

**JOINT STAKEHOLDERS SUBMISSION**  
**FOR THE UNIVERSAL PERIODIC REVIEW OF VIETNAM 2014**  
**BY GPAR, GENCOMNET AND CIFPEN<sup>1</sup>**

This joint submission has been prepared with direct contribution and consultation of 60 NGOs and Community-based groups, and several individual experts. The consultation process on topics and contents of the report was conducted through six thematic workshops and group discussions, one field study, and three consultation workshops, including one national consultation and one regional consultation in the South, with a total of 471 times of participation by people from different backgrounds. The process was coordinated by a working group of members from three Vietnamese NGOs networks: GPAR, GENCOMNET and CIFPEN, together with academia and independent researchers.

**A. ENGAGING WITH THE UN HUMAN RIGHTS STANDARDS AND MECHANISM**

**1. Ratification of international human rights instruments.** Among UN core human rights conventions, Vietnam has ratified five conventions, but not yet a member of others, including the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishment (CAT), the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CMW), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Protection of all Persons from Forced Disappearance (CPPED).<sup>2</sup> Vietnam has not ratified any optional protocol on communication about violations of rights under relevant conventions. In the UPR 2009, the Government of Vietnam has accepted seven recommendations from 13 countries on ratification of different Conventions.<sup>3</sup> However, by June 2013, no new signature or ratification of additional major instruments was deposited by the Government of Vietnam.

**Recommendation: The State should accelerate the ratification of the CAT, CMW, CRPD, CPPED and ratify different optional protocols to ICCPR, ICESCR, CEDAW, and CRC, especially those on communication procedures.**

**2. Implementation of international human rights standards.**<sup>4</sup> In the amendment of the Constitution 1992, the Chapter on Human Rights and Citizen's Rights was rearranged as the second chapter. However, the draft amendment imposes limitations on the exercise of human rights, which is against international standards. Besides, some human rights, for instance, freedom of thoughts and consciences, or the right to remain silence of the arrested person, are not recognized in the draft. Although Vietnam's legal system recognizes the priority of applicable international treaties in the national legislation,<sup>5</sup> in practice, the court rarely applies international law on human rights directly in its ruling.<sup>6</sup> The absence of laws and guidelines, however, has been an excuse for many state agencies for not implementing certain rights, for instance freedom of association and peaceful assembly or freedom of information.<sup>7</sup> Additionally, the submission of country reports for different treaty bodies was often delayed in many years.<sup>8</sup>

**Recommendation: The State must respect and ensure the enjoyment of fundamental human rights and freedoms, in particular freedom of thoughts, freedom of speech and expression, freedom of information, freedom of assembly and association, without delay; take all necessary**

**measures to ensure that international human rights standards are fully recognized and applied by domestic legal instruments. The State should fully implement its obligation to timely report to different treaty bodies.**

3. **Cooperation with UN Special Procedures.** Vietnam has positively implemented its commitment to UPR recommendations on strengthening cooperation with UN Special Procedures,<sup>9</sup> as it received four mandate-holders of Special Procedures country visits from 2009 to 2011,<sup>10</sup> but rejected two requests for visit.<sup>11</sup> As a result of these visits, some positive discussions followed by improvements in the legal framework and in practice were made. However, there was little direct and independent exchange between visiting mandate-holders and independent civil society organizations in Vietnam during these visits.

**Recommendation: The State should issue a standing invitation to all mandate-holders of Special Procedures, specifically strengthen cooperation with Special Procedures on civil and political rights. It should facilitate direct and independent exchanges between national civil society organizations and the mandate-holders of Special Procedures during and beyond a country visit.**

4. **Implementation and dissemination of recommendations from the UN Human Rights Mechanisms.** Recommendations were not published and disseminated widely in the country.<sup>12</sup> Other human rights recommendations from different UN Human Rights Mechanisms are not available in Vietnamese or disseminated, unless with support from international organizations.<sup>13</sup>

**Recommendation: The State should widely disseminate, in Vietnamese and other minority languages, its human rights commitments and communications from the UN human rights mechanism. It should develop a plan of actions to implement these recommendations with clear monitoring scheme.**

## **B. PROTECTION OF VULNERABLE AND DISADVANTAGED GROUPS.**

5. **Cultural rights of ethnic minorities.**<sup>14</sup> Policy on ethnic minorities in Vietnam was drawn based on the perspective of cultural evolution theory rather than respect to diversity, which resulted in many traditional social and cultural activities of minorities labeled as “backward” by subjective and selective criteria of outsiders, and eventually be restricted or prohibited in practice, as observed by researchers and UN experts.<sup>15</sup> Article 5 of the Constitution 1992 (amended in 2001) encourages ethnic minorities to preserve and promote only “good” cultural practices and traditions, which allowed possibility for dominance of perception and interpretation of what is deemed good practice by majority. In practice, negative interpretation of the cultural practices of different ethnic groups remains popular in the society, particularly prevailing in the state media, and among state officials working in areas where ethnic minorities inhabited.<sup>16</sup> In the school system, the lack of cultural understanding remained barrier for children from minority groups.<sup>17</sup>

**Recommendation: The State should adopt an Anti-Discrimination Law,<sup>18</sup> which prohibits of all forms of discrimination based on any ground. The State should actively implement recommendations by the UN Independent Expert on Minorities Issues, including implementation of capacity building programs for public officials, especially those working with ethnic minorities and other vulnerable groups and for the media. It must also undertake**

measures to raise awareness to ensure non-discrimination and respect diversity among the public and in the school system.

6. **Community's collective ownership of land and natural resources**, which was a customary right among many ethnic groups and was recognized in the international human rights norm, was not recognized and protected in the Constitution 1992 and in particular the Land Law 2003.<sup>19</sup> The denial of this right may have negative impacts on economic, cultural and spiritual life and the sustainable development of different ethnic minorities' communities.

**Recommendation: The State should revise legal framework, including the Civil Code and the Land Law, toward the recognition of community as a legal entity, and community's collective ownership of their traditional land and natural resources.**

7. **Women's equal access to land.** The commitment of Vietnam on gender equality, in particular in ensuring equal access to land through issuing certificate of land use rights with both names of spouses in the Land Law 2003<sup>20</sup> was noted by CEDAW Committee,<sup>21</sup> and re-confirmed in the UPR 2009.<sup>22</sup> However, the realization of such commitment was seriously affected by the removal of the relevant statutory provision in the Land Law,<sup>23</sup> left such requirement now only included in procedural guidelines.<sup>24</sup> As a result of a fragmented legal framework, land use right certificates with both names of spouses were not well introduced in practice,<sup>25</sup> neither it is being systematically monitored.<sup>26</sup>

**Recommendation: The State should re-introduce the provision of having names of both spouses on the certificate of land use right in the ongoing revision of the Land Law 2003, and take all necessary measures to implement this regulation.**

8. **Equal Participation of Women in Political Life.**<sup>27</sup> In elected bodies, the rate of women member is respectively at 21.71%, 24.65% and 25.7% for People's Councils at commune, district and provincial levels, while the rate in the National Assembly is 24,2%.<sup>28</sup> However, the rate of women in top leader positions does not exceed 10% in any level of the Government' structure.<sup>29</sup> The consistent low percentage of women in leadership and decision-making suggests a structural and systematic discrimination and gender stereotypes which hindered women to assume leadership positions and decision-making power. This practice does not reflect the principle of CEDAW toward substantive equality.<sup>30</sup> In popular elections, introduced women candidates were often in disadvantaged positions as being young women working at the grassroots level, such as school teachers or doctors with less political participation experience and qualification than male candidates.<sup>31</sup> Thus, the capacity of elected women representatives was low and did not meet expectations of voters. The retirement age for women are set at 55 while for men is at 60,<sup>32</sup> which limits women's career and opportunities for promotion.

**Recommendation: The State should fully implement UPR recommendations and those by other treaty bodies, especially the CEDAW Committee, including the removal of the discriminated provision of different ages of retirement between men and women; Take concrete measures to facilitate women's political participation at all levels; Reform election process to ensure equal opportunities for independent candidates and create democratic mechanism to engage civil society organizations in the monitoring of the electoral process.**

9. **Child Neglect and Abandonment.**<sup>33</sup> Despite several Government's policies and programs to support orphans, abandoned and neglected children,<sup>34</sup> the number of abandoned children in

Vietnam was estimated at 150,000 to 176,000, remained an increasing challenge.<sup>35</sup> The existing legal framework, as commented by the Child Rights Committee, was not comprehensive enough to protect children from all forms of violence, injury or abuse, neglect or negligent treatment as it focused only on abandoned children, without referring to the neglect of children in a comprehensive way,<sup>36</sup> which resulted in a lack of protection by the State to this group of children.<sup>37</sup> Meanwhile, the law prescribes no alternative care, particularly for neglected children.

**Recommendation: The State should take comprehensive measures to ensure the protection and promotion of child rights, including concrete steps to address the issue of child neglect and abandonment. Vietnam should fully adopt recommendations by the Child Rights Committee; Strengthen the capacity and accountability of state agencies in child protection; Establish a national database on situation of orphans, abandoned and homeless children; Develop an independent monitoring body for child rights; Expand community-based child protection system and foster care; Develop comprehensive criteria for child care centers with special attention of children at risks; and Create an enabling legal framework for the effective participation of civil society organizations in the monitoring and advocacy for child rights.**

#### **Persons with Disabilities.**

10. Vietnam has signed the Convention on the Rights of Persons with Disabilities on 10/2007. Vietnam accepted nine UPR recommendations in 2009 regarding the rights of persons with disabilities,<sup>38</sup> in particular Recommendations No 2 to consider ratifying the Convention,<sup>39</sup> but has not yet ratified, while did not publish a clear agenda of consideration to become a member of the Convention.

**Recommendation: The State should accelerate the ratification of the CRPD.**

11. **The Right to work of persons with disabilities.** Despite several regulations and policies to ensure the right to work of persons with disabilities, their equal access to employment was not ensured.<sup>40</sup> Affirmative provisions for persons with disabilities at work, sometimes were designed inadequately and were not pro-choice. For example, the regulation provides shorter working hours for people with disabilities unintentionally becomes barriers in practice for a number of persons with disabilities.<sup>41</sup>

**Recommendation: The State should take all necessary measures to enable persons with disabilities to equally access to education, vocational training, and employment, with special attention on capacity building for inclusive education and non-discrimination in employment.**

12. **Access to legal aids by persons with disabilities.** By 2013, the right to legal assistance of persons with disabilities was provided by Decree No. 14/2013/ND-CP.<sup>42</sup> Legal aid for person with disabilities was provided mainly in the form of legal advice to claim for disabilities benefits<sup>43</sup> but not in general legal proceedings such as administrative procedures, procedures for settling complaints against administrative decisions, administrative measures and criminal procedures. There is no specific entitlement of legal aid for persons with disabilities in the proceeding of court procedures<sup>44</sup> so that they can participate in these proceedings equally and enjoy a due process.

**Recommendation: The State should ensure should ensure the ongoing reform of the justice system take into account access to legal aid by persons with disabilities.**

13. **Access to public services by persons with disabilities.** There is no formal discrimination against persons with disabilities in access to public services, however there is no comprehensive measure to

facilitate access of public services by people with disabilities. In health care, 58.34% of people with disabilities and 80% of households with persons with disabilities have difficult access.<sup>45</sup> Many laws and regulations require transportation services and public services to meet the needs of people with disabilities.<sup>46</sup> However, the lack of implementation measures, or inappropriate measures, resulted in difficult access by persons with disabilities to means of public transportation such as bus, train or air, or common services such as banking.<sup>47</sup>

**Recommendation: The State should provide effective remedy and awareness raising to ensure non-discrimination against persons with disabilities in all aspects of life, with special attention to ensure their equal access to public services.**

14. **Although Vietnam has never criminalized homosexuality**, it did not legally recognize the group, and their vulnerability, nor take measures to address acts of discrimination against this group. Being vulnerable to discrimination, the members of the LGBT community face different types of discrimination, ranging from denial of services,<sup>48</sup> employment, discrimination at work, or being fired based on sexual orientation or gender identity,<sup>49</sup> and being discriminated by administrative authorities.<sup>50</sup>

**Recommendation: The State should adopt an anti-discrimination law which ensures equal rights of all people including people with different sexual orientation and gender identity. It must take all necessary steps to ensure the right to equality to members of the LGBT community in principles and in practices, especially through applying the Yogyakarta Principles as a guide of policy development to apply the international human rights standards in relation to sexual orientation and gender identity; and dissemination of information, advocacy, public education and improving capacity for state officials and staff.**

15. **Non-recognition of transgender rights:** This has led to legal troubles related to the determination of their identity, resulted in violations of other rights. In the Criminal Code, transgender or gay men are unprotected in the crime of rape<sup>51</sup> because their sex would be formally identified as male on paper.<sup>52</sup> Many transgender people can not apply for the identification card because their appearance do not match their sex recognised at birth. Without proper identification card, they face troubles in accomplishing daily civil transactions, especially when they are requested to provide identification.<sup>53</sup> In some cases, they are brought to office police department and in some incidents had to suffer acts of violence.<sup>54</sup>

**Recommendation: It is recommended that Vietnam should recognize the right to personal identity, regardless of their gender identity or gender expression.**

16. **Same Sex Marriage:** Although the discussion has started positively, as of May 4/2013, Vietnam does not officially recognize same-sex marriage and not allow its citizens to get married to same-sex citizens of countries that have legalized same-sex marriage in the authorized agencies in Vietnam,<sup>55</sup> and does not recognize same-sex marriages conducted and registered legally in other countries.<sup>56</sup> Adoption by same-sex couples, therefore, is not officially recognized.

**Recommendation: The State should recognize the right to equal marriage for all persons, regardless of their sexual orientation.**

## C. CIVIL AND POLITICAL RIGHTS

17. **The right to participate in the public life through civil society organizations.** A large number of UPR recommendations related to social organization was accepted.<sup>57</sup> Besides, the Government of

Vietnam also rejected several recommendations related to specific actions to ensure specific rights and freedoms,<sup>58</sup> or mentioned independent civil society.<sup>59</sup> Significantly, most of these rejected recommendations are related to the establishment of independent human rights monitoring mechanisms.

18. In Vietnam, the term civil society is not formally recognized.<sup>60</sup> Many social organizations were established in different forms. These organizations work in several areas in support for the right of vulnerable groups, advocate for good governance and democracy, environmental protection and address climate change.<sup>61</sup> In recent years, many of such organisations have been invited by the Government to join the public policy process.<sup>62</sup> Main challenges to the healthy development of civil society organizations were, however, a fragmented legal framework which does not officially recognize civil society organizations. Although freedom of association and assembly are specified in the Constitution 1992, and a few existing legal documents could serve as basis for the establishment of civil society organizations, established organizations are required to be affiliated to various State-controlled agencies.<sup>63</sup> Registration procedures, often dependent on personal relationships, are unreasonably lengthy, or even irresponsive.<sup>64</sup> The Law on Association has not been issued after more than 10 years of drafting, even though 75% of organizations believed that such Law, once promulgated, would help to improve the position of the civil society organizations in Vietnam.<sup>65</sup>
19. In the operation of social organizations or NGOs, the existing legal framework allowed only Government-sponsored organizations (belong to the Fatherland Front or Specialised Associations – those are staffed and mandated by the Government) to officially provide feedbacks on the Government’s policies<sup>66</sup> is discriminatory against other nongovernmental organizations. Some legal documents still constrained the approval of projects and funding sources for the civil society organisations.<sup>67</sup> The tight security evaluation during the project approval had negatively impacted those organizations working in areas considered sensitive such as protecting and promoting human rights and promote democracy at the grassroots level.<sup>68</sup>

**Recommendation: The State should: Develop a comprehensive legal framework which recognizes civil society and civil society organizations as official stakeholders in the public policy process through the promulgation and implementation of the Law on Association and Law on Demonstration; Revise vague provisions in the Criminal Code which could impair the enjoyment of human rights and fundamental freedoms; Remove limitations of areas of NGO operation established under Decision 97/2009/QD-TTg.**

20. **Access to information.** The Government started the drafting process on access to information law since 2008, according to some UPR recommendations.<sup>69</sup> However, the Law on Access to Information has yet been passed. Regulations on disclosure of information is scattered in many legal documents,<sup>70</sup> resulted in unsystematic practices of information disclosure while a mechanism to handle violations remained absent.<sup>71</sup> For instance, the Ordinance on the implementation of democracy in communes, wards and townships (2007), which is recognized as one of the most relevant legislation on the publicity of information to the people,<sup>72</sup> did not provide any sanction against non-compliance. The lack of access to information may cause delay or refusal of providing information by public officials, ultimately it impairs the right to information of the public.<sup>73</sup> Also it has no mechanism to ensure holding public officials accountable for providing public information. The misuse of the regulation on classification of many types of information and documents is

common that state agencies could use to deny providing information based on reasons of state secrets on their own justifications.<sup>74</sup>

**Recommendation: The State should accelerate the passage of Law on Access to Information which specify responsibility to provide public information and ensure access to information by people including freedom to seek, impart information by individuals and organizations in compliance with Article 19 of the ICCPR. The State should also amend Press Law, Publishing Law and other related laws to ensure the practice of freedom of information.**

**21. Corruption and Good Governance.** Vietnam joined the Convention on Prevention of Corruption on 03/7/2009 and made some positive political moves towards the implementation of the Convention. Vietnam also accepted the UPR recommendations on actions against corruption<sup>75</sup> and has continued anti-corruption dialogues with many development partners and stakeholders. The draft amendment of the Constitution 1992 suggests an establishment of the State Auditor as a constitutional independent institution.<sup>76</sup> The highest authority for corruption control is mandated to the Steering Committee for Corruption Prevention under the Central Political Bureau of the Communist Party, which is not the apparatus of the state power. This structure may affect its competence as well as the transparency in operation. Corruption is a pervasive phenomenon especially in the public sector, and perceived by the public as among most critical problem threatening the equitable development of the country,<sup>77</sup> but the domestic instruments to combat corruption are not effectively implemented. The role of the civil society organizations is also limited in fighting against corruption as they are not formally recognized.

**Recommendation: The State should ensure freedom of expression for individuals and the press without fear of being arrested or be prosecuted. The Government should develop a comprehensive legal framework and substantive actions to protect and provide support to witness, whistleblowers and, in general, human rights defenders, through actively seek support from the UN, including extending an invitation to the Special Rapporteur on Human Rights Defenders; The role of media and civil society organizations in the fight against corruption including effective dialogues with government should be enhanced.**

**22. Protection of the right to life and other human rights of people deprived of liberty.** Right to life and other human rights of detainees have been raised as issue of concern.<sup>78</sup> A review of major domestic newspapers found at least 20 cases of people died as they were arrested and held in custody at police stations, mostly at the district or commune level, or died after being transported from these places to the hospital.<sup>79</sup> Few related law enforcement officers were prosecuted,<sup>80</sup> but the follow-up on similar cases was rarely mentioned by media. Visits by families and relatives, as well as information on detainees provided by the agency conducting the proceedings are limited in many cases. Civil society organizations hardly have access to prisons or detention centers. Although there are regulations on inspection authorities which allow supervision or monitoring conditions of detention by the Procuratorate and Sectoral inspectorates, by the National Assembly, People's Council and Fatherland Front, mechanisms for these supervision or monitoring were not specified, neither monitoring reports have been published. The conditions of pretrial detention centers and prisons were degraded and not staffed properly in terms of health care. Many prisons are overcrowded, which made education or vocational training for inmates difficult.<sup>81</sup> According to state media, there are some cases that detainees died in detention centers recently.<sup>82</sup> While

accepted the recommendation on ratifying CAT, by June 2013, Vietnam has not yet ratified the convention.

**Recommendation: The State should accelerate the ratification of the CAT; strengthen the monitoring mechanism on conditions of detentions; impartially investigate incidents of homicides or injures in detention and disclose monitoring results; compensate for torture victims and their relatives; guarantee the right to meet and communicate with lawyers and family members of detainees and inmates. The State should improve physical conditions of detention centers and prisons and ensure effective trainings for law enforcement officers on national law and international human rights standards.**

23. **Commitment to implement fair trial.**<sup>83</sup> Since 2005, a judicial reform strategy has been introduced by the Communist Party and the government, which raised the importance of rule of law.<sup>84</sup> The right to public trial is recognized and provided by law.<sup>85</sup> However, in practice, the major challenge in ensuring the right to fair trial remained in the inter-dependent structure and limited capacity of the judicial system.<sup>86</sup> There is yet full institutional independence of the legislature, the executive, judicial system, and the Party.<sup>87</sup> The 5-year tenure of appointment for judges, together with the condition for not being reappointed if a judge had high rate of canceled or modified convictions, ideally would increase the accountability of judges. However, it may also increase dependence of judges as they might tend to consult higher court, or executive agencies before making a judgment.<sup>88</sup> In court proceedings, the principle of assumption of innocence was not applied thoroughly. Although the recent judicial reform progresses towards more defense for public trials,<sup>89</sup> the right to participate in the proceedings by the defendant and lawyers is still limited.<sup>90</sup>

**Recommendation: The state should amend the Constitution 1992 and the law on organization People's Court in principle of independence of the court system with the legislature and the executive. The term of appointment of judges should be extended, and judges should receive decent pay. The State need to amend the Criminal Procedure Code and other procedural Law to be aligned with international human rights standards and to adopt good practices on fair trial.**

#### **D. ECONOMIC, SOCIAL AND CULTURAL RIGHTS.**

24. **Involuntary resettlement for hydropower plants.** Vietnamese law does not recognize the ownership of private land but the land use right. It allows land expropriation by the government for development projects including projects for economic development such as hydropower plants.<sup>91</sup> By 2012, there were about 59 hydropower and irrigation projects in pipeline or under construction in 13 provinces in the country,<sup>92</sup> mostly in mountainous areas inhabited by ethnic minorities.<sup>93</sup> The implementation of resettlement projects often did not ensure adequate compensation,<sup>94</sup> neither having a proper participation by affected people in the design and implementation of the resettlement project.<sup>95</sup> Overall, majority of local people were not informed about land use plan at their locality.<sup>96</sup> Actual compensation often did not meet the principle of "resettlement site should have condition at least as equal, or better than the old site".<sup>97</sup> This leads to use of coercive measures or non-voluntary resettlement.<sup>98</sup> In addition, social problems related to land ownership and displacement arised. Nevertheless, the proposal on private land ownership has been made into the draft amendment of the Constitution 1992.<sup>99</sup>



**Recommendation: Vietnam should ensure that projects involving the resettlement of people will be conducted in full recognition of human rights standards, including the UN Basic Principles and Guidelines on Development based Displacement and Evictions.<sup>100</sup>**

25. **Social housing.** The Government of Vietnam accepted eight UPR recommendations relevant on housing, in addition to two specific recommendations on social housing.<sup>101</sup> Good efforts in delivering housing programs for the poor in rural and mountainous areas were recognized.<sup>102</sup> However, housing for the urban poor, especially migrant workers did not receive equal attention.<sup>103</sup> The social accommodation for lease is not available while the cost for purchasing a place to live in urban areas is too high compared to the minimum wage,<sup>104</sup> plus a high wage disparity<sup>105</sup> made decent housing not accessible for low-income workers. Social housing policy lack of transparency in the implementation that accommodate access of the actual poor people.

**Recommendation: The State should introduce a comprehensive national housing policy including social housing programs to ensure the access and needs of disadvantaged groups, including the urban poor people. It is recommended that Vietnam should actively implement Article 11 (1) of the Covenant on Economic, Social and Cultural Rights to ensure adequate standards of living for all people, so to fulfill the right to adequate housing with special attention to the poor and disadvantaged groups.**

26. **Right to work.** Vietnam commits in decent work by ratifying a number of Conventions of International Labor Organisation (ILO) but still is not a member of any ILO Conventions concerning trade union, or the Convention on Freedom of Association and Collective Bargaining.<sup>106</sup> The State-led labour union is not independent enough to represent workers.<sup>107</sup> The prevailing Trade Union Law makes it impossible for self-employed labour to freely establish their union as well as limit the access to freedom of association and collective bargaining of the increasing numbers of workers in precarious employment. Foreign workers cannot establish or join trade unions.<sup>108</sup> Moreover, the capacity of the State labour management and inspection is not adequate to ensure proper labor law enforcement and better worker protection.<sup>109</sup> Workers are not informed about their rights and obligations hence often fall into the trap of low pay, long working hour, seasonal contract without health insurance, social insurance. Workers in the informal sector are not well recognized.

**Recommendation: The State should recognise of the right to freely establish and join trade unions of workers, especially to implement collective bargaining mechanism; Improve capacity of the labor inspection system; Implement comprehensive programs to raise awareness of all workers and employers about their rights and responsibilities; and engage with civil society organizations to monitor the implementation of labour rights.**

27. **Rights of migrant workers and their family members.** Vietnam sent about 500,000 workers overseas and continue sending about 85,000 workers abroad every year.<sup>110</sup> A high number of migrant workers oversea come from poor households in rural areas or those belong to ethnic minorities.<sup>111</sup> Even though the relevant law prescribes duties of recruiting companies and administration to provide sufficient information, guarantee decent work and safety for migrant workers during the contract oversea, these duties were often not fulfilled and monitored by relevant administration.

**Recommendation: The State should become member of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as other important ILO conventions on migrant workers to ensure the legal and practical protection of workers oversea; Strengthen cooperation with national and international NGOs and institutions on labour rights monitoring and protection.**

28. **Human rights education.** Vietnam accepted six recommendations in the UPR 2009 on human rights education.<sup>112</sup> However, implemented human rights education programs in Vietnam remain a pilot scheme.<sup>113</sup> There is no comprehensive strategy or national plan of action for human rights education at different levels and sectors. Vietnam does not formally participate in the Plan of Action of the Human Rights Education Program Global Phase I and Phase II.<sup>114</sup> Apart from fragmented introduction of child rights,<sup>115</sup> human rights education is not formally included in the school curricular at any level, in especially in public sector training such as police officer, teacher's training or other professional training.<sup>116</sup> Educational exchanges with international partners through workshops, conferences, training etc. are now required to go through complex procedures for realization up to the Prime Minister's level approval.<sup>117</sup>

**Recommendation: The State should actively participate in the Plan of Actions for the World Program on Human Rights Education. It should take all necessary measures to implement human rights education programs for the public and specific programs for law enforcement officers and vulnerable groups. Vietnam should facilitate and promote open and effective cooperation with national and international organizations on human rights education, including NGOs and independent institutions, while seek for international technical assistance on capacity building for human rights.**

#### **E. NATIONAL HUMAN RIGHTS INSTITUTION**

29. Although the government has indicated several human rights challenges, Vietnam at the moment does not have a specialized agency mandated as a national human rights institution following the Paris Principles, including protection and promotion of human rights, providing human rights technical assistance for State agencies and human rights education. Recently, Provincial Steering Committees for Human Rights were established in many province, but these committees are not full-time staffed. Yet other agencies involved in the human rights were established to focus either on foreign relations or security are not publicly known and accessible. In recognition of this context, the Government has announced it pledge to consider the establishment of a national human rights institution.<sup>118</sup>

**Recommendation: Vietnam should establish a national independent institution on protection and promotion of human rights, which fully recognises the Paris Principles.**

## **ENDNOTES**

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- <sup>1</sup> GPAR, the Cooperation Group for Governance and Public Administration Reform includes 21 organisation members established in 2011; GENCOMNET is a network of NGOs working on Gender and Community Development established in 2005, including 11 members; CIFPEN is the Civil Society Inclusion in Food Security and Poverty Elimination Network established in 2005 with 48 organisation members.
- <sup>2</sup> According to the UN treaties Database (<http://treaties.un.org>), Vietnam has ratified the Convention on the Prevention and Punishment of the Crime of Genocide, 1948 (accessed on 09/6/1981); International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (accessed on 09/6/1982, with reservation of Article 11); International Covenant on Economic, Social and Cultural Rights, 1966 (accessed on 24/9/1982); International Covenant on Civil and Political Rights, 1966 (accessed on 24/8/1982); Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, 1968 (accessed on 6/5/1983); International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973 (accessed on 09/6/1981); Convention on the Elimination of All Forms of Discrimination against Women, 1979 (Signed on 29/6/1980, ratified on 17/02/1982); Convention on the Rights of the Child, 1989 (signed on 26/01/1990, Ratified on 28/02/1990); Amendment to article 43 (2) of the Convention on the Rights of the Child, 1995 (accessed on 11/01/2000); Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000 (signed on 08/9/2000, ratified 20/12/2001); Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, (signed on 08/9/2000, ratified on 20/12/2001). Vietnam has signed the Convention on the Rights of Persons with Disabilities, 2006 (on 22/10/2007) but not yet ratified this convention. Vietnam is also a member of 18 ILO Conventions, including five among eight major instruments (Conventions No. 29, 100, 111, 138 and 182), three among four Conventions on Governance (Conventions No. 81, 122 and 144), and 10 technical instruments (following ILO's data at [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>3</sup> Recommendations A2 (from South Africa), A3(from Australia, Sweden, Nigeria, Algeria and Chile), A4 (from Malaysia, Argentina and Turkey), A5(Argentina), A6(Azerbaijan), A7(Belarus) and A8(Indonesia) accepted by Vietnam which encouraged Vietnam to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; the International Convention for the Protection of All Persons from Enforced Disappearance; as well as the Optional Protocols to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women – according to UN Document No. A/HRC/12/11. Similar recommendations on ratification of these human rights convention were made by Special Rapporteurs and Independent Experts during their country visits to Vietnam (included in recommendations by the Independent Expert on human rights and extreme poverty in 2010 (A/HRC/17/34/Add.1, para.14); the Independent Expert on foreign debt in 2011(A/HRC/17/37/Add.2, para.10); and the Special Rapporteur on Health in 2011 (A/HRC/20/15/Add.2, para.8); and by UN Treaty Bodies, including most recently recommendations from CERD – 2012 (CERD/C/VNM/CO/10 -14, para.20); CRC – 2012 (CRC/C/VNM/CO/3-4, para.56 (a), 77 and 80).
- <sup>4</sup> The Government of Vietnam has committed to improve the domestic legal framework to be in line with universal human rights standards through the acceptance of UPR Recommendations #A9(Japan), 10(Malaysia), 12(Burkina Faso), 13(Iran), 14(Egypt) and 16(Algeria) accepted by the Government of Vietnam – UN Document A/HRC/12/11.
- <sup>5</sup> Article 6 paragraph 1 of the Law on signing, ratification and implementation of international agreements (2005) state a principle that where as the international agreement, which Vietnam is a party, shall have different provision from the national law, the international agreement should be applied. Other laws also provided that international agreements which Vietnam is a party with should be superior to domestic law (for example, Law on Gender Equality, 2006 (Article 3), Law on Housing, 2005 (Article 3).

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- <sup>6</sup> Unlike the commercial sector where reference to the international commercial law was made by the court more often, according to Lã Khánh Tùng, *Quyền cá nhân trong hiến pháp Việt Nam qua lăng kính của bộ luật nhân quyền quốc tế*, trong sách "Những vấn đề về hiến pháp and sửa đổi hiến pháp", NXB Dân Trí, 2012, trang 160. (La Khanh Tung, 2012, *Individual rights in the Constitution of Vietnam in views of international human rights law*, in "Constitution and the amendment of constitution", Dan Tri Publishing House, page 160.)
- <sup>7</sup> The right to hold a demonstration or the right to freedom of peaceful assembly was coded in Article 69 of the Constitution 1992. However, in practice, it was more likely that most demonstrations were considered illegal or not permitted in practice, unless it was organized by state authorities as public meetings. The deny of such event was often explained as for not having a law on demonstration. Meanwhile, the Government applied the Decree No38/2005/ND-CP issued on 18<sup>th</sup> March 2005 and its guidelines required that any assembly of more than 05 people should be approved by the Provincial People's Committee, unless it was organized by the government or political organizations belong to the government.
- <sup>8</sup> For instance, the most recent country report for ICCPR was considered in 2003. The next report, which was due in 2004, has not been submitted. The CEDAW report was overdue since 2011.
- <sup>9</sup> Vietnam has accepted **Recommendation No. 22** for strengthening cooperation with the UN Special Procedures, but also refused to extend a standing invitation to all mandate-holders of Special Procedures (as recommended by Netherlands, New Zealand, Switzerland and Canada - UN Document A/HRC/12/11), and in particular rejected all recommendations to invite special procedures on civil and political rights such as on religious freedom, freedom of expression or to the Working Group on Arbitrary Detention (recommendations by Germany, Argentina and Italy - UN Document A/HRC/12/11). The Independent Expert on Minorities Issues, at her country visit to Vietnam in 2010, recommended the Government of Vietnam to strengthen cooperation with Special Procedure mandates in the area of civil and political rights. Specifically, she recommended that the Government invite the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Working Group on Arbitrary Detention. She also suggested that these mandates "should be allowed free and unfettered access to all parties they wish to meet and to all regions of the country." (A/HRC/16/45/Add.2, para 101).
- <sup>10</sup> The Independent Expert on human rights and extreme poverty (23-31 August 2010); IE on minority issues (5 to 15 July 2010); IE on foreign debt (21- 29 March 2011); and the Special Rapporteur on Health (25 November -5 December 2011)
- <sup>11</sup> The Government of Vietnam rejected requests for visit by the Special Rapporteur on the situation of human rights defenders (2012), and the Special Rapporteur on Torture (2013). The request by the Special Rapporteur on Cultural Rights made in 2011 was not yet responded clearly.
- <sup>12</sup> For instance, the government assigned different ministries for implementation and reporting of UPR recommendations, however such assignment was not published. Consequently, a number of decisions and policies had been issued in contrary to those UPR commitments made by the Government. An example was the amendment of the Land Law which removed the provision on recording both spouses' names on the certification of land use rights – which later was reintroduced in a guideline for procedure of issuing land use rights see also paragraph number 8 in this document.
- <sup>13</sup> In February 2013, Vietnam has announced the candidacy of the Human Rights Council member for the term 2014 – 2016, along with its submission of voluntary human rights pledges. Along with many recommendations of different Human Rights bodies, the full text of these pledges was not publicised either in Vietnamese or in English.
- <sup>14</sup> Vietnam has accepted UPR Recommendations No 29, 54, 75, 76, 77, 78 and 79 respectively by Japan, India, China, Nepal and India, Pakistan, Philippines, Morocco – UN Document A/HRC/12/11. Vietnam ratified the ICESCR, and is a member of the UNESCO Convention on the Protection and Promotion of the

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Diversity of Cultural Expressions, 2005 and the UNESCO Convention 2003 for the Safeguarding of Intangible Cultural Heritage.

- <sup>15</sup> See Oscar Salemink, *The King of Fire and Vietnamese Ethnic Policy in the Central Highlands*, in *Develop or Domestication? Indigenous people of Southeast Asia*, Chiang Mai, Silksworm Books, 1997; Lê Hồng Lý et al. *Bảo tồn và phát huy di sản văn hoá trong quá trình hiện đại hoá: Nghiên cứu trường hợp tín ngưỡng thờ cúng Hùng Vương (Phú Thọ), hội Gióng (Hà Nội), tháp Bà Poh Nagar (Khánh Hòa) và văn hoá cồng chiêng của người Lạch (Lâm Đồng)*. (Heritage conservation and protection in the modernisation: case studies of Hung King worshipping (Phu Tho), Giong Festival (Hanoi), Poh Nagar temple (Khanh Hoa), and Gong culture of Lach people in Lam Dong, Unpublished Report for UNESCO (2012). It was also recommended by the UN Independent Expert on minorities issues to the Government of Vietnam to take necessary steps to address disadvantages of ethnic minorities, to change the stereotype towards ethnic minorities group and take a bottom-up approach in policy making and implementation, and to ensure a comprehensive legal framework to ensure non-discrimination and protection of minorities rights (Report of the independent expert on minority issues, Gay McDougall, Addendum. Mission to Viet Nam (5 - 15 July 2010)A/HRC/16/45/Add.2, para.76 -78).
- <sup>16</sup> Several studies on ethnic development pointed out different types of stereotypes against ethnic minorities. For instance, the study *Hình ảnh người dân tộc thiểu trên báo in* (Images of ethnic minorities in printed press conducted in 2011 (published by The Gioi Publishing House, 2011) reviewed 500 articles on printed newspapers and found 79% of those with stereotypes and discriminated statements. Another study (unpublished) by iSEE, a Vietnamese NGO on ethnic stereotypes and its policy implications (*Chịu khổ vs chịu khổ: Câu chuyện định kiến tộc người và một hàm ý chính sách qua nghiên cứu định tính ở một tỉnh miền Bắc và Trung Việt Nam*), or *The Country Social Analysis: Ethnicity and Development in Vietnam* (World Bank, 2009) indicated that stereotypes and discriminations against members of ethnic minorities were among most difficult challenges for their social inclusion and development.
- <sup>17</sup> As described, for instance, by Trương Huyền Chi (2010) in ‘*Họ nói đồng bào không biết quý sự học: Những mâu thuẫn trong giáo dục ở vùng đa dân tộc Tây Nguyên Việt Nam*. (They said, “our fellows do not appreciate learning”): Contradiction in education of multi-ethnic area in the Central highland of Vietnam), the researcher described challenges in schooling of ethnic minorities children, among which stereotypes were most critical against small groups.
- <sup>18</sup> CERD (2012) concerned about the absence of a comprehensive and dedicated law on non-discrimination in the Vietnamese legal framework, and recommended Vietnam to adopt an anti-discrimination law (CERD/C/VNM/CO/10-14, para.10).
- <sup>19</sup> The Law on Forest Protection and Development 2004 provided the concept of community forests, but the allocation of forest to communities was defined and practiced as the allocation of responsibility for guarding the forest rather than being able to benefit from the forest, needless to say such allocation was only conducted as some pilots (see Nguyễn Thị Thu Trang. 2012. Decentralisation of forest tenure for communities in the Central Highland. MPP2-610 (07/2012), Fulbright Economic Teaching Program. Available at <http://www.fetp.edu.vn/vn/luan-van-mpp/phan-quyen-so-huu-trong-giao-rung-cho-cong-dong-o-tay-nguyen/> ; Hoàng Đình Quang, Newsletter No 8/2010 of Vietnam Forest Rangers. Accessed at <http://bidoupnuiba.gov.vn/index.php/vi/baovetainguyenrung-l/231-thc-trng-thach-thc-qun-ly-rng-cng-ng.html>).
- <sup>20</sup> Article 48 para.3 Land Law 2003.
- <sup>21</sup> Concluding Observation - CEDAW 2007, UN Document CEDAW /C/VNM/CO/6.
- <sup>22</sup> See Vietnam’ State report (A/HRC/WG.6/5/VNM/1, para.43). Vietnam also accepted UPR Recommendations #A27 on women’s rights in general (Russia) and 72 on fully implementation of Land law 2003 (Switzerland)– UN Document A/HRC/12/11.

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- <sup>23</sup> Law No 38/2009/QH 12 promulgated by the National Assembly on 19/6/2009 on Amendment of a number of articles in selected Laws related to infrastructure development has removed the provision in Article 48 para.3 Land Law 2003.
- <sup>24</sup> As mentioned at Article 43 para. 3 of Decree No 181/2004/NĐ-CP of the Government, at Circular No 01/2005/TT-BTNMT and later at Decision No 08/2006/QĐ-BTNMT of Ministry of Natural Resources and Environment. It was reinforced in the Circular No 17/2009/TT-BTNMT by the Ministry of Natural Resources and Environment in 2009.
- <sup>25</sup> In practice, the proportion of land use certificates recorded with names of wives and husbands accounted for only 7.8%, while certificates with the name of the husband only was 81.4%; the gap is wider for certificates on agricultural land and forestry, respectively, 5.1% and 86.3% (data from the National Household and Living Standard Survey 2006 quoted in Report on Gender Mainstreaming in the Project of Amendment of Land Law, 08/12/2012 by Ministry of Natural Resources and Environment). This disparity was more severe in the South, with only 1.1% of certificates in the name of both husband and wife, those with the wife's name was 22.1%, while 73.3% were in the name of the husband – as it was of 2.2%, 46.2% and 50.5% in the North respectively (World Bank.2008. ). In particular, there were provinces "does not have any case with both names on the certificate.(UNDP and Institute for Policy and Strategy for Agriculture Development. 2011. Land Policy for Development in Vietnam. Page 168).
- <sup>26</sup> Beside a respective indicator introduced in the Strategy for Comprehensive Growth and Poverty Reduction (2002), this issue was not monitored in any of national strategies or national programs on gender equality. State documents related to the issuance of land use rights certificates often did not report this information. For instance, the Report on Progress of Issuing Land Use Right Certificates No 93/BC-CP of the Government on 19/10/1997, or Report No. 193/BC-BTNMT on 06/9/2012 of the Ministry of Natural Resources and Environment on Review of the Implementation of Land Law 2003 and implications for Amendment of the Land Law did not mention this information. This missing of reporting information was noted in a report by CIPFEN and ActionAid Vietnam on “Survey on women’s access to Land by status of land use rights certification in six regions of ActionAid Program sites”, 8/2008.
- <sup>27</sup> In relation to the obligation to respect, ensure and protect women's rights and gender equality, Viet Nam accepted UPR Recommendations No. 14, 27, 29, 58, 82. The CEDAW Committee (2007) also recommended that Vietnam should ensure a full and effective implementation to achieve Millennium Development Goals (CEDAW/C/VNM/CO/6, para.29 and 32); ensure participation in decision-making processes at all levels, especially by women living in rural and remote areas and women belonging to ethnic minorities (CEDAW/C/SR.518, para.25).
- <sup>28</sup> Office of the National Assembly (2011), and Proceedings of the National Summit of the Women’s Union (2012).
- <sup>29</sup> In the Communist Party, the percentage of women in secretariat positions at high levels did not make any progress with only 9% (at the Central level), and 12% (at the provincial level), which did not meet the target (data from the Department of Organisation, Central Political Bureau of the Communist Party, 2007 and 2001, and from the Women’s Union, 2012); the rate of women in Secretary positions increased slightly, but only at 6,18%, the rate of women in Deputy Secretary was only 8,42% (Office of the Central Political bureau of the Communist Party, 2006, 2011 and documentations from National Summit of Women’s Union in 2007 and 2012). Among the members of the Central Political Bureau, 12.5% (two per sixteen members) are women (one woman member was just elected in May 2013). In general, women only account about 37% Party members, and at two most powerful political organs of the Communist Party – the Political Bureau and the Central Committee, women representation was only 7% and 9% respectively (UNDP.2012. Women’s Representation in Leadership in Vietnam). In the National Assembly, the rate of women members reduced from 27.3% (Term XI) to 25.76% (Term XII), and decreased to 24.4% (Term XIII) (Office of the National Assembly, 2011). The rate of women in the People’s Council (elected bodies) at commune, district and provincial levels increased only 2-3% per term and did not reach the target of 30% at each level

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(Ministry of Home Affairs, 2007 and 2011). The rate of women in Minister positions decreased from 12% to 9,3% in the existing cabinet, while the rate of women in Deputy Minister positions decreased from 8,4% to 7,9% (Office of the National Assembly, 2001; Ministry of Home Affairs, 2011; Office of the Government. 2007 and 2012. Report on implementation of the National Target on Gender Equality). The rate of women in Presidential positions of elected bodies at provincial, district and communal levels was only respectively at 5%, 6% and 6%; the rate of women in Chairperson position of Provincial, District and Commune's People's Committee was respectively at 2%, 5% and 6% (Documentations of the National Summit of Women's Union, 2007 and 2012). At Provincial Departments, the rate of women in leadership positions – both directors and vice-directors – was 11%. The improvement of the number of women in leadership positions was observed only at the district and commune level while the proportion of women in high level political leadership at the central and provincial levels remain unchanged if not reversed. (UNDP.2012. Women's Representation in Leadership in Vietnam).

<sup>30</sup> The existing representation of women in leadership suggested a possible reinforcement and re-production of gender stereotypes that women are only suitable at supporting position, or with social services sectors such as education or health care, or social work.

<sup>31</sup> See also UNDP.2012. Women's Representation in Leadership in Vietnam.

<sup>32</sup> Labor Code and Social Security Law.

<sup>33</sup> Vietnam accepted UPR Recommendations No. 4, 29, 34, 35, 37 on the protection of children's rights in general; to prevent and punish acts of trafficking in children, respectively from Malaysia, Argentina and Turkey; Japan; Iran; Austria; and Morocco – UN Document A/HRC/12/11. The Child Rights Committee also recommended Vietnam to take comprehensive measures to address violence against children, including abuse and neglect of children (CRC, 2012 - CRC/C/VNM/CO/3-4, para. 53 and 54).

<sup>34</sup> The Law on Protection, Care and Education of Children (2004) prohibits the abandonment of the child, and regulated that abandoned children belong to groups of children in special circumstances subjected to be protected and cared by the State to ensure their rights are fully practiced (Articles 7 and 40). Other relevant policies include Decision No 38/2004/QĐ-TTg (dated 17/3/2004) of the Prime Minister on subsidies for families and individuals who adopt orphans and abandoned children; Decision No 65/2005/QĐ-TTg (dated 25/3/2005) by the Prime Minister on the approval of the Proposal on Community-based Child care in special cases during 2005 – 2010, including orphans and abandoned children; Decree No 67/2007/NĐ-CP (dated 13/4/2007) and Decree No 13/2010/NĐ-CP dated 27/02/2010 of the Government on Social Welfares; Decree No 68/2008/NĐ-CP dated 30/5/2008 of the Government on conditions for establishment, procedures for establishment, organization, operation and dismiss social protection agencies; Decision No 267/QĐ-TTg dated 22/02/2011 of the Prime Minister on the Approval of the National Program on Children Protection during 2011 – 2015; Decision No 1555/QĐ-TTg dated 17/12/2012 of the Prime Minister on the Approval of the National Action Program for Children during 2012 – 2020.

<sup>35</sup> About 0.6% of Vietnamese children. See Ministry of Labour, Invalids and Social Affairs, 2013. Draft Report on Qualitative Study on roots of problem of neglected and abandoned child in Vietnam.

<sup>36</sup> This issue is not addressed in both National Programs: The National Program on Children Protection and the National Action Program for Children similar observation was made by CRC in the Concluding Observations (2012) for Vietnam (CRC, 2012 - CRC/C/VNM/CO/3-4, para.53).

<sup>37</sup> In practice, about 30-35% of orphans, abandoned children, children with disabilities and children living with HIV-AIDS are not fully covered by the State's policies. (See Ministry of Labour, Invalids and Social Affairs. 2011. Report on Evaluation of the Achievement of Objectives of the National Action Program for Children 2001 – 2010. Another study by the Vietnam Association for Children Rights Protection (VACRP) in 2010 suggested that only about 55% of orphans and abandoned were recorded by the local government, and only 81% of them received social assistance. Only 43.2% children lost one parent received social assistance. Private shelters are taking care of 66.3% orphans and abandoned children. However, most of

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their employees are not adequately trained, with untrained staff accounted 43.8% and 56% reported that they do not have long term commitment because of being under-paid (VACRP. 2010. Analysis on the implementation of Government's Policies and Programs for orphans and abandoned children in 9 provinces and cities).

Only 38% of mothers in urban areas spend more than 3 hours a day to take care of her child, this proportion in rural areas was only 25%. (UNICEF and the Research Institute on Family and Gender (2008), Result of the National family Survey 2006 – Child neglect is a form of child abuse). In 2006, up to 19% of children aged 0-59 months were either left at home alone or being sited by other children under age 10. (UNICEF, (2010), Children Situation Analysis in Vietnam). Child abandonment is a criminal charge only in case such act resulted in the death of the child (Article 94 Criminal Code).

<sup>38</sup> UPR Recommendations 29, 54, 70, 71, 73, 74 to ensure the rights of vulnerable groups including people with disabilities respectively by Japan, India, Côte d'Ivoire, Campuchia, Singapore and Azerbaijan accepted by Vietnam; In particular Recommendations No 30 and 31 regarding efforts to implement the rights of people with disabilities by Cuba and Libya – UN Document A/HRC/12/11.

<sup>39</sup> Recommendation by South Africa accepted by Vietnam – UN Document A/HRC/12/11

<sup>40</sup> According to the Ministry of Labour, Invalids and Social Affairs, in 2011, approximately 93% of people with disabilities in Vietnam were not vocationally trained. Among the number of people with disabilities were trained, only about 1.22% of qualified for recruitment. There is a high percentage of people with disabilities unable to find any jobs: 41.86% in the Red River Delta and 35.77% in the South East Mekong Delta. (Briefing provided at the National Committee of Ethnic Minorities Affairs, dated 28/4/2011, accessed at <http://cema.gov.vn/modules.php?name=News&op=Print&mid=4551>) In education, only 66.5% children with disabilities at the age of primary school attended a school due to low awareness of parents, the education system and society, and the lack of facilities, equipment and capacity of the education system (UNICEF.2013. The State of Children in the World 2013).

<sup>41</sup> Labour Law Article 35, para.4 required that persons with disabilities should not work for more than 7 hours/day or 42 hours/week. In fact, such provision did not bring an equal opportunity for a person with disabilities to join work force in factories, especially for those positions working in a team or a row.

<sup>42</sup> Before, the law on Legal Aid (2006) provided that only person with disabilities “with no family support” could enjoy legal aids – Article 10 para.3, followed by Decree No 07/2007/NĐ-CP on 12/01/2007 by the Government on the implementation of the Law on Legal Aid – Article 2 para.4.

<sup>43</sup> According to Ministry of Justice, the number of cases of persons with disabilities supported with legal aid was gradually increased from 2007 to 2010, but remain limited at 0.73% of total cases supported, and limited in urban areas. (Access at the Ministry of Justice's website <http://www.moj.gov.vn/Pages/solieuthongke.aspx>; 11/4/2013).

<sup>44</sup> As no provision related to legal aid for persons with disabilities was included in the joint circular No 10/2007/TTLT-BTP-BCA-BQP-BTC-VKSNDTC-TANDTC between the Ministry of Justice, the Ministry of Public Security, the Ministry of Defense, the Ministry of Finance, the Supreme Procuracy and the Supreme Court, and the draft of the new Joint Circular to replaced above mentioned document; Joint Circular No 10/2011/TTLT-BTP-TTCP on providing legal aids in handling complaints on administrative decisions and administrative measures. In fact, access by persons with disabilities are limited. For instance, a person with disabilities had to crawl up the stairs to the court to file a complaint (as described at: <http://tuoitre.vn/Chinh-tri-Xa-hoi/415306/Bo-len-cau-thang-nop-don-cho-toa.html>; 11/12/2010; or deaf people do not have proper access to court procedures and proceedings, especially during criminal trials due to a lack of proper sign languages for legal terms (according to a review of recent criminal cases related to hearing-impaired people listed at <http://phapluattp.vn> dated 24/5/2010, or at <http://vnexpress.net> dated 25/5/2010; described in “How to handle the criminal case of a hearing-impaired person” at <http://www.tienphong.vn>).



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- <sup>45</sup> Ministry of Labour, Invalids and Social Affairs. 2008. Survey on the implementation of laws and regulations on people with disabilities.
- <sup>46</sup> The right of persons with disabilities to access public buildings, housing and public transportation was provided in the Law on People with Disabilities (Article 39 – 42), Labour Law (Article Điều 171); Law on Construction 2003 (Article 52); Law on Public Air transportation 2006 (Article 145), Law on Land Transportation 2008 (Article 3, 11, 23, 33, 44, 59, 79); Law on Railway (Article 21, 43, 97); Law on Sciences and Technology 2000; Standards on Construction for people with disabilities; The Project to support people with disabilities during 2012-2020 approved by Decision No 1019/QĐ-TTg of the Prime Minister stated an objective that by 2015, at least 50% public buildings are accessible for people with disabilities, and fully accessible by 2020.
- <sup>47</sup> For instance, the bus system in Hanoi and Ho Chi Minh city provide free tickets for people with disabilities, however buses in these cities are not accessible for wheelchairs. Another example in the air transportation was a regulation by the National Airlines (Vietnam Airlines), which required persons with disabilities to register support service 24 hours in advance. The airline passenger with disabilities has to sign a void-liability paper, which could be an excuse for airlines staff to refuse support to the passenger at an unexpected event. On railway, most of train stations do not have staff to assist passengers with disabilities, while trains' entrances and toilets are not accessible for wheelchairs.
- <sup>48</sup> A lesbian reported to the Institute for Social, Economics and Environment Studies (iSEE) that she was refused a service by an insurance company as her medical document stated that she is lesbian.
- <sup>49</sup> For example, a number of cases were reported on newspaper, such as L.Liêu - Tiểu Long, “*Nỗi thống khổ việc làm của người đồng tính*, (The pain in getting an employment for a homosexual person) Người Đưa Tin, 2012, <http://www.nguoiduatin.vn/loi-thong-kho-viec-lam-cua-nguoi-dong-tinh-a55855.html> ; Thực Anh, *Dở khóc dở cười chuyện đồng tính nơi công sở*, (homosexual people at work) Thebox.vn, 2012, <http://www.baomoi.com/Do-khoc-do-cuoi-chuyen-dong-tinh-noi-cong-so/139/8712120.epi>; or Hoàng Yến, *Nhà hàng bị kiện vì sa thải người đồng tính*, (A restaurant was sued for firing a homosexual staff) Pháp Luật TP.HCM, 2012, <http://phapluattp.vn/20120528104119876p1063c1016/nha-hang-bi-kiem-vi-sa-thai-nguoi-dong-tinh.htm>
- <sup>50</sup> Another lesbian woman reported to iSEE that local police examined their rented house where she lived with her partner. They were fined for not register their residential status to local police. After paying the fine, they tried to register, however they were requested off the record to move out of the house as the police did not accept registration from a homosexual couple. The expression of gender identity was viewed as acts “imitating, disturbing society, violating morality and good traditions”, sometimes at authorities' public speech (for example, Director of Ho Chi Minh City Department of Justice Uong Thi Xuan Huong said during the Review Conference on the Implementation of Marriage and Family Law on 16/4/2013: “*The young generation is racing to the trend of changing genders. (...) disturbing society, vilolating the good morality and traditions of our country.*”, and thus can be intervened and disposed. Many cases of transgender people in direct contact with the Institute for the Studies of Society, Economy and Environment share that the local officials often disperse their gatherings and prohibit them from coming to certain places, they also often give a warning regarding the “curfew,” specifying that the transgender people cannot be outside after midnight. Some public places also deny transgender people's entrance. Homosexuals are considered “easy to slip into the criminal scenes,” (Trieu Duong, *Homosexual criminals: Increasing everyday*, Ha Noi Moi, 2012, <http://www.baomoi.com/Toi-pham-dong-tinh-Ngay-cang-gia-tang/104/9032554.epi>), and there will be mitigating factors for the defendant if the victim is gay, reasoning that the victim must have led “an unrestrained lifestyle” (Phong Anh, *The murderer killing a homosexual director escaped the death penalty*, Dat Viet newspaper, 2010, <http://www.baomoi.com/Hung-thu-sat-hai-giam-doc-dong-tinh-thoat-an-tu-hinh/104/5945010.epi>) or is not serious-minded (Canh Sat Toan Cau, *Murder, cutting body into pieces: The homosexual criminal concern*, 2013, <http://www.anninhthudo.vn/Phap-luat/Giet-nguoi-chat-xac-Moi-lo-toi-pham-dong-tinh/481099.antd>).

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In addition to institutionalized discrimination in laws, stigma and discrimination for LGBT people among law enforcement and the public attitude, discrimination practices occurred in culture, social, health and education. Many teachers without proper knowledge about homosexuality and sexual orientation, or equality, have committed abusive behaviors such as insulting or committing discriminatory acts against students because of sexual orientation or gender identity (Ho Hong Giang, *Homosexual students, the teachers are 20 years behind*, Vietnamnet, 2012, <http://vietnamnet.vn/vn/giao-duc/72607/hoc-tro-dong-tinh--thay-co-lac-hau-20-nam.html>). LGBT people have suffered violence in the family, forced treatment, or being discriminated in health care. In many cases, the doctors scolded, scorned and even denied medical care to patients who are gay or transgender because of their sexual orientation and gender identity. (Nguyen Thu Nam, *Study on gay discrimination in a number of medical facilities in Hanoi and Ho Chi Minh City*, The Institute for Studies of Society, Economy and Environment, 2010). These acts of discrimination and abuse are not addressed.

<sup>51</sup> Criminal Code, Article 111. As the provision explained that “intercourse is an act between man and woman” and the law did not recognize gender identity of transgenders, an act of rape a person who had sex reassigned from male to female did not legally commit an act of rape.

<sup>52</sup> Hoàng Yến, *Hiếp dâm người chuyển đổi giới tính, có bị tội?* (Is raping a transgendered person legally considered a criminal offense?) Pháp Luật TP.HCM, 2010, <http://phapluattp.vn/20100824122757371p1063c1016/hiiep-dam-nguoi-chuyen-doi-gioi-tinh-co-bi-toi.htm>

<sup>53</sup> As required by *Decree No 38/2005/NĐ-CP*.

<sup>54</sup> iSEE reported that several lesbian women, or people with sex re-assigned from female to male in District No06. Ho Chi Minh city were arrested and kept at police stations, or taken to “education centers” for not having legal identification cards.

<sup>55</sup> *Decree 24/2013/NĐ-CP*. Point i Paragraph 1 of Article 12.

<sup>56</sup> *As above*. Paragraph 1 of Article 1.7.

<sup>57</sup> The Government of Vietnam accepted eight UPR Recommendations which suggested a facilitation of the establishment and operation of social organizations, such as develop a legal framework and measures for the full implementation of human rights treaties to which Vietnam is a party, particularly in the conduct of the necessary steps to promote and protect fundamental rights and freedoms (Recommendations #A9 (Japan), 14 (Egypt), 15 (People’s Republic of Korea, and Russia), 22 (Germany and Mexico), 24 (Algeria), 44 (Argentina), 45 (Italy), 52 (South Korea) accepted by Vietnam – UN Document A/HRC/12/11.

<sup>58</sup> Recommendations by UK (Para.51b), Canada (Para. 35e), Norway (Para. 41b), Finland (Para. 63a), Germany (Para. 64d), USA (Para. 66b), and Argentina (Para. 83c) UN Document A/HRC/12/11.

<sup>59</sup> Recommendation by UK was rejected - UN Document A/HRC/12/11 Para.51 (b).

<sup>60</sup> In Vietnam, the term “civil society” or “civil society organization” are neither legally nor formally recognized. These terms were often associated by governmental officials with “enemy”, which is the main structural challenge to the work of civil society organizations. During the UPR consultation workshops, it was recommended by participants from the government to remove the term “civil society” and “civil society organisations” from this report. In the UPR 2009, the Government of Vietnam also rejected recommendations specify “civil society organisations” including Recommendations by UK (Para.51b), Canada (Para. 35e), Norway (Para. 41b), Finland (Para. 63a), Germany (Para. 64d), USA (Para. 66b), and Argentina (Para. 83c) UN Document A/HRC/12/11.

<sup>61</sup> For instance, hundreds of organizations are member of key NGOs’ networks such as GENCONMET, GPAR, VNGOA, NEW, DOVIPNET, PPWG, CIPFEN, PPWG, VNGO&CC.

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- <sup>62</sup> Good practices of participation in the public policy process were experiences in the development of Law on Gender Equality, Law on prevention of Domestic Violence, Law on Prevention of HIV/AIDS, Law on Employment, during consultation of the Constitution Amendment, and several other important policies.
- <sup>63</sup> William Taylor, Nguyễn Thu Hằng, Phạm Quang Tú, Huỳnh Thị Ngọc Tuyết. 2012. “Xã hội dân sự tại Việt Nam: Nghiên cứu so sánh về các tổ chức xã hội dân sự tại Hà Nội và Thành phố Hồ Chí Minh” (Civil Society in Vietnam: A comparative study of civil society organizations in Hanoi and Ho Chi Minh city) commented that there is no focal point for the registration of an NGO. The practice of registration depended on the operational sector as well as personal relationship for individuals who wished to establish an organization, who could register under different ministries or with government’s special associations (those organizations enjoy state budget for human resource and operation).
- <sup>64</sup> For instance, Trần Đăng Tuấn, a well known journalist initiated a program to provide nutritious food for school children in the mountainous province. He applied to the Ministry of Home Affairs to establish a Charity Foundation “Cơm có thịt” (Rice with Meat) at the end of May 2012, but his application was not considered by October 2012, without any response (He sent a public letter to announce the situation at <http://dantri.com.vn/dien-dan/nha-bao-tran-dang-tuan-viet-thu-gui-bo-truong-bo-noi-vu-ve-com-co-thit-663966.htm>; Another case was Phạm Thanh Hiệp, President of Provincial Councils for Scout testified that, the Association of Scout in Ho Chi Minh city submitted an application for establishment to the Provincial Department of Home Affairs on 8/8/2012. After several months with no response, he sent a second written request, and was replied that according to an instruction by the People’s Committee of Ho Chi Minh city, several organizations for youth exist, such as Communist Youth Association, Communist Frontier Children Association, Student Association, therefore the establishment of the Scout Association was not allowed. Their application was refused, even though the Scout Association was registered with the Government of Vietnam People’s Republic on 31/5/1946 and President Ho Chi Minh was the Honored President of Vietnamese Scout Association.
- <sup>65</sup> William Taylor, Nguyễn Thu Hằng, Phạm Quang Tú, Huỳnh Thị Ngọc Tuyết. 2012. “Xã hội dân sự tại Việt Nam: Nghiên cứu so sánh về các tổ chức xã hội dân sự tại Hà Nội và Thành phố Hồ Chí Minh” (Civil Society in Vietnam: A comparative study of civil society organizations in Hanoi and Ho Chi Minh city). page 4 and 27.
- <sup>66</sup> Article 9 and Article 10 of the Constitution 1992 and Article 9, Article 10 of the Draft Amendment of the Constitution 1992 provided the right to supervise and criticise activities of state agencies, elected representatives and officials, employees State only to the Fatherland Front and its member organizations, which reflected a discrimination against independent civil society organisations which are not a member of the Fatherland Front. Similarly, Article 34 of Decree 45/2010/ND-CP excluded the right to participate in selected activities of state management, public services, and to provide monitoring and assessment of policies, programs, schemes and projects by state by civil society organizations. Decision 97/2009/QĐ-TTg of the Prime Minister limits number of fields of science and technology that an organisation could register and operate, and does not allow any public comments on strategies and policies of the Party and the State. Decree No. 38/2005/ND-CP dated 18/03/2005 of the Government provides a number of measures to ensure public order has restricted the right to assemble and peacefully protest, which is one important measure of civil society organizations to involved enforcement of the policy process as well as the right to participate in management of the society and the country, and the right to freedom of expression. Article 69 of the Constitution 1992 (amended in 2001) provided that the exercise of freedom of speech, freedom of information, freedom of association, freedom assembly should be “in accordance with laws and legal documents”. Therefore, the implementation of these rights and freedoms might be limited as: i) there is no law on association and law on access to information despite several drafting discussions; ii) The interpretation of provisions on public security, such as Article 88 of the Criminal Code 1999 (amended) which may have criminalized those statements not favoured by the Government, or Article 6 Decree 98/2008/NĐ-CP (dated 28/8/2008 on the management, provision and utilization of internet service and information on the internet), had a chilling effect on the exercise of the freedom of speech.

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- <sup>67</sup> Phạm Quang Nam, Nguyễn Ngọc Anh. 2013. Implementation of Decree 93: Practices and Recommendations (pages 5, 24, 28 and 29) (Draft paper). Decree 93/2009/ND-CP and Circular 07/2010/TT-BKH was rather difficult for a number of organizations to get their projects approved by the respective authorities.
- <sup>68</sup> The Center for Support Social Development Programs (CSDP) testified that authorities of Thai Nguyen Province did not allow them to implement a project on “Strengthening Democracy through Policy Advocacy in Pho Yen District, Thai Nguyen Province” in 2011. Another organization, the Center for Education and Capacity Building for Women (CEPEW) testified that Authorities of Thanh Hoa Province did not allow the Center to implement “Practicing Democracy: Realise the right to access to information and feedbacks to between local authorities and people for a sustainable community”.
- <sup>69</sup> On freedom of information, Vietnam accepted Recommendations No. 45 (by Italy) on compliance with Article 19 ICCPR; No 46 (by Canada) on issuance of access to information legislation; No 47 (by Sweden) on respect freedom on expression in media reform; No48 on protection of press freedom (by Australia); protection of journalists (by Switzerland); and press law in compliance with Article 19 ICCPR (Netherlands). Vietnam rejected all recommendations related to independent or private media (by Canada at para. 35 (a), by Norway at para.41(d,e), by Netherlands at para. 47 (b), by UK at para. 51(a), by New Zealand at para. 59 (b) - UN Document A/HRC/12/11.
- <sup>70</sup> There are several existing clauses on disclosure of information in different legislations: Constitution 1992 (article 53); Press Law 1999 (article 2, 4, 7, 8, 10); Law on Prevention of Corruption 2005 (article 12, 13, 30, 33); Decree No 120/2006/NĐ-CP on guidelines and implementation of selected articles of the Law on Prevention of Corruption; Law on State Audit 2005 (Article 58); Ordinance on Grassroot Democracy at Commune Level 2007 (article 5 and 9); State Budget Law 1992; Regulation on spokesperson and provision of information for media; Decree No92/2006 required the leader of Ministerial Agencies and Provincial Authorities to disclose development plans of areas and sectors; Law on Promulgation of Legislation by People’s Council and People’s Committee, 2004; Ordinance on Protection of State Secrets, 2000, Decree No 33/2002/NĐ-CP on the implementation of the Ordinance on Protection of State Secrets, etc.
- <sup>71</sup> For instance, even though the Law on State Budget required frequent disclosure and report of public debt (article 44 – 47), in practice, it was not possible to find frequent reports or information on the public debt as commented by the UN the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina during his country visit in March 2011 (A/HRC/17/37/Add.2, para 5).
- <sup>72</sup> The Ordinance required disclosure of certain documents, development plans and information, forms of disclosure and responsibilities of local authorities in providing information to people at communal level.
- <sup>73</sup> World Bank. 2010. Survey report on information disclosure in land management (table 1).
- <sup>74</sup> According to a research done by the School of Law, Hanoi National University in collaboration with the Centre for Human Rights and Citizen’s Rights and the Centre for Comparative Legal Studies (in the same university), some authorities sealed the sign “Confidential” even on their telephone directory (in “Tiếp cận thông tin: Pháp luật và thực tiễn ở Việt Nam, (Access to Information: Legislation and Practices in the world and Vietnam). National University Publishing House.2011. page 597).
- <sup>75</sup> Vietnam has accepted UPR recommendation No 36 on strengthening anti-corruption efforts to avoid the negative impact on human rights (by Iran) - UN Document A/HRC/12/11.
- <sup>76</sup> Article 122 of the Draft presented at  
[http://www.moj.gov.vn/hienphap1992/News/Lists/giaidapthacmac/View\\_Detail.aspx?ItemID=5223](http://www.moj.gov.vn/hienphap1992/News/Lists/giaidapthacmac/View_Detail.aspx?ItemID=5223)
- <sup>77</sup> In the Corruption Perception Index 2012 announced by Transparency International, Vietnam ranked at 123/176 countries and territories, with 31/100 điểm. PAPI, the Provincial Administrative Performance Index – a national survey on performance of the administrative system showed that the percentage of people

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believed there is no diverting of public funds was slightly above 50% (50.06% in 2011 and 50.70% in 2012). Corruption affects the equal rights to quality public services, such as procedures related to the granting of land use right certificates (with 50.26% of respondents in the PAPI survey 2011 believed that bribery is common), the respective percentage related to construction permit is 48.81%, the health service at district level is 53.48%, for education is 40.86 and to get an employment in the public sector is 59.67%. The repeated survey in 2012 report a thin progress in the construction sector, however confidence on non-corruption in the public health care, and public sector employment decreased. More information is available at <http://www.papi.vn>.

During the national consultation workshops of this report, a quick assessment on the relevancy and urgency of different problems showed that corruption was perceived as most critical and urgent issue, which affected the realisation of human rights (In the South, 55% of participants in the South rated as very critical and urgent, 30% participants rated as critical and urgent. In the North, the respective number is 63% and 31% - in a scale of 1: do not know; 2: not relevant for Vietnam; 3: not very important; 4: important issue, but not urgent; 5: Important and critical; 6: very important and critical).

<sup>78</sup> Vietnam accepted the recommendations No 3 to consider ratification of the CAT (by Australia, Sweden, Nigeria, Algeria and Chile), rejected UPR Recommendations of Canada, Austria, the United States regarding disclosure of detention conditions, provided general feedback with recommendations on strengthening legal aid for detainees (Recommendation of Canada), no response to recommendations to consider the invitation to the Special Rapporteur on Arbitrary detention (Recommendation of Mexico) - UN Document A/HRC/12/11.

<sup>79</sup> These cases were reviewed as reported in major printed domestic newspapers during 2009 – 2013, including: Detainees died at police stations at district level: 1) Nguyễn Mạnh Hùng died after 10 days detained at the station of Ha Dong district, Hanoi. He died before being admitted to hospital on 29/11/2009; 2) Nguyễn Quốc Bảo died after being transferred from the police station of Hai Ba Trung district in Hanoi to the hospital on 22/1/2010; 3) Võ Văn Khánh died at the police station of Dien Ban District in Quang Nam Province on 7/5/2010; 4) Vũ Văn Hiền died after being transferred from the police station of Dai Tu District in Thai Nguyen province on 30/6/2010; 5) Nguyễn Văn Khương was beaten to death by Nguyễn Thế Nghiệp, police officer of Tan Yen District in Bac Giang province on 23/7/2010; 6) Trần Duy Hải died in the temporary detention center of the police station of Chau Thanh A District in Hau Giang province on 8/8/2010; 7) Nguyễn Công Nhật died in the temporary detention center of the police station of Bến Cát District, Bình Dương province on 26/4/2011; 8) Huỳnh Thanh Thắng died in the temporary detention center of the police station of Bù Đốp District in Bình Phước province on 7/10/2011; 9) Đặng Văn Trí died in the temporary detention center of the police station of Krông Nô district in Đắk Nông province on 15/11/2011; 10) Lê Quang Trọng died in the temporary detention center of the police station of Can Lộc District in Hà Tĩnh on 19/3/2012; 11) Tăng Hồng Phúc died in the temporary detention center of the police station of District No.8, Hồ Chí Minh City on 2/4/2012; 12) Bùi Hữu Vũ died in the temporary detention center of the police station of Nam Đàn District, Nghệ An on 11/4/2012; 13) Ngô Thanh Kiều was tortured by five police officers of Tuy Hoa City of Phu Yen district lead to his death on 13/5/2012; 14) Nguyễn Mạnh Sơn was beaten to death by seven police officers of Thạch Thất district in Hanoi on 21/6/2012. Homicides at police station at commune level: 15) Đặng Trung Trịnh died at the police station of UBND xã Tiên Động, Tứ Kỳ, Hải Dương on 28/11/2009; 16) Nguyễn Văn Long died at the police station of Bom bo commune, Bù Đăng, Bình Phước on 23/12/2009; 17) Trần Ngọc Đường died at the Commune People's Committee station of Thanh Bình commune, Trảng Bom, Đồng Nai on 9/9/2010; 18) Đặng Quang Trung died at the police station of Tiến Hưng commune, Đồng Xoài town, Bình Phước on 15/3/2011; 19) Nguyễn Mậu Thuận was beaten by four police officers of Kim Nỗ commune, Đông Anh, Hà Nội lead to his death on 30/8/2012; 20) Nguyễn Thanh Hiền died on 8/9/2012 as he was released from the police station of Ngô Quyền ward, Vĩnh Yên city, Vĩnh Phúc; 21) Trần Văn Tân died at the Commune People's Committee station of Kim Xuyên commune, Kim Thành, Hải Dương on 2/1/2013.

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- <sup>80</sup> for "using corporal punishment" (under Article 298 of the Criminal Code 1999), "intentional injury" (as Article 104 of the Penal Code) or "causing death while on duty" (under Article 97 of the Penal Code).
- <sup>81</sup> Poor and degraded infrastructure of detention centres and overloaded prisons are common in many province – according to report of Procuracy in 34 provinces: Trà Vinh, Sóc Trăng, Đồng Nai, Bình Định, Vĩnh Long, Yên Bái, Bạc Liêu, Bình Thuận, Lâm Đồng, Điện Biên, Long An, Bình Dương, Khánh Hòa, Vĩnh Phúc, Hà Nội, Đắk Lắk, Bắc Ninh, Kon Tum, Tây Ninh, Đồng Tháp, Quảng Nam, Hậu Giang, Bắc Kạn, Gia Lai, Thanh Hóa, Cà Mau, Quảng Bình, Hà Tĩnh, Kiên Giang, Cao Bằng, Thừa Thiên Huế, Lào Cai, Quảng Trị, Hà Giang) – Trainig document of the Supreme Procuracy – accessed at <http://www.vksndtc.gov.vn/theloai/thongbao/108.aspx>
- <sup>82</sup> For instance, Lê Quốc Đạt died on 13/4/2013 at the temporary detention center of Chí Hòa, Ho Chi Minh city. The case was reported by An Danh, Phạm nhân chết trong trại giam, gia đình không được báo tin (Detainee died in custody, family was not informed), Pháp luật TP.Hồ Chí Minh (Ho Chi Minh city legal news), 17/4/2013, <http://phapluattp.vn/20130417010427665p0c1015/pham-nhan-chet-trong-trai-giam-gia-dinh-khong-duoc-bao-tin.htm>.
- <sup>83</sup> Related to the right to fair trial, Vietnam accepted UPR Recommendations by Iran (No.38), Côte d’Ivoire, Turkey and Pakistan (No.39); Bangladesh (No.40); Turkey (No.41); Argentina (No.42) and Austria (No.43) - UN Document A/HRC/12/11.
- <sup>84</sup> Strategy on Judicial Reform towards 2020 at Resolution 49-NQ/TW by the Central Committee of the Communist Party on 2/6/2005.
- <sup>85</sup> Article 72 of 1992 Constitution, the Civil Code, Civil Procedures Code, Penal Code, Criminal Procedures Code, Law on the Organisation of the People’s Court, Law on the Organisation of the People’s Procuracy. Article 7 of the Law on the Organisation of the People’s Court 2002 provided that The *courts* shall *conduct* public *trials*, except for cases of necessity to *conduct* secret *trials* in order to keep the State secrets, preserve the nation’s fine traditions and customs or to keep secrets of the involved parties at their legitimate requests.
- <sup>86</sup> On average, a judge worked on 42 to 47 cases per year, however, in some districts, this number was 120 to 140 cases per year. When received a complaint, the court often did not issue a receipt neither inform plaintiff on the proceedings, the complainant would have to come back to the court several times to check whether their complaints were admitted, and what/when/how would the next step be conducted. (UNDP Project 00058492. 2012. Report on the Survey on Local Court Administration practices in Vietnam – 2012). According to the annual report of the Supreme Court in 2012 (Ibid), there were 869 administrative cases unsolved, the backlog of administrative cases was up to 23% in 2012. The number of administrative cases in 2012 increased 166%. The accumulated number of unsolved cases at the Supreme Court were very large (up to early 2013, it was 4,361 cases).
- <sup>87</sup> According to a survey on the practice of local courts in Vietnam by UNDP and the Ministry of Justice, the practice of consult the verdict or report on the court decision were common, while the local court considered the provincial court their direct administrative supervisor as more than 63% of surveyed judges at provincial and district levels mentioned a “regulation to report on court decision” (UNDP Project 00058492. 2012. Report on the Survey on Local Court Administration Practices in Vietnam – 2012).
- <sup>88</sup> UNDP Project 00058492. 2012. Report on the Survey on Local Court Administration practices in Vietnam – 2012. Page 30. Also according to the annual report of the Supreme Court in 2012, in administrative cases, usually due to the nature of having one side is a member of the local government, it is difficult for local courts to come up with objective judgment. Many administrative judgment were canceled or corrected by the judge. (Supreme Court, *Báo cáo tổng kết công tác năm 2012 and nhiệm vụ trọng tâm công tác năm 2013 của ngành Tòa án nhân dân* (18/01/2013) (Annual Report of Operation in 2012 and Major Tasks for 2013 of the People’s Court System). BC05/BC-TA . Page 7. Available at the website of the Supreme Court: [http://toaan.gov.vn/portal/page/portal/tandtc/545500/3827663?p\\_state=6&p\\_nam\\_baocao=22&p\\_loai=1](http://toaan.gov.vn/portal/page/portal/tandtc/545500/3827663?p_state=6&p_nam_baocao=22&p_loai=1)).

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- <sup>89</sup> Article 27 of Lawyer's Law and Circular no. 70/2011/TT-BCA dated 10/10/2011 on defense lawyer and right to be defended.
- <sup>90</sup> In many cases, Investigation office did not accept the defense lawyer proposed by the offence's relatives, but required agreement of the offences while it is difficult to meet the detained offence. According to *Báo cáo đánh giá thực trạng bảo đảm quyền bào chữa và quyền hành nghề của luật sư, kèm theo Kiến nghị sửa đổi, bổ sung Bộ luật tố tụng hình sự năm 2003* (Công văn số 251/LĐLSVN, 29/10/2012). [Report on right of litigation and right to defense of the lawyers in Vietnam, attached with proposals to amend the Criminal Procedure Code 2003 - Vietnam Bar Federation, Letter No.251/LĐLSVN, 29/10/2012.]
- <sup>91</sup> Constitution 1992, Article 17 and 18, and Land Law 2003 article 38.
- <sup>92</sup> Report on Review of Resettlement Projects for hydropower and irrigation works by the Department of Resettlement and New Economic Zones under the Ministry of Agriculture and Rural Development, 2012. 94.4% people in resettlement for Son La hydropower plant was people belong ethnic minorities groups, the number for Huoi Quang plant was 97.4% and for Ban Ve was 99.5% (the State's Consulting Company on Electricity Construction (2007) and National Institute for Agricultural Planning and Projection (2004, 2005, 2006 and 2008))
- <sup>93</sup> 94.4% people in resettlement for Son La hydropower plant was people belong ethnic minorities groups, the number for Huoi Quang plant was 97.4% and for Ban Ve was 99.5% (the State's Consulting Company on Electricity Construction (2007) and National Institute for Agricultural Planning and Projection (2004, 2005, 2006 and 2008)).
- <sup>94</sup> For instance, the field work conducted by CIFPEN in the resettlement site for Ban Ve Hydropower showed that 81,1% respondents in Thanh Son commune and 91,2% in Ngoc Lam said the compensated land they received were unfertilized land and not suitable for agricultural activities; 100% respondents in both communes said they did not receive land use rights certificates, or almost one-third of respondent said the allocation of compensated land has not been completed (for 35,1% respondents in Thanh Sown and 29,4% respondent in Ngoc Lam, noted that the project started in 2004. In 2012, 145 households (more than 500 people) had left their resettlement site to return to the previous residential land, 181 households sold their allocated land and moved out of the resettlement site) 90% respondents in Thanh Son reported that compensated houses were too small for them, or did not have water supply. Another survey by an NGO in three large hydro power plants in Ban Ve, Yali, and Tuyen Quang reported on 54% of respondents were unhappy about the selection of the resettlement site. Design of housing in resettlement site was not culturally suitable (CODE.2011. Reallocation, Resettlement, Stabilisation of life and protection of natural resources and environment in hydropower projects in Vietnam).
- <sup>95</sup> Ibid.Less than 50% affected households were informed directly during different steps of a resettlement planning and implementation, only 10 -20% involved in discussion of the planning and implementation. (page 123).
- <sup>96</sup> In a survey on governance at the provincial administration, the percentage of respondents did not know about land use planning was 72.62% in 2010 and 79.19% in 2011(PAPI survey 2011, page 17).
- <sup>97</sup> Land Law 2003, Article 42, para. 3.
- <sup>98</sup> According to the General Comment No7 by the Committee on Economic, Social and Cultural Rights, Non-voluntarily resettlement is in general considered a violation of International Human Rights Law, and the state should limit forced eviction, take measures to ensure that resettlement decisions will be considered with due attention to legal and social aspects, and adequately compensate those who were forced to relocate.
- <sup>99</sup> Article 58 Draft Amendment of the Constitution 1992.

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- <sup>100</sup> Key principles and requirements for states such as ‘only in the exceptional circumstances’; ‘with the prior, free and informed consent of affected communities’; ‘the carrying out of evictions impact assessments’ and so forth are established in the UN Basic Principles and Guidelines on Development based Evictions and Displacement. See the report of the Special Rapporteur on Adequate Housing, A/HRC/4/18, February 2007. Also see General Comment No7 by the Committee on Economic, Social and Cultural Rights, Both these instruments clearly state that on-voluntarily resettlement is in general considered a violation of International Human Rights Law, and the state should limit forced eviction, take measures to ensure that resettlement decisions will be considered with due attention to legal and social aspects, and adequately compensate those who were forced to relocate.
- <sup>101</sup> Vietnam accepted eight recommendations on ensuring the rights of vulnerable groups in general (Recommendations by Thailand(No 62), China (67), Lebanon (69), Côte d’Ivoire (70), Cambodia (71), Azerbaijan(74), China (75), and Pakistan(77) - UN Document A/HRC/12/11) and specifically two recommendations on social housing by the Philippines (No 57) and Cote d’Ivoire (No 70) - UN Document A/HRC/12/11.
- <sup>102</sup> For instance, housing programs 134, 135 and other programs. CERD(2012) has recognized this good practice (Concluding Observation by CERD - Document CERD/C/VNM/CO/10-14, para B4(f)).
- <sup>103</sup> The UN Human Rights mechanisms also recommended that Vietnam should pay attention to ensure the right to adequate housing - especially in terms of hygiene and safety, health – for urban poor, especially migrant workers (Report on the visit by the Independent Expert on human rights and extreme poverty, Magdalena Sepúlveda Carmona (2010) - A/HRC/17/34/Add.1). Beneficiaries of social housing policy are defined as government staff who do not have a house, families of targeted policies, families of invalid soldiers or sacrificed people, families who contributed to the revolution, families with low income, poor labours who were permanent residents. However, the distribution of housing benefit are not equal. For instance, a survey on needs of social housing in Hanoi listed housing needs of 35 Central Government’s agencies with 157,000 staff, and 83 agencies of the city with 36,000 staff registered for purchase of social housing. The survey report set an objective for Hanoi by 2015 to build 15,500 apartments for governmental staff, and did not assess or set any objective for other sector, not to mention migrant workers. (Following the report on Newspaper An ninh thủ đô. 14/4/2013. Râm rộ đăng ký mua nhà ở xã hội: Cơ hội hay nỗi lo. <http://www.anninhthudo.vn/Nha-Dat/Ram-ro-dang-ky-mua-nha-o-xa-hoi-Co-hoi-hay-noi-lo/494495.antd>)
- <sup>104</sup> According to a survey by Vietnam General Confederation of Labor, a minimum wage was established in 1993 but from the outside it was set at a low level relatively to its purpose. The minimum wage in effect become the actual level of basic salary for unskilled and low-skilled workers, meeting only 40-60% of workers minimum expenses. Ref. Lao Dong(2012) “Hard life of laborers on minimum wage” (translated). Lao Dong 11 December 2012. <http://laodong.com.vn/cong-doan/nguoi-lao-dong-song-lay-lat-voi-muc-luong-toi-thieu/91341.bld>
- <sup>105</sup> D. Vaughan-Whitehead (2011). ‘ How “fair” are wage practices along the supply chain? Global Assessment in 2011” paper prepared for Better Work conference, 26-28 October 2011, Washington DC. <http://betterwork.org/global/?p=1296>. Wage disparity between workers at the top and bottom of the wage scale was high in Vietnam.
- <sup>106</sup> Vietnam has full of obligations to the right to decent work in Article 6 and 7 of the International Covenant on Economic, Social and Cultural Rights. Vietnam is also a member of 18 ILO Conventions concerning various issues of labor. Related to workers, Vietnam accepted UPR Recommendations No1 (by Malaysia), No37 (by Iran), No52 (by Korea), No 55 (by Algeria), 56 (Turkey), and 70 (by Côte d’Ivoire) – UN Document A/HRC/12/11. However, Vietnam was not a member of any Convention of the International Labour Organization concerning trade union. Vietnam has also received recommendations from the UN human rights mechanisms on the ratification of the International Convention on the Protection of the rights of migrant workers and their family members (CERD(2012) - CERD/C/VNM/CO/10-14 para.20; CEDAW



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- (2007)- CEDAW/C/VNM/CO/6 para.33; CRC(2012) - CRC/C/VNM/CO/3-4. para.80), the ILO Convention No. 189 (2011) on the working conditions of domestic workers (CRC (2012), CRC/C/VNM/CO/3-4. para.80) but so far no clear agenda to participate in these conventions was published.
- <sup>107</sup>107 The Vietnam General Confederation of Labor (VGCL) is the only trade union organization officially recognized in Vietnam.
- <sup>108</sup>108 The prevailing Trade Union Law makes it impossible for self-employed labour to freely establish their union, and the foreign workers cannot establish or join the trade union (Law on Labour Union of Vietnam, article 1). The collective bargaining was limited due inability of representation of the enterprises level, The only way to negotiate wages was wildcat strikes. According to the Federation of Labour Union, there were 978 strikes in 2011. From 1995 to 2012, there were nearly 5,000 strikes organized – about 100 cases at State-owned enterprises, 1,400 cases at private companies and about 3,500 cases in foreign-direct investment companies. None of these strikes were organized by local labour unions in those companies (report on a workshop on 05/4/2013 by the Federation of Labour Union, accessed at <http://thuvienphapluat.vn/tintuc/vn/thoi-su-phap-luat/thoi-su/4450/gan-5.000-cuoc-dinh-cong-tu-khi-luat-lao-dong-ra-doi>
- <sup>109</sup>109 There were a total of only 450 labour inspectors nation wide to cover more than 400,000 enterprises, said Mr.Nguyen Tien Tung, Deputy Chief Labour Inspection of the Ministry of Labour, Invalids and Social Affairs (MOLISA) in an interview on 16/3/2012 (accessed at <http://www.baomoi.com/Thanh-tra-lao-dong-Thieu-ve-so-luong-yeu-ve-chat-luong/47/8076879.epi>). In Hanoi, with more than 100,000 enterprises, there was only three inspectors who had qualification on safety among a total of 17 inspectors. ILO estimated that the workforce of Vietnam would need 1,500 inspectors (quoted from an interview with Mr. Phan Dang Tho, Deputy Chief of Labour Inspection of MOLISA, accessed at <http://vov.vn/Xa-hoi/Thanh-tra-lao-dong-Thieu-va-khong-chuyen/223059.vov>) Labour inspectors are lack of skills to work on emerging issues such as child labour, modern health and safety issues.
- <sup>110</sup>110 Department of Oversea Labour, MOLISA. 2012. This is official record by the government, while there are additional number of people working abroad without official registration to the government.
- <sup>111</sup>111 Following Decision No 71/2009/QD-TTg, on 29-4-2009 by the Prime Minister on the Approval of the Proposal “Support poor districts to improve labour export for sustainable poverty reduction during 2009-2020”.
- <sup>112</sup>112 In relation to the specific actions on human rights education, Vietnam has accepted the UPR Recommendations No. 18 on general human rights education, No 19 on the application of the Action Plan for Human Rights Education Program Global, No. 17 and 21 on human rights education for public officials, state employees and people on duty, No 27 and 28 on education of women's human rights, and No 75 on human rights education for ethnic minorities respectively by Morocco, Italy, Thailand and Anh quốc, Palestine, Nga and Sweden, Bangladesh, and China – UN Document A/HRC/12/11. Human rights education, among 20 other issues, was ranked as from important and critical issue to very critical issue by respectively 28% and 45% participants of the UPR consultation workshop in the South, and 41% and 39% participants in the South (second concerned issue after corruption).
- <sup>113</sup>113 Law schools and Universities pioneered in the teaching of human rights such as activities at the Law school of Hanoi National University, in Hue National University, and others department of Law . However, by 2012, human rights is not yet a required course in the Hanoi University of Law, the largest professional legal training institution in Vietnam – but a module in a two-credit course on international law. Human rights is not a required content in the formal curriculum of law training program approved by the Ministry of Education and Training. A Master program on human rights at the Hanoi National University introduced in 2010, which is the only post-graduate human rights program in operation, is a pilot program supported by international donors. (Nghiem Thi Kim Hoa. 2012. Human Rights Education in Law University in Vietnam. Consultancy report for UNDP).

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- <sup>114</sup> As it does not provide a focal point to the Action Plan, neither officially adopt major recommended actions such as establishing a National Strategy for Human Rights Education, or conducting extensive studies on human rights education in different public sectors as starting points.
- <sup>115</sup> Teachers and pupils could have heard about the Convention on the Rights of the Child, but they do not know substantive rights, neither could relate these rights in the school context. For example, in a survey conducted in 2012, about 30% of teachers could not tell substantive rights of the Child. (Oxfam. 2012. Training Needs Assessment for RVNA99 in Ninh Thuan Province, unpublished document).
- <sup>116</sup> For instance, police force is not adequately trained on human rights at international standards and practical knowledge to apply in their performance, if not reversely trained to take a hostile approach towards human rights defenders or debates. According to a report from the Academy of People' Security, the leading training institution for the Public Security Service in Vietnam, by 2010, the formal curriculum of the Academy did not include human rights content. It was explained that human rights were taught in different subjects, while no study on human rights was conducted at the Academy. A survey among students of the Academy showed that 51% respondents reported that they did not have opportunity to learn about international human rights conventions which Vietnam is a party, at the same time 41% respondents said contents on human rights were properly introduced. In the same survey, 67% respondents did not choose the right to demonstration a right "recognized and ensured by the State and legislation". The respective number for the right to freedom of assembly was 33%, and the right to freedom of speech was 19%. It was mentioned in the report that the perception of human rights education in the Academy was "for the security officers in the sector of culture and thoughts could realize their tasks in management and fighting against the acts to take advantages of freedom of speech, the right to publish, the right to association and assembly, freedom of press in order to falsify, wrongly accuse and taking propaganda against the Government of the Socialist Republic of Vietnam; for the investigators to prevent and fight against those acts to take advantages of the right to freedom of association to establish opposite organizations, to take advantages of the freedom of movement to go abroad to against the Government of Socialist Republic of Vietnam" (Phung The Vac and Dinh Thi Mai. 2010. Nghiên cứu và giảng dạy quyền con người, quyền công dân ở học viện An ninh nhân dân (Research and Teaching of human rights and citizen's rights at the Academy of People' Security). In Vo Khanh Vinh (ed.) Giáo dục Quyền con người: Những vấn đề lý luận và thực tiễn. (Human Rights Education: Theories and Practices). Social Sciences Publishing House. 2010.). The improper education on the State's obligation on protection of human rights of the public officials leads to the risk of human rights violations by these officials, not to mention non-formal security force at the local level who are often not trained properly in general.
- <sup>117</sup> Human rights conferences or workshops with the participation of foreigners or financially supported by international organisations are required to obtain the permission from the Prime Minister, after obtaining the written approval of the Ministry of Foreign Affairs and concerned local authorities, and afterward has to report to the Prime Minister and the Ministry of Foreign Affairs for records. According to Article 1, Article 3 para. 1b and Article 4 of the Decision No 76/2010/QĐ-TTg of the Prime Minister on 30/11/2010. For instance, based on this decision, on 23 April 2012, the Office of the Prime Minister requested the Vietnam Academy of Social Sciences to cancel a workshop on Rights and Obligations of citizens in the Constitution, and asked the organizer to "seriously take the lesson learned" (Letter No. 2798/VPCP-QHQT of the Office of the Prime Minister on the organization of the International Conference on Rights and Obligations of citizens in the Constitution). Human rights conferences or workshops with the participation of foreigners or financially supported by international organisations are required to obtain the permission from the Prime Minister, after obtaining the written approval of the Ministry of Foreign Affairs and concerned local authorities, and afterward has to report to the Prime Minister and the Ministry of Foreign Affairs for records.
- <sup>118</sup> In 02/2013, Vietnam has announced its voluntary pledges of human rights, including considering the establishment of a national human rights institution.