

# Universal Periodic Review for Viet Nam 2013

## UNCT Submission

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## 1. Introduction

During the Universal Periodic Review (UPR) in 2009 Viet Nam received and accepted 93 recommendations. Since that time, the Government has been making efforts in putting in place follow-up mechanisms in order to progress on implementing the commitments made at the review. Set against the UPR recommendations Viet Nam has accepted in 2009, this report will place its focus on analysing to what extent Viet Nam has been able to progress since 2009, while reflecting the UN's priorities, as set out in the human rights based One Plan 2012 – 2016.

## 2. Background and Framework

### Scope of international obligations

Since Viet Nam's last UPR in 2009, no further core human rights treaty has been signed or ratified by Viet Nam.<sup>1</sup>

### Constitutional and legislative framework

The promotion and protection of human rights is enshrined in the Vietnamese Constitution, which guarantees basic rights and freedoms. The current Constitution, promulgated in 1992 and revised in 2001, is in the process of revision following a National Assembly decision that it is inconsistent with the realities of the country's socio-economic and political development context.<sup>2</sup> During the amendment process public consultations supported by a National Assembly resolution, have allowed for comments to be made on all thematic areas including on human rights provisions.<sup>3 4</sup>

The unprecedented role given to civil society, the media and others by the Constitutional Amendment Drafting Committee in the consultation process is well recognised. The opportunity to share remarks and comments with the Drafting Committee as part of the consultation process was also extended to the UN Country Team, who emphasised the need for the Constitution to express the State's duty to promote and protect human rights, the supremacy of international law and the general need for alignment with international human rights norms and standards.<sup>5</sup> A key concern of the UNCT is to what extent public debates will be reflected in the amended Constitution and to what extent the newly proposed mechanisms for constitutional protection<sup>6</sup> - if adopted - can guarantee effective remedies for human rights violations.

### Institutional and human rights infrastructure and policy measures

Viet Nam has established a Human Rights Steering Committee, which brings together representatives from several line-ministries and sectors. Chaired by the Minister of Foreign Affairs and supported by the Standing Office of the Committee, located within the Ministry of Public Security, the Committee is mainly responsible for coordinating human rights activities at ministerial level.

The Ministry leading the overall human rights portfolio is the Ministry of Foreign Affairs (MOFA). The Ministry assumes the prime responsibility for the conclusion, accession and implementation of all treaties that are concluded or acceded to in the name of the State, including human rights treaties. MOFA therefore plays a key role in following up on national and international human rights obligations, while working in close cooperation with other ministries. MOFA also assumes key responsibilities in coordinating the follow up to UPR

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<sup>1</sup> A full overview of instruments signed or ratified can be found in Annex 1. Viet Nam's treaty reporting status can be found in Annex 2.

<sup>2</sup> Submission no. 11/TTr-UBTVQH13 by the National Assembly's Standing Committee to the National Assembly on the realisation of the direction on amending the 1992 Constitution (2 August 2011).

<sup>3</sup> Comments can be made until Autumn 2013, before the National Assembly's 6<sup>th</sup> session in October-November 2013. Vietnamese are not asked to vote on the draft in a referendum.

<sup>4</sup> Resolution no. 38/2012/QH13, approved by the National Assembly on 23 November 2012, on the public consultation of the draft Constitutional amendments.

<sup>5</sup> The UN Country Team's full set of comments submitted to the Drafting Committee, are available at: [www.un.org.vn](http://www.un.org.vn)

<sup>6</sup> Article 120 of the draft amendments of January 2 2013 provides for the establishment of a Constitutional Council with power to review the constitutionality of laws and regulations. However, the current draft amendments contain an option not to establish this body, leaving the Constitution with no effective mechanism for enforcement, interpretation or remedy, as at present. (While the current Constitution provides for its own interpretation by the Standing Committee of the National Assembly, that body has in fact never issued any interpretation of any provision, despite a number of petitions from citizens requesting it to do so, and there is no procedural mechanism provided by which it could do so.)

recommendations and supports the preparation of Viet Nam's national UPR report and related voluntary commitments. Until recently MOFA has also carried the main responsibility for drafting and compiling Viet Nam's reports to human rights treaty bodies. However, there is now a strong tendency to 'decentralise' human rights reporting and to share this responsibility with other line-ministries.

The overarching Social Economic Development Strategy of 2011-2020, a key national document, identifies human rights as a cross cutting issue to be mainstreamed into all national development priorities and activities. Many ministries have also passed strategies that provide the framework for developing national policies in fields relevant to human rights. Such strategies include: the National Strategy on Gender Equality for 2011-2020, the Viet Nam Family Development Strategy 2020 with a vision 2030 (2012), the National Plan of Action on Prevention and Combating Trafficking Crime, the Legal System Development Strategy to 2010 with a Vision to 2020, the Judicial Reform Strategy for the Period until 2020, the Education Development Strategic Plan 2011-2020, the National Strategy on Climate Change until 2050 (2012), the National Green Growth Strategy (2012), and the National Strategy on HIV/AIDS Prevention and Control (2012). Although numerous development and policy frameworks exist, a national review process or mechanism is needed to ensure that all upcoming national strategies and laws are in full conformity with international human rights commitments, obligations and standards.

An independent national human rights mechanism, or National Human Rights Institution (NHRI), so far does not exist. However, the Government has been looking at the option of establishing a NHRI and the different modalities and options that exist around the world.<sup>7</sup> Establishing a NHRI in accordance with the Paris Principles, although rejected as a recommendation at the UPR in 2009, remains an issue the Government is nevertheless considering.

### **3. Cooperation with Human Rights Mechanisms**

Since the last UPR in 2009 and since accepting the recommendation to enhance the cooperation with UN Special Procedures, Viet Nam has intensified its cooperation with human rights mechanisms and extended five invitations to Special Rapporteurs: the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights; the Independent Expert on the question of human rights and extreme poverty; the Independent Expert on minority issues; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the right to education. The first four have already concluded their mission to Viet Nam in 2010 and 2011.

Viet Nam is engaging with regional human rights mechanisms through the ASEAN Intergovernmental Commission on Human Rights (AICHR) established in 2009, and supported the development of the ASEAN Declaration on Human Rights, which was adopted in 2012. Furthermore, Viet Nam chaired AICHR in 2010.

At international level a key ambition of Viet Nam is to join the UN Human Rights Council and make greater contributions to the efforts of the Council and the international community to promote and protect human rights.<sup>8</sup> In this regard Viet Nam is advancing its aim for a deeper integration into the international human rights community whilst also reacting to comments received during the 2009 UPR, when members asked Viet Nam to participate actively in international cooperation to encourage and protect economic, social and cultural rights and to share positive experiences with other countries.<sup>9</sup>

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<sup>7</sup> As part of the cooperation between MOFA and UNDP on human rights, a comparative study was compiled at the request of the Government, which draws out different models of NHRI's around the globe. The study 'National Human Rights Institutions – models, programs, challenges, solutions' (2011) is available at: <http://www.undp.org.vn/detail/publications/publication-details/?contentId=4000&languageId=1>

<sup>8</sup> Statement by H.E. Pham Binh Minh, Minister of Foreign Affairs of the Socialist Republic of Viet Nam at the high-level segment of the 22nd Session of the UN Human Rights Council, 25<sup>th</sup> February 2013.

<sup>9</sup> General Assembly Report of the Working Group on the Universal Periodic Review, Viet Nam, A/HRC/12/11.

#### 4. Implementation of international human rights obligations

##### Equality and non-discrimination

At the 2009 UPR there was wide acknowledgment for Viet Nam's rapid growth and successful poverty reduction strategies. Between 1993 and 2008 poverty rates were reduced from 58.1 per cent to 14.5 per cent, a reduction of 75 per cent.<sup>10</sup> Many Vietnamese have been able to profit from new growth processes, which have led to improved living conditions, more income opportunities, better access to services such as safe drinking water and health care facilities.

Even though data suggests that perceived inequality in Viet Nam differs from available empirical data on inequality<sup>11</sup> not all Vietnamese are able to profit equally from national development. Ethnic minority groups for instance have fewer employment opportunities open to them and their limited income excludes them from full participation in socio-economic life; the ethnic minority poverty rate stands at 66.3 per cent.<sup>12</sup> Income inequality among households for every ethnic group in the poorest communes of Viet Nam is increasing<sup>13</sup>. Public infrastructure in these geographically remote regions is in many instances underdeveloped and ethnic minorities have unequal access to public services such as education and healthcare. In 2010 ethnic minorities accounted for nearly half (47 per cent) of the total poor, even though they account for only 15 per cent of the population.<sup>14</sup> Similarly, child poverty rates are higher among ethnic minority groups. Although child poverty rates have declined, they remain high at 22.6 per cent in 2006, 20.7 per cent in 2008 and 21.1 per cent in 2010.<sup>15</sup>

Viet Nam has shown its commitment to gender equality by developing a comprehensive legal framework. The Constitution explicitly recognizes the equal rights of women and the country is one of the pioneers in the region in formulating policies and passing relevant laws, such as the Law on Gender Equality (2006). In addition, other national laws and strategies reinforce gender equality with provisions on gender-based non-discrimination such as the National Strategy on Gender Equality for 2011-2020; the Viet Nam Family Development Strategy 2020 with a vision 2030 approved by the Prime Minister in May 2012; the Law on HIV/AIDS Prevention and Control; the revised Labour Code; the Land Law and the Law on Marriage and Family. Although the legal frameworks are broadly in place to achieve equality and non-discrimination, there still exist a number of critical issues that require law and policy changes, as well as more intensified efforts in implementing the existing legal frameworks. For example, many women still work in the informal sector without adequate social protection or employment benefits<sup>16</sup> and the current differential in retirement age for women (age 55) and men (age 60), further impedes their professional advancement<sup>17</sup>. Political representation rates in fact have declined over the last four parliamentary terms, and currently the representation rate of women in the National Assembly, although above the global average,<sup>18</sup> stands at only 24.4 per cent,<sup>19</sup> while in the Central Committee of the Communist Party, only 9 per cent of positions are held by women.<sup>20</sup>

Inequalities also exist with regards to land rights. The number of female-only and joint holders of land-use titles is still low, even though the Land Law (2003) allows for the names of both husband and wife to be stated

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<sup>10</sup> World Bank, 'Well Begun, Not Yet done: Vietnam's remarkable Progress on Poverty Reduction and the Emerging challenges; 2012 Vietnam Poverty Assessment' (2012).

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> The Gini index for ethnic minorities increased from 40.3 in 2007 to 44.9 in 2012. UNDP, 'Impact of Programme 135 phase II through the lens of Baseline and Endline Surveys' (2012).

<sup>14</sup> World Bank, 'Well Begun, Not Yet done: Vietnam's remarkable Progress on Poverty Reduction and the Emerging challenges; 2012 Vietnam Poverty Assessment' (2012).

<sup>15</sup> Ibid.

<sup>16</sup> Cling, Jean-Pierre, Mireille Razafindrakoto & Francois Roubaud (2010), 'The Informal Economy in Viet Nam. Study of the Labour Market', (ILO Viet Nam 2010).

<sup>17</sup> UN Discussion Paper, 'CEDAW, Women's rights and retirement age in Viet Nam' (2012).

<sup>18</sup> Inter-Parliamentary Union, Women in National Parliaments, <http://www.ipu.org/wmn-e/world.htm>

<sup>19</sup> UNDP, 'Women's Representation in Leadership in Viet Nam' (2012).

<sup>20</sup> Ibid.

in the land use certificates.<sup>21</sup> This curtails women's access to financial instruments such as credit, and limits their ability to be economically independent from their husbands. Despite legal guarantees of equality, in reality, customary norms and traditions often govern inheritance, succession, marital property relations, and familial property division disadvantage women hindering them from accessing their rights. Ensuring that women's rights to land are fully upheld will require a much stronger focus on enforcing existing legal instruments rather than focusing on legal revisions.<sup>22 23</sup>

Another area of progress in advancing equality has been the recent statements by senior government officials and public debate on same-sex marriage and the rights of lesbians, gays, bisexuals and transgender (LGBT) people.<sup>24</sup> Efforts to strengthen LGBT rights within the revision of the Law on Family and Marriage is an opportunity for Viet Nam to emerge as a regional leader in the fight against homophobia.

### **Right to life, liberty and security of person**

As stipulated in international and regional legal instruments, the duty and priority to protect the right to life, liberty and security of persons lies with States. The Vietnamese Government has ratified the International Covenant on Civil and Political Rights. To protect in particular women and young girls it also signed the Convention on the Elimination of all forms of Discrimination Against Women while explicitly recognising the equal rights of women across public and private domains in the Constitution.

However, national data confirm that high rates of physical, sexual and emotional violence against women persist. Statistics show that 32 per cent of ever-married women reported having experienced physical violence in their life and 54 per cent of women report lifetime emotional abuse. Fifty-eight per cent of women report ever experiencing physical, sexual or emotional abuse.<sup>25</sup> While the current Law on Gender Equality and the Law on Domestic Violence Prevention provides a legal framework against domestic violence, the framework falls short of providing full protection against forms of violence such as emotional abuse. As such, there is a significant need for a comprehensive, systematic, and human-rights based national response to gender based violence in Viet Nam.

A theme covered at the first UPR was human trafficking, which Viet Nam agreed to address, pledging to cooperate with the international community and neighbouring countries in this regard. Vietnamese women, men and children are being trafficked for sexual and labour exploitation with women and children most at risk, especially from minority groups and border regions. The majority of Viet Nam's cross-border human trafficking occurs on the country's northern border with China (65 per cent), while 11 per cent are on the Cambodian and 6.5 per cent on the border of Lao PDR.<sup>26</sup> Although the actual number is likely to be higher, recent official figures show that in 2012, 460 Trafficking in Persons (TIP) cases with 769 perpetrators, and 844 reported victims were identified.<sup>27</sup> The Law on Prevention and Combating of Human Trafficking and the National Plan of Action on Prevention and Combating Trafficking provide a comprehensive list of prohibited acts, prevention, protection and assistance measures for victims of trafficking. Challenges however remain in collecting and compiling accurate statistics and data and raising awareness among victims of their rights and entitlements to remedy and assistance.<sup>28 29</sup>

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<sup>21</sup> Hoang Cam et al, 'The Exclusion of Women's Access to Land' (UNDP 2012). Also in United Nations system in Viet Nam, the World Bank, the Asian Development Bank, AusAID, Oxfam, 'Joint Policy Brief; Revising the 2003 Law on Land in Viet Nam: Creating Equitable Treatment for Land Use Right Holders'.

<sup>22</sup> Menon, Nidhiya and Yana Rodgers, 'Land Rights and Economic Security for Women in Viet Nam' (UNDP 2012).

<sup>23</sup> United Nations system in Viet Nam, the World Bank, the Asian Development Bank, AusAID, Oxfam, 'Joint Policy Brief; Revising the 2003 Law on Land in Viet Nam: Creating Equitable Treatment for Land Use Right Holders'.

<sup>24</sup> <http://tuoitre.vn/Chinh-tri-Xa-hoi/503408/khong-nen-dinh-kien-voi-nguoi-dong-tinh.html>; <http://tuoitre.vn/chinh-tri-xa-hoi/543174/bo-y-te-ung-ho-ket-hon-dong-tinh.html>

<sup>25</sup> General Statistics Office of Viet Nam, 'National Study on Domestic Violence Against Women' (2010).

<sup>26</sup> Ministry of Public Security, 'Report of the Standing Office on Drugs and Crime', as presented at the international workshop on anti human trafficking Ha Noi, 21 December 2012.

<sup>27</sup> Criminal Police Department, Ministry of Public Security, 'Annual Report' (2012).

<sup>28</sup> UNODC Regional Centre for East Asia and the Pacific, 'Needs Assessment for Establishing a National Referral Mechanism in Viet Nam'.

<sup>29</sup> AUSAID Australia-Asia Program to Combat Trafficking in Persons (2012).

The detention of individuals in ‘medical treatment establishments and rehabilitation centres’ for administrative violations has presented a major challenge in upholding rights guaranteed by the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. This issue was identified in the 2009 UPR process, but the recommendation to repeal ordinance 44 on regulating administrative justice, which authorises administrative detention, house arrest or detention in special protection centre and psychiatric facilities for two-year renewable periods without trial, was rejected. Nevertheless, since then there has been notable progress. A new Law on Handling Administrative Violations passed in June 2012 includes a number of important reforms, such as the abolition of administrative detention for sex workers, and the introduction of judicial due process for administrative detention of dependent drug users and reform schools for juveniles in conflict with the law. According to MOLISA, all 862 women who were detained in the 05 centres before the Law on the Handling of Administrative Violations was passed have since been released. The People’s Supreme Court and the Ministry of Justice are working with other government institutions to develop court procedures for people accused of illegal drug dependency and juveniles in conflict with the law.

Challenges remain. All individuals detained for illegal drug dependency require evidence-based, long-term treatment for their addiction and access to healthcare, especially for HIV, hepatitis and other health issues related to drug use. Persons undergoing rehabilitation can work only in the context of a free employment relationship that necessarily requires the formal consent of the person concerned and guarantees and safeguards wage, occupational health and social security and thus reflects a free labour relationship. The UN Country Team has recommended a full review of the conditions under which people perform labour during compulsory detention or rehabilitation.<sup>30</sup>

Furthermore, with relation to persons under the age of 18, international law stipulates that deprivation of liberty shall only be used as a matter of last resort and for the shortest appropriate period of time, based on the principle of best interests of the child. Though the new Law on Handling Administrative Violations introduces some procedural safeguards to juveniles in conflict with the law, detailed measures that are considered appropriate to promote physical and psychological recovery and social reintegration, and to implement child-friendly sensitive procedures have to be addressed in the process of developing sub-laws and guidance documents to implement the new Law.

#### **Administration of justice, including impunity of law, and the rule of law**

Viet Nam continues its efforts to move towards a law-governed state and has underlined this effort at its first UPR where Viet Nam pledged to continue its judicial reforms and the promotion and protection of human rights. The vision and objectives of the Communist Party of Viet Nam and the State to reforming the judiciary are reflected in the Judicial Reform Strategy to 2020<sup>31</sup> and the Socio-Economic Development Strategy 2011-2020. A National Steering Committee on Judicial Reform headed by the President has been set up and meets regularly to watch over the implementation of the reform agenda. In accordance with the principle of building a rule of law state, the Party at its XI Congress in 2011 called for institutional reform toward ensuring the unified power of the State, along with the distributions, collaboration and control between state bodies in the exercise of legislative, executive and judicial powers.

The overall progress of judicial reform though has been slow and lags behind the legislative changes and the process of simplifying public administrative procedures. Many tasks related to creating enabling conditions for the promotion and protection of human rights, as set forth in the judicial reform strategy, such as the introduction of an adversarial system in court adjudication, and the strengthening of independent judicial adjudication have not yet been sufficiently translated into concrete actions.<sup>32</sup> The Vietnamese judicial system

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<sup>30</sup> United Nations in Viet Nam, ‘Position on administrative detention for sex workers and people who use drugs’ (2011). Available at: [http://www.unaids.org.vn/images/stories/newsroom/2011/un\\_position\\_paper\\_on\\_administrative\\_detention\\_15\\_august\\_2011.pdf](http://www.unaids.org.vn/images/stories/newsroom/2011/un_position_paper_on_administrative_detention_15_august_2011.pdf)

<sup>31</sup> See Resolution 49/NQ-TW dated 24 May 2005 of the Politburo of Communist Party on Judicial Reform Strategy to 2020; Action Plan to Implementation of the Resolution 49 on Judicial Reform Strategy – period 2006-2010.

<sup>32</sup> The Vietnamese Constitution only provides that judges will decide cases independently, but not that they will be structurally independent as required by international standards.

is still marked by a lack of independence of judges even though the Vietnamese Constitution requires judges and jurors to decide cases independently and only by following the law. In reality Vietnamese judges frequently seek the opinion of court's leaders, in between 40-60 per cent of cases, on how to decide civil cases depending on the type of jurisdiction.<sup>33</sup> This impairs the right to a fair and public hearing of everyone by a competent, independent and impartial tribunal established by law.<sup>34</sup>

Whilst land law and regulations are regularly updated and amended reflecting the pressures associated with a market-driven economy, land grievances dominate complaints sent to central government. As shown by the Supreme People's Court's official statistics about 70 per cent of all complaints relate to land compensation and reallocation<sup>35 36</sup> and are mostly resolved by extrajudicial measures. Land taking in Viet Nam is based on administrative decisions and land users are often not consulted in the decision making process. According to the 2012 Viet Nam Governance and Public Administration Performance Index (PAPI), 92 per cent of land users in 2012—compared to 73 per cent in 2010— for instance had not been aware of local land-use plans.<sup>37</sup> Injustices result when compensation for recovered land does not adequately cover the income, wealth and security foregone by land users, in particular farmers. To address the injustice, beyond revising the Land Law and creating equitable treatment for land use right holders with special consideration to farmers and marginalised groups,<sup>38</sup> Viet Nam needs to develop a responsive and independent judicial and governance system that allows the poor and vulnerable groups to claim their rights.

Though court statistics on cases handled in recent years has shown increasing efficiency, there is less confidence of the public in the court and justice system in terms of access to justice.<sup>39</sup> Low levels of access to justice in Viet Nam affect especially poor and marginalised groups and curtail their access to effective judicial remedies; the right to counsel in criminal cases is poorly enforced in practice. Only around 9 to 11 per cent of accused, according to the statistics of the Supreme Court, have been represented by counsel either paid by the accused or appointed by justice agencies.<sup>40</sup> Even among those accused who are entitled to free legal assistance, only about 20 to 30 per cent have access to appointed counsel.<sup>41</sup> The Government has established a legal aid system in order to provide free legal services for the poor, women, juveniles, ethnic minorities and people with HIV. But effectiveness and outreach of the state legal aid system to the right-holders has not improved significantly since the last UPR. Government statistics show that the amount of state-funded legal aid services remains at a low level<sup>42</sup> while the role of non-state and civil society actors in this field has been limited, partly due to the regulatory limitations on the bodies which can offer such legal aid.

Efforts taken to reform the criminal sanctioning system can be observed in the legislative process. The Law on Criminal Procedures is being reviewed with the aim to increase legal safeguards of those accused and convicted, and to ensuring an impartial and fair trial. It remains to be seen how far these principles as well as other fundamental rights on criminal justice are upheld in the revisions of the Law on Criminal Procedures to be submitted to the National Assembly in 2014. It is recommended that Viet Nam sets out the fundamental criminal justice rights in more detail in the Constitution, including that certain rights according to international

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<sup>33</sup> Court Governance in Viet Nam, 2013, a UNDP commissioned study, in which 2567 judges participated, accounting for approximately 47 per cent of Vietnamese judges at that time.

<sup>34</sup> See Article 10, the Universal Declaration of Human Rights; Article 14(1), the International Covenant on Civil and Political Rights.

<sup>35</sup> See Report of General Inspectorate to National Assembly on handling administrative complaints and denunciation, National Assembly XIII, Session 4, October 2012.

<sup>36</sup> Supreme People's Court's statistics: <http://www.toaan.gov.vn/portal/page/portal/tandtc/5901712>.

<sup>37</sup> CECODES, VFF-CRT & UNDP, 'The Viet Nam Provincial Governance and Public Administration Performance Index (PAPI) 2012: Measuring Citizens' Experiences (2013).

<sup>38</sup> See Hoang Cam et al, "Exclusion of Women in Access to Land in Contemporary Viet Nam", (UNDP 2012).

<sup>39</sup> UNDP, 'Access to Justice in Vietnam - A survey from a people's perspective (2004); UNDP, 'Updated Report on Access to Justice in Vietnam' (2010). See also the Supreme Court's statistics of caseload at <http://toaan.gov.vn/portal/page/portal/tandtc/5901712>.

<sup>40</sup> UNDP, 'Appointed Counsel in Vietnamese Criminal Law and Practice' (2011)

<sup>41</sup> Article 57(2) of the Criminal Procedure Code requires that an accused who is subject to life sentencing or the death penalty, or a minor or person with physical/mental defects, is entitled to free legal assistance. The defendant's lawyer in this case is called 'appointed counsel'.

<sup>42</sup> In 2009, 12 7652 persons received free legal aid, in 2010, the number stood at 11 4651 (Ministry of Justice <http://moj.gov.vn/Pages/solieuthongke.aspx>.)

law cannot be limited under any circumstances, such as the right to life, the prohibition of torture, or cruel, inhuman or degrading punishment.

Corruption in the public sector undermines human rights, curtails access to essential services while undermining the rule of law and eroding trust in public institutions. Viet Nam ratified the United Nations Convention against Corruption (UNCAC) in 2009. During 2011 and 2012 the Government actively participated in the review mechanism process of UNCAC and self-assessed its implementation of the Convention. As part of the review process several gaps and areas of no compliance were identified, including issues of “illicit enrichment” (article 20); “bribery in the private sector” (article 21); “liability of legal persons” (article 26) and “joint investigations” (article 49). Other areas of partial compliance were also identified that include the revision of the Criminal Code and the Constitution.<sup>43</sup>

The Viet Nam Governance and Public Administration Performance Index (PAPI) 2012 provides evidence that bribe requests for public services impact a significant portion of citizens and that the amounts paid are substantial when compared to the costs of other activities related to accessing those services.<sup>44</sup> But even this estimation does not capture the true cost of corruption to society, because it does not take into consideration the impact of corruption on those who refuse or cannot afford to pay bribes. It is these indirect effects of activities that should be tackled, as they are evidence of an unfair playing field that will have far reaching consequences for the country’s economic growth and political development.<sup>45</sup>

#### **Freedom of expression, association and peaceful assembly and right to participate in public and political life**

In 2007, Viet Nam’s Ordinance on Grassroots Democracy put in place the legal framework to expand citizen’s participation in local government. The Ordinance established new mechanisms to enable citizens to exercise their rights to be informed of government activities that affect them, to discuss and contribute to the formulation of certain policies, to participate in local development activities and to supervise government performance. In addition, a number of related legal instruments have also been promulgated over recent years including the new Law on Complaints (2011), Law on Denunciation (2011), and the revised Law on Anti-corruption (2012).

To further enhance citizens involvement in public deliberation and law making the Law on Promulgation of Legal Normative Documents that was issued in 2008 requires draft laws, ordinances and decrees to be consulted with the public and those directly affected.<sup>46</sup> The recent process of amending the Land Law and the 1992 Constitution have been good examples of how public concerns have been integrated into the law making process.

Many regulatory frameworks nevertheless tend to restrict the space for activism by filtering out areas for which individuals and organisations are allowed to provide ‘critical’ comments. Setting up a social organisation outside the state’s orbit of mass organisations and ‘special’ organisations is subject to a complicated regulatory authorisation procedure<sup>47</sup> and the classification system determined in different decrees on associations leads to a lack of transparency and an unequal playing field for social organisations.<sup>48</sup>

To be able to meaningfully take part in participatory processes requires access to information as well as freedom of expression. During Viet Nam’s first UPR, the State accepted a number of recommendations relating to the freedom of expression, including one to “fully guarantee the right to receive, seek and impart

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<sup>43</sup> See also Acuña-Alfaro, Jairo, ‘Anti-Corruption during 2013: More of the Same, Vietnam Law and Legal Forum’. January-February Issue. pp. 4-8. Ha Noi. (2011)

<sup>44</sup> CECODES, VFF-CRT & UNDP, ‘The Viet Nam Provincial Governance and Public Administration Performance Index (PAPI) 2012: Measuring Citizens’ Experiences (2013).

<sup>45</sup> Ibid.

<sup>46</sup> See Article 4, 35 and 63 Law on Promulgation of Legal Normative Documents.

<sup>47</sup> The Prime Minister’s Decision 97/2009/QĐ-TTĐ lists areas in which scientific and technological organisations can be established, excluding legal and human rights fields. The Decision also provides that no critical comments can be presented to the public.

<sup>48</sup> Decree 45/2010/QĐ-TĐ provides that social organisations/associations in Viet Nam need to be classified into 3 types: mass organisations, organisations of a special nature and others.

information and ideas in compliance with article 19 of the International Covenant on Civil and Political Rights".<sup>49</sup> So far this recommendation has not been fully implemented.

Since 2009 the Government has taken efforts to expand the telecommunication and communication networks in Viet Nam, which gradually broaden the landscape of communication. The Internet has become a major space for social networking and expression. However, the recent draft decree – aimed to replace Decree 97 on management, supply and use of Internet services and electronic information – if adopted would tighten regulatory and technical controls on Internet access and content.

Apart from restricting Internet access, access to information generally remains a key constraining factor in Viet Nam curtailing the constitutional right 'to be informed'.<sup>50</sup> In 2009 the Ministry of Justice led the drafting of the Law on Access to Information in coordination with other government agencies and submitted the draft to the National Assembly. However, the draft was withdrawn from the legislative program of the National Assembly XII and is now listed in the preparatory category of the National Assembly XIII, which does not specify a concrete timeline for review and endorsement.

Listed in the preparatory category of the National Assembly XIII and therefore without a concrete timeline for review and endorsement is also the Law on Association and the Law on Demonstration.<sup>51</sup> The right of assembly, association and demonstration are recognised in Article 69 of the 1992 Constitution 'in accordance with the law'.<sup>52</sup> This means that a full enjoyment of those freedoms is pending proper regulation by law and that there is neither clarity on the extent of those freedoms nor a mechanism to protect them in practice. This leads to a situation in which peaceful gatherings and public protests are either not formally permitted or sometimes dispersed at the discretion of executive agencies on the grounds of public security, but without any legal framework or any mechanism to seek legal redress.

#### **Right to work and to just and favourable conditions of work**

In guaranteeing the right to work and to just and favourable conditions of work, Viet Nam aims to apply international labour standards and norms and in this regard has ratified five out of eight fundamental ILO Conventions, namely nos. 29, 100, 111, 138 and 182.<sup>53 54</sup> The recent reform of the labour law – both the Labour Code and the Trade Union Law (entering into force in 2013) - provides for stronger protection for workers' rights, in particular fundamental rights such as non-discrimination and equality, prohibition of forced labour and child labour, as well as the right to organise and collective bargaining. It also provides for a better enabling legal environment for labour market actors, in particular workers and employers and their organisations, to negotiate and determine their own terms and conditions of employment.

However, the revised Labour Code applies only to formal employment relationships on the basis of employment contracts, which effectively excludes employers and workers without contractual arrangements. Nationally, only 37.4 per cent of workers are in wage employment and are able to fully profit from nationally established protection mechanisms. Over two thirds of working age Vietnamese (62.6 per cent) are employed in vulnerable jobs (e.g. employment as unpaid contributing family workers or own-account workers) while unpaid family workers account for 17.5 per cent of total employment.<sup>55</sup> Thus a large number of workers remain excluded from the coverage of the Labour Code.

Furthermore, Viet Nam, as stipulated under the Covenant on Social, Economic and Cultural Rights, recognises the right to work, including the right of everyone to the opportunity to gain his living by work, which he freely

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<sup>49</sup> General Assembly Report of the Working Group on the Universal Periodic Review, Viet Nam, A/HRC/12/11.

<sup>50</sup> See Article 69 of the 1992 Constitution.

<sup>51</sup> Legislative Programme of National Assembly XIII, period 2012-2016 issued under Resolution No. 20/2011/QH13/2011/QH13 dated 26 Nov 2011.

<sup>52</sup> See Article 69 of the 1992 Constitution.

<sup>53</sup> ILO Source: [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103004](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103004)

<sup>54</sup> See annex 1.

<sup>55</sup> General Statistics Office of Viet Nam, 'Labour Force Survey', (2012).

chooses or accepts. Members of disadvantaged and vulnerable groups such as young workers, women, ethnic minorities, disabled workers, people living with HIV/AIDS and unskilled migrant worker nevertheless continue to encounter special difficulties in accessing the labour market and in finding decent work. High rates of unskilled labour in ethnic minority areas (86.7 per cent in northern mountainous regions, 90 per cent in the Central Highlands<sup>56</sup>) are a barrier to accessing the labour market. Young people also struggle to enter the job market. Unemployment rates among young people in Viet Nam are more than three times higher than the adult rate. Nearly half of all unemployed in the country in 2012 were between the ages of 15 and 24.<sup>57</sup>

A further challenge is the lack of understanding of the seriousness of sexual harassment and the limited legal restrictions against sexual harassment in the workplace Viet Nam's Labour Code adopted by the National Assembly on 18th June 2012 now has four articles relating to sexual harassment, which is a significant step forward to help address the issue itself, however the Labour Code continues to fall short of effectively prohibiting sexual harassment and protecting victims, as it neither provides a clear definition of sexual harassment nor obligates employers to take preventive measures or to establish complaint procedures in the workplace.<sup>58</sup>

### **Right to social security and to an adequate standard of living**

The right to social security is enshrined in the Universal Declaration of Human Rights to offer protection to the most vulnerable members of society and guarantee a minimum of goods and services required for a dignified life.

To protect especially the most vulnerable groups the social assistance system in Viet Nam in the last years has expanded. Viet Nam has developed a traditional social insurance system whose coverage of civil servants and employees of State-Owned Enterprises and foreign companies is high. Work injury, sickness, maternity, old age pensions, survivors' benefits and unemployment insurance compose the myriad of schemes protecting those workers. Since 2009, efforts have been made to shape the directions to reform current social protection and poverty reduction policies. Resolution 80 on Direction for Sustainable Poverty Reduction from 2011-2020 and the Party's resolution 15 on Social Policies 2012-2020 have confirmed the Government's recognition of the need for better efforts to coordinate and institutionalise multidimensional approaches to measuring and addressing poverty and vulnerability in Viet Nam as it reached middle-income status.

Even though the expansion of the social protection coverage has been significant in the past 15 years, most workers remain unprotected against risks, from old age to maternity or work injury. The social insurance system covers around 10.5 million workers, around 20 per cent of the workforce<sup>59</sup>. However, informal workers remain unprotected from shocks and migrants are facing a particular vulnerability because they often work in undervalued occupations and in an environment of social isolation. These low levels of access to social security make clear that the rights of large parts of the population in this regard remain unrealised.

Hence, although there have been positive developments the social insurance system shows important weaknesses: low adequacy of pensions, financial concerns, and high evasion. Some fundamental issues remain unaddressed. First, and most importantly, the current system does not guarantee a minimum living standard for all Vietnamese, it only provides income support to some groups –poor orphans, people over 80 years old, poor people over 65 years without family support, etc.- under Decree 13 on social protection support to vulnerable groups. Second, there are many policies under different National Target Programs and Decrees providing social assistance without coordination and clear direction. Third, the delivery system is rather weak, disintegrated and lacks a client-focus. Fourth, and final, Viet Nam's social protection expenditure is low: less than 4 per cent of GDP according to the Ministry of Finance (17 per cent on labour market policies, 1.45 per

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<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> ILO 2012, 'Sexual Harassment at the Workplace in Vietnam' (2012).

<sup>59</sup> Ministry of Labour, Invalids and Social Affairs, 'Report on the implementation of social insurance in Viet Nam' (2012).

cent on health, 0.71 per cent on social insurance and 1.07 per cent on social assistance)<sup>60</sup>. Finally, while the number of older persons has increased significantly, insufficient investments have been made in an appropriate elderly care system.

The recent Party Resolution 15/NQ/TW on some issues of social protection in the period 2012 - 2020 establishes guidance on social policies for the period 2012-2020. In order to maximise the potential for reform the Government will need to deliver and translate these general guidelines into specific schemes and significant changes in policies, laws and delivery systems. The fiscal commitment has not been solved yet and the Government should develop a medium term fiscal plan to make the Resolution a reality. To overcome these challenges, renewed political commitment to accelerating the required reforms and their implementation is needed. A modern social protection system would make the country more resilient in face of economic and climate-related shocks while also contributing to the promotion and protection of human rights.

### **Right to health**

Viet Nam has been doing well in progressing towards most of the health related Millennium Development Goals and is likely to achieve them by 2015.<sup>61</sup> The country has made large strides in reducing under-five mortality rates, achieved sharp declines in maternal mortality rates, reduced the number of newly diagnosed AFB+ Tuberculosis cases and rapidly reduced Malaria prevalence.<sup>62</sup> This overall national progress however is marked by disparities. The national health care system is unevenly developed across the country and especially underdeveloped in some remote and mountainous areas, areas that are predominately populated by minority groups. Reports in 2010 showed that the maternal mortality rate was twice the average in the 225 difficult to reach districts and 5 times the national average in the 62 poorest districts. There is a five times difference between the provinces with the highest (Dien Bien) and the lowest (HCMC) infant mortality rate and under 5 mortality rates for the poorest 20 per cent of the households (28/1,000) was more than twice of the remainder of the population (12/1,000).<sup>63</sup>

In the last five years, the Government has made efforts to expand health insurance coverage as the means for improving access to health care and financial protection, especially for the vulnerable. The health insurance law was issued in 2008 and, by 2009, all the poor, ethnic minorities, under 6 children and people aged 80+ were covered with health insurance via full government subsidy for the premium. In addition, the near poor are given partial subsidy of up to 70 per cent of health insurance premium. These efforts have pushed public spending on health to 2.7 per cent of GDP or 40 per cent of total health expenditure and as a result, the coverage has increased substantially from 44 per cent in 2008 to 68 per cent in 2013.<sup>64</sup> However, the percentage of near-poor population joining health insurance is still limited, and out of pocket spending on health is high (more than 50 per cent of total health spending). This poses a real barrier for people with low incomes and places them into very vulnerable financial circumstances.<sup>65</sup>

Viet Nam has a concentrated HIV epidemic, and key populations bear a far greater risk of HIV infection, including people who inject drugs (PWID), men who have sex with men (MSM) and sex workers.<sup>66</sup> In the past years, the Government has achieved marked scale-up of evidence-based HIV prevention, care and treatment interventions focusing on key populations, including needle-syringe program, methadone maintenance therapy and antiretroviral therapy, and the epidemic is being stabilised in most parts of the country.<sup>67</sup>

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<sup>60</sup> Ministry of Finance, 'Overview on policies and programmes to support poor people in Viet Nam' (2011).

<sup>61</sup> Brian van Arkadie et al 'Joint Country Analysis of Viet Nam' (United Nations Viet Nam, 2010).

<sup>62</sup> Ibid.

<sup>63</sup> General Statistics Office of Viet Nam, 'Viet Nam. Multiple Indicator Cluster Survey (MICS) 2010-2011' (2011).

<sup>64</sup> Ministry of Health, 'National Health Account' (2011).

<sup>65</sup> Ibid.

<sup>66</sup> National Committee for AIDS, Drugs and Prostitution Prevention and Control 'Nam AIDS response progress report' (2012).

<sup>67</sup> Ibid.

However, access to key HIV services are not equitable across the country,<sup>68</sup> and many people are accessing HIV diagnosis and treatment too late,<sup>69</sup> leading to the limited therapeutic and preventive benefits of the treatment. Stigma, discrimination and punitive laws against key populations are likely causes of late access to HIV services,<sup>70</sup> and further efforts are required to address them. Moreover, HIV is transmitted from males with risk behaviour to their female sexual partners, indicating the urgent need to strengthen the prevention of partner transmission.<sup>71 72</sup>

The difference in access and quality of health services represents an obstacle in attaining the highest standard of health for all of Viet Nam's citizens and as outlined in the 2009 UPR will require more intensified national efforts.

### **Right to education**

While Viet Nam has made significant progress in education, the country enjoys a literacy rate of 97 per cent, inequities in education remain. Especially in mountainous areas and for ethnic minorities education is not easily accessible and available, a condition Viet Nam is looking to change as is reflected in the Government's acceptance of the UPR recommendation 'continue to take measures to provide education (...) especially in mountainous areas and for ethnic minorities and with their involvement'.<sup>73</sup>

In 2012, the Prime Minister approved the Education Development Strategic Plan 2011-2020 which has a special focus on strengthening education systems in disadvantaged areas including among ethnic minorities and more generally aims for: education for all children aged 5 by 2015, 99 per cent attendance of children in primary and 95 per cent of children in secondary school and 70 per cent of children with disabilities to be enrolled in school.

The swift implementation of the strategy will be a key requisite in ensuring that everyone is able to access education and that their right to education can be fully realised. Currently in Viet Nam access to education and its quality is still largely determined by, ethnicity, ability to mount out-of-pocket payments - both formal and informal – level of disability and geography. This is reflected in recent figures which show that for ethnic minorities, secondary school net enrolment rate is only 66 per cent, while it is 84 per cent for the Kinh and Hoa.<sup>74</sup> Furthermore, the need to use Vietnamese as the official language in schools, as stated in the Law on Education, further exacerbates the exclusion of ethnic minority children who have limited or no understanding of the Vietnamese language when they start schooling. This results in ethnic minorities' education attainment being much lower than that of the Kinh majority. Apart from lower education levels, the limited reflection of different ethnic minority groups' language, culture and traditions reflect a limited rights based approach to education. Mother tongue-based bilingual education (MTBBE) has been proven as a successful means to increase the academic performance of minority children and has been recognised by the Ministry of Education and Training as one of the five solutions to assist ethnic minority children to improve their Vietnamese language<sup>75</sup>. To protect and promote the rights of all Vietnamese children to access education, the Vietnamese Government should look at options to replicate and expand mother tongue-based bilingual education.

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<sup>68</sup> Viet Nam Authority of HIV/AIDS Control 2012, Ministry of Health, 'HIV/STI Integrated biological and behavioral surveillance (IBBS) in Viet Nam' (2009).

<sup>69</sup> National Committee for AIDS, Drugs and Prostitution Prevention and Control, 'Viet Nam AIDS response progress report' (2012).

<sup>70</sup> Ibid.

<sup>71</sup> Travis L, Tran TD, Tran HM, 'Triangulation Exercise on Intimate Partner Transmission of HIV in Viet Nam.' (UNAIDS, UN Women 2012).

<sup>72</sup> Partners in Health Research, 'Baseline surveys in female sexual partners of male IDUs in Dien Bien and Ho Chi Minh City' (2012).

<sup>73</sup> General Assembly Report of the Working Group on the Universal Periodic Review, Viet Nam, A/HRC/12/11.

<sup>74</sup> General Statistics Office of Viet Nam, 'Viet Nam. Multiple Indicator Cluster Survey (MICS) 2010-2011' (2011).

<sup>75</sup> Ministry of Education guidance N# 8114/BGDĐT-GDTH, dated 15th Sept 2009, signed by Vice Minister Hien on improving quality teaching Vietnamese for ethnic children. MTBBE is recognised as one solution to address the language challenge for ethnic minorities.

**Persons with disabilities**

Official statistics state that in Viet Nam 6 million people live with disabilities or about 6,6 per cent, out of which over 1.3 million are children. However, an analysis from the governmental Viet Nam Household Living Standards Survey (VHLSS) based on the International Classification of Functioning, Disability and Health (ICF) leads to an estimate of as many as 15.3 per cent of Viet Nam's population living with disability. Disease and congenital abnormalities accounted for the majority (greater than 60 per cent) of disabilities. War and accidents are also important causes.

Disability is placed high on the national agenda. In its first Universal Periodic Review Viet Nam accepted recommendations to adopt a Law on Persons with Disabilities and to consider ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD), the latter was also a voluntary commitment that Viet Nam made at the UPR in 2009 and further reinforced when it presented its candidacy to the Human Rights Council.

The Law on Persons with Disabilities was passed in 2010, the Prime Minister approved the national targeting program on healthcare in the period of 2012-2015, which includes a program on rehabilitation of persons with disabilities and national guidelines were developed that for instance support early identification and interventions for children with disabilities. Viet Nam is also actively considering ratification of the ILO Convention concerning Vocational Rehabilitation and Employment of Disabled Persons (No. 159) and has signed the CRPD in 2007, but has yet to ratify it. The UN strongly encourages the ratification of the CRPD in the near future by Viet Nam to ensure the full realisation of human rights and fundamental freedoms for people with disabilities, without discrimination of any kind.

## Annex 1:

### Instruments signed or ratified by Viet Nam

<b>Human Rights Treaty</b>	<b>Ratified (Signed)</b>
International Covenant on Civil and Political Rights (ICCPR)	24 September 1982
International Covenant on Economic, Social and Cultural Rights (ICESCR)	24 September 1982
Convention on the Elimination of all forms of Racial Discrimination (ICERD)	9 June 1982
Convention on the Elimination of All forms of Discrimination against Women (CEDAW)	17 February 1982
Convention on the Rights of the Child (CRC)	28 February 1990
CRC Optional Protocol 1: Child soldiers	20 December 2001
CRC Optional Protocol 2: Sale of children	20 November 2001
Convention on the Rights of Persons with Disabilities	(Signed) 22 October 2007

### Human Rights conventions considered for adoption after UPR review in 2009

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment  
Convention on the Rights of Persons with Disabilities  
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families  
Convention for the Protection of All Persons from Enforced Disappearance

### ILO Conventions ratified since last UPR in 2009 or considered for adoption

Convention no. 122 on employment policy 11 June 2012

Maritime Labour Convention (the Ministry of Foreign Affairs has sent an official registration of the Instrument of Ratification to the ILO, pending information under Standard A4.5 §10 , full ratification is expected in 2013) 8 May 2013

Convention no. 105 (forced labour), Convention no. 187 (promotional framework on OSH), Convention no. 88 (employment services) and Convention no. 95 (protection of wages) are prominently identified for ratification by MOLISA

### Annex 2: Viet Nam's treaty reporting status

<b>Title of Treaty or Convention</b>	<b>Reporting Status (in 2012)</b>
International Covenant on Civil and Political Rights (ICCPR)	No report
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Report has been submitted to treaty bodies and is being currently reviewed
Convention on the Elimination of all forms of Racial Discrimination (ICERD)	Viet Nam's periodic report has been submitted and reviewed in 2012 by the UN Committee on the Elimination of Racial Discrimination
Convention on the Elimination of All forms of Discrimination against Women (CEDAW)	Since 1982 - Viet Nam submitted 6 CEDAW periodic reports. In 2012- Viet Nam has finalised the CEDAW combined report 7-8. However, it has not yet been officially submitted.
Convention on the Rights of the Child (CRC)	The combined 3 <sup>rd</sup> and 4 <sup>th</sup> report on CRC implementation was submitted on 08/03/2009. The Committee considered the report on 31st May 2012.