaration, and indeed, some had supported it. The 10 or so bilateral agreements on extradition and 14 on the transfer of convicted persons concluded by Viet Nam had all incorporated the relevant provisions of the Convention.

33. The establishment of a national human rights institution was under way, after the Government had conducted research on the institutions and practices of other countries and held consultations with experts and non-governmental organizations (NGOs).

34. A number of special rapporteurs had visited Viet Nam since 2006 and had worked closely with the Government and NGOs, making helpful recommendations for the protection of human rights in the country. Visits from other special rapporteurs were being scheduled. The Special Rapporteur on torture would be welcome to visit Viet Nam at a mutually convenient time.

35. **Mr. Nguyen Ngoc Anh** (Viet Nam) said that, with reference to the individual cases raised by the Committee, certain allegations lacked detail and were difficult to verify. One particular claim that tear gas had been used against an individual was manifestly false since the police in Viet Nam did not use tear gas. Nguyen Van Dai and Le Quoc Quan had been tried and given suspended prison sentences and had then emigrated to Germany, where they had been allowed to stay on humanitarian grounds. Tran Thi Thuy and Nguyen Bac Truyen had not been ill-treated: they had been tried in accordance with the law and Nguyen Bac Truyen had now served his sentence. The cases of those four individuals had been widely covered in the media. The case of Nguyen Huru Tan, who had committed suicide, was regrettable. An officer had been found guilty of negligence in that regard and sanctioned. The Government had already provided sufficient information on the cases of Tran Thi Nga, Nguyen Ngoc Nhur Quyuh and Nguyen Hung Linh. Dang Quoc Viet had been suspected of illegal drugs trafficking and, when stopped by police, had run away, fallen and injured himself. His vehicle had subsequently been found to contain marijuana.

36. **Mr. Modvig** (Country Rapporteur) said he welcomed the news that the State party intended to simplify its anti-torture legal framework. While it might be true that the domestic definition of torture in many countries did not fully reflect the definition in article 1 of the Convention, it was nonetheless a fact that as long as the State party had multiple provisions and penalties, it would be unable to demonstrate how many cases of torture there actually were. Furthermore, the harsher penalties introduced in article 373 of the new Criminal Code were still not commensurate with the seriousness of the offence. The State party might refute the assertion that relatives were not always notified of their loved one's detention and that detainees were not always granted access to a lawyer, but the fact remained that the Committee would prefer the State party to establish a monitoring mechanism that would also enable it to generate statistical data. Notwithstanding the State party's assertion that there were no prisoners of conscience or political prisoners and that

torture did not take place, the Committee had received a large number of reports to the contrary.

37. He would appreciate specific information on the capacity of the various prisons and detention centres, as well as a reply regarding the increase in the incarceration rate. While it was positive to hear that shackles were not used in a punitive manner, he would suggest that they were perhaps not the appropriate way of treating a suicidal prisoner either, and that the State party might consider providing psychiatric care instead. Pointing out that if prisoners who broke prison rules were sent to separate quarters alone, that would constitute solitary confinement, he wished to know what the difference was between those quarters and ordinary cells.

38. The fact that prison doctors were employed by the Ministry of Public Security, in other words the same entity that ran prisons, meant that they were not actually independent. He wished to know whether all new detainees underwent a medical examination: 200 doctors did not seem a sufficient number to carry out that task. He would appreciate a reply to the questions on how and by whom lesbian, gay, bisexual and transgender inmates were identified for assignment to separate quarters; how many cases of torture had been reported by prison doctors; how many deaths in custody had occurred and who had conducted the investigations and recorded the interrogations; and how long the period of temporary and pretrial detention was in law and in practice. He wondered what type of visits the People's Procuracy conducted in prisons. If they were of a similar scope to those a national preventive mechanism would conduct, the Committee would be very interested in the findings and in any resulting actions. Given the suspiciously low number of complaints of torture and ill-treatment, the State party might wish to consider changing the procedure so that complaints did not have to be filed with the head of the facility. For example, locked complaint boxes could be installed to which only the Procuracy had the key. What was the timeline for the establishment of the national human rights institution?

39. **Ms. Belmir** (Country Rapporteur) said that she would appreciate more detailed replies to her questions on the prerogatives of the People's Procuracy and judges, especially in the light of the fact that the Procuracy appeared to have the power to review the legality of judicial decisions, and on the acts that investigators were prohibited from carrying out. She invited the delegation to comment on the disproportionate number of detainees from religious and ethnic minorities and on the use of certain provisions of the Criminal Code, chiefly article 258, to target human rights defenders. Its comments would also be welcome on the lack of a juvenile justice system and on reports that children were placed in drug rehabilitation centres together with adults and that persons detained in such centres were in fact subjected to forced labour. The State party might challenge the veracity of the allegations in the individual cases referred to by the Committee, but it was worth noting that those cases had been raised by other treaty bodies and numerous NGOs as well.

40. **Mr. Touzé** said he found that the delegation's reply regarding executions dehumanized the victim, given that it was impossible to truly know whether or not that person had suffered physically — not to mention the emotional anguish that being executed most certainly caused. He would appreciate a response to the point raised about the failure to inform prisoners of the date of their execution, which constituted ill-treatment that clearly fell within the scope of the Convention.

41. **Mr. Hani** said that, under the Vienna Convention on the Law of Treaties, the State party's declaration upon ratification of the Convention against Torture did indeed constitute a reservation and was unacceptable because it essentially vitiated the Convention. Moreover, it was not true that no other States had objected to the declaration — Poland had — or that other States had made similar declarations. It would be useful to know whether the incident involving the film director Dang Quoc Viet had been investigated. Regarding the delegation's reference to the ILO Abolition of Forced Labour Convention, 1957 (No. 105), if one looked at the situation in the drug rehabilitation centres in the light of article 1 of that Convention, it was difficult to dispute the finding of Human Rights Watch that the work performed by inmates in those centres constituted forced labour. He would appreciate the delegation's comments on reports that prisoners had to perform exhausting work, for long hours and for very little pay, if any. He would also appreciate a reply to his question as

to whether or not Khmer Krom leaders Lieu Ny and Thach Thoul had been tortured, which would point to torture being committed for the purpose of discrimination.

42. **Ms. Gaer** said that she was troubled by some of the delegation's replies, for instance with regard to house arrest and solitary confinement, which were essentially semantic arguments and failed to address the actual issue. She was similarly unconvinced by the argument that, for reasons of sovereignty, it was acceptable to imprison individuals for political motives. It was worth recalling that article 2 of the Convention was very clear about there being no justification whatsoever for torture. She would appreciate a reply to her questions on whether the death in custody of Hoa Hao Buddhist Nguyen Huu Tan had been investigated by an independent body rather than by the same service accused of causing his death, and whether there were any mechanisms in place to protect persons who denounced acts of torture from reprisals. She reiterated her request for more detailed information on the cases referred to in paragraph 231 of the report, in which evidence obtained under torture had been dismissed. Echoing the concerns raised by the Special Rapporteur in the field of cultural rights, she wished to know whether there were any data on how ethnic and religious minorities were treated differently from the rest of the population. Lastly, she encouraged the State party to accede to the requests for visits by the various special procedures of the Human Rights Council.

43. **Mr. Rodríguez-Pinzón** said that he wished to know whether, in cases of torture, victims could still seek remedies to obtain compensation even if the perpetrators had not been identified or convicted. It was important to establish a mechanism to track the number of court rulings and administrative decisions granting reparation in cases of torture, in order to help bring public policies into line with article 14 of the Convention.

44. **Ms. Zhang** said that the efforts made so far by the State party to combat torture and ill-treatment were to be commended. However, it was important to improve the training provided on the prohibition of torture, in line with article 10 of the Convention, and to extend the training to medical personnel, public officials and other persons involved in various aspects of the custody of detainees. She wished to know whether such training included information on other international instruments covering the treatment of prisoners, such as the Nelson Mandela Rules, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). It was important to establish a mechanism to assess how effective the training was in reducing the number of cases of torture.

The meeting was suspended at 5.15 p.m. and resumed at 5.25 p.m.

45. **Mr. Le Quy Vuong** (Viet Nam) said that written replies to the questions raised that the delegation had not been able to answer during the dialogue would be sent to the Committee in due course; in the meantime he would address a number of points. While he acknowledged the Committee's view that the Criminal Code needed to be brought more closely into line with the Convention, particularly concerning the definition of torture, he wished to stress the significant progress made in that regard in the 2015 version of the Criminal Code.

46. The activities of officials in charge of the custody of detainees, and indeed all judicial activities, including those related to arrests and detentions, were monitored by the National Assembly and the People's Procuracy. Strict provisions on arrests and custody had been laid down in the 2015 Criminal Code. Police officers and investigation agencies had no right to make arrests save in cases of flagrante delicto, and all cases of detention had to be approved by the People's Procuracy. All arrests were communicated to the detainee's family, and to the relevant local government office, to allow the People's Procuracy to perform its monitoring role.

47. Anyone accused of committing a crime punishable by a prison sentence longer than 20 years was assigned a state defence counsel, free of charge. All arrested persons were given a medical examination and the nature of any existing injuries was clarified. Under a recent amendment to the Criminal Code, prisoners with a record of good behaviour could

be considered for release on parole, in which case they were supervised by the local authorities.

48. While the possibility of shackling prisoners was provided for in law, in practice that measure was not often applied, and prisoners were able to move around freely. There were no secret prisons; all prisons had been defined under the Law on the Execution of Temporary Custody and Detention, and were overseen by the National Assembly and the People's Procuracy.

49. Prison doctors were highly trained and independent. Where necessary, inmates could be transferred to hospitals outside prison, many of which had signed agreements with prisons to test inmates for communicable diseases. Inmates undergoing treatment for HIV/AIDS and tuberculosis were housed separately from other prisoners. Prisoners were entitled to make official complaints, which were treated in confidence to protect against retaliation, in line with the 2018 Law on Denunciations.

50. The role of prosecution fell to the People's Procuracy. The executive and judicial branches were independent. The People's Procuracy supervised investigations, trials and activities related to the execution of sentences. Trial judges were independent, and accused persons were considered innocent until proven guilty. The role and powers of the investigation agencies were defined in the Criminal Procedure Code. All investigation officials were obliged to conduct their duties in full respect of the law, including when collecting evidence. Any cases of forced confessions and corporal punishment were strictly punished; hence the use of audio or audiovisual recording when an accused person was questioned or made a statement.

51. All ethnicities and minor religions were equal in law. During investigations, accused persons belonging to an ethnic minority could answer in their own language, and an interpreter was provided if necessary. With regard to the concern raised over alleged arbitrary arrests, all arrests by investigation agencies were made openly. For example, except in cases of emergency, arrests were always carried out in daylight. It should be noted that any decision to send a person to a re-education centre or similar institution had to be taken by a court.

52. There was no such thing as forced labour in Viet Nam; prisoners' work in areas such as sewing and farming was carried out in order to facilitate inmates' reintegration into society. With regard to the possibility of redress in cases of miscarriage of justice involving State officials, legislation had been adopted in 2017 to provide compensation in such cases.

53. **The Chair** said that he looked forward to receiving the written responses promised by the head of delegation. If they were received within 48 hours they would be considered in the preparation of the Committee's concluding observations.

The meeting rose at 5.55 p.m.