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**Committee on Economic, Social and Cultural Rights****Concluding observations on the second to fourth periodic reports of Viet Nam\***

1. The Committee on Economic, Social and Cultural Rights considered the second to fourth periodic reports of Viet Nam on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/VNM/2-4) at its 42nd and 43rd meetings (see E/C.12/2014/SR.42 and 43), held on 10 and 11 November 2014. At its 70th meeting, held on 28 November 2014, it adopted the following concluding observations.

**A. Introduction**

2. While regretting the late submission, the Committee welcomes the second to fourth periodic reports submitted by the State party and the supplementary information provided in the replies to the list of issues (E/C.12/VNM/Q/2-4/Add.1) as well as orally by the delegation. The Committee also welcomes the constructive dialogue held with the State party's high-level delegation, which represented various relevant branches of the Government.

**B. Positive aspects**

3. The Committee welcomes the ratification by the State party of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2001.

4. The Committee notes with appreciation the precedence accorded to the Covenant over domestic law, as provided for in the 2005 Law on the Conclusion, Accession to and Implementation of International Treaties.

5. The Committee welcomes the measures taken by the State party which contribute to the realization of economic, social and cultural rights, including:

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\* Adopted by the Committee at its fifty-third session (10–28 November 2014).



(a) The adoption, in 2012, of the Strategic Framework for mobilization, management and utilization of Official Development Assistance and other preferential loans of donors in the 2011 to 2015 period;

(b) The adoption, in 2005, of the Anticorruption Law and subsequent amendments, and the ratification, in 2009, of the United Nations Convention on Anti-Corruption;

(c) The adoption, in 2010, of the Law on Persons with Disabilities;

(d) The implementation of the National Target Programme on community-based mental health services;

(e) The establishment of the Health Insurance Fund and the adoption, in 2008, of the Law on Health Insurance and subsequent amendments.

6. The Committee welcomes the significant reduction of poverty in the State party, which has contributed to the achievement of the Millennium Development Goals.

## **C. Principal subjects of concern and recommendations**

### **Justiciability of the Covenant rights**

7. The Committee is concerned that the Covenant has not been given full effect in the State party's domestic legal order. The Committee also regrets the absence of court cases invoking the Covenant (art. 2, para. 1 of the Covenant).

**The Committee recommends that the State party fully incorporate the provisions of the Covenant in domestic law, so as to strengthen the protection of the rights under the Covenant. The Committee also recommends that the State party ensure that economic, social and cultural rights and their justiciability are an integral part of the training programmes for judges and lawyers. It further recommends raising awareness of the Covenant among the authorities responsible for its implementation as well as the general population.**

### **Limitations on the exercise of rights**

8. The Committee expresses concern at the provisions of article 14 (2) of the Constitution as well as laws and regulations adopted for its implementation, which impose broad restrictions on the full exercise of human rights (art. 4).

**The Committee urges the State party to review the restrictions to the exercise of economic, social and cultural rights, as provided for in article 14 (2) of the Constitution and implementing regulations and legislation, so as to bring them into line with article 4 of the Covenant, and to ensure that they are necessary and proportionate and do not interfere with the core minimal content of the rights.**

### **Access to justice and remedies**

9. The Committee is concerned at the absence of effective and accessible remedies for victims of violations of economic, social and cultural rights. Moreover, it is concerned at reports of intimidation of and reprisals against individuals claiming violations of their rights, such as those protesting against forced evictions or poor working conditions (art. 2, para. 1).

**Recalling its general comment No. 3 (1990) on the nature of States parties' obligations, the Committee calls upon the State party to ensure the provision of judicial or other effective remedies for violations of economic, social and cultural rights, as well as legal**

aid for indigent complainants. It also recommends that the State party raise awareness among the population about mechanisms and procedures available to seek remedies. Moreover, the Committee urges the State party to condemn acts of intimidation or reprisals against individuals claiming violations of their rights and to take appropriate measures against those found responsible for such actions.

#### **National human rights institution**

10. The Committee is concerned that the State party does not have a national human rights institution.

**The Committee calls upon the State party to expedite the process of establishing a national human rights institution, compliant with the Paris Principles. The Committee refers the State party to its general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights.**

#### **Enabling environment for civil society**

11. The Committee is concerned that civil society cannot operate freely and independently in the State party. It also expresses serious concern at reports of harassment and imprisonment of human rights defenders and of obstruction to their cooperation with international human rights mechanisms.

**The Committee calls upon the State party to create an enabling environment for the free establishment and functioning of independent civil society organizations, outside the purview of the sociopolitical organizations mentioned in the Constitution. The State party should also provide effective protection against harassment, arrest and detention of human rights defenders, including by prosecuting and punishing those responsible for such acts.**

#### **Corruption**

12. The Committee is concerned about the extent of corruption in the State party and its adverse effect on the realization of economic, social and cultural rights. The Committee is also concerned at the low number of convictions since the entry into force of the Anti-Corruption Law in 2005 (art. 2, para. 1).

**The Committee urges the State party to address the root causes of corruption and related impunity and to ensure that public affairs are conducted, in law and in practice, in a transparent manner. In that regard, it recommends that the State party effectively enforce compliance with the legal provisions on assets declaration and on protection of the human rights of those who are engaged in anti-corruption activities, in particular victims, whistle-blowers, witnesses and their lawyers.**

#### **Non-discrimination**

13. The Committee is concerned at the absence of an effective legislative framework for enforcing the non-discrimination provisions of the Covenant and the State party's Constitution (art. 2, para. 2).

**The Committee recommends that the State party adopt a comprehensive anti-discrimination law defining, prohibiting and sanctioning discrimination on all grounds. The said law should cover not only direct but also indirect discrimination and provide for the implementation of temporary special measures and remedies for victims. In that regard, the Committee draws the State party's attention to its general comment No. 20 (2009) on non-discrimination in the enjoyment of economic, social and cultural rights.**

### **Residential registration system**

14. The Committee expresses concern at the discriminatory impact of the residential registration system (*hộ khẩu*) on access by internal migrants to social services, and the enjoyment of other rights, such as housing rights and the right to water and sanitation (art. 2, para. 2).

**Recalling the constitutional guarantee of freedom of movement and residence within the country, the Committee urges the State party to ensure that change of residence, even temporarily, does not affect the enjoyment of economic, social and cultural rights. In particular, the Committee recommends that the State party immediately lift the requirement of residential registration for accessing social benefits, housing, services, such as water and sanitation, and school registration, and that it modify the current residential registration system to make it fully compatible with human rights standards.**

### **Persons with disabilities**

15. The Committee notes with concern that persons with disabilities are discriminated against in the enjoyment of several rights, such as the right to education and the right to work, in spite of the adoption of the 2010 Law on Persons with Disabilities. Moreover, the Committee is concerned that the new package of tax exemptions and other benefits for enterprises where persons with disabilities make up at least 30 per cent of the personnel favours the creation of segregated enterprises (art. 2, para. 2).

**The Committee recommends that the State party:**

**(a) Allocate sufficient resources for the implementation of the 2012–2020 National Action Plan on Disability, especially with regard to accessibility and the provision of reasonable accommodation, particularly in rural areas;**

**(b) Undertake awareness-raising campaigns to eliminate cultural barriers and prejudices against persons with disabilities;**

**(c) Actively recruit persons with disabilities in the public sector and reinstate the quota system, including in the private sector;**

**(d) Put in place an effective system of assessing the enjoyment of economic, social and cultural rights of persons with disabilities;**

**(e) Expedite the ratification of the Convention on the Rights of Persons with Disabilities.**

### **Discrimination against women**

16. The Committee notes with concern that, owing to their role as main caregivers in the family, women in the State party work primarily in the informal economy where working hours are more flexible. The Committee is further concerned at measures taken by the State party that de facto perpetuate this discriminatory situation, such as the maintenance of the provisions on the care-giving role of women in the new Law on Marriage and Family and the gender-biased training plans on skills such as sewing and knitting (art. 3).

**The Committee recommends that the State party:**

**(a) Amend all legislative provisions which are discriminatory to women, such as those in the Law on Marriage and Family, as well as the different retirement ages for men and women;**

- (b) Continue to raise awareness about equal sharing of responsibilities in the family and in society, and monitor, on the basis of baseline data, the impact of campaigns on society's perception of gender roles;
- (c) Remove gender biases and stereotypes in school materials;
- (d) Promote training for women in non-traditional fields and in areas that will provide them with equal career opportunities in the formal economy;
- (e) Develop affordable child-care services and introduce a system of paternity leave;
- (f) Implement temporary special measures to achieve the objectives of women's representation in public administration, as set out in the 2011–2020 National Strategy on Gender Equality.

#### **Unemployment and underemployment**

17. The Committee notes with concern that the youth unemployment rate remains significantly high in the State party. The Committee is further concerned that a majority of unemployed young people are found to be untrained for the labour market, in spite of the existence of a fairly developed system of vocational training. Moreover, the Committee is concerned at the extent of underemployment, particularly in the rural areas, in the State party (art. 6).

**The Committee recommends that the State party reform its educational, vocational and professional training programmes, based on a careful assessment of needs, so as to offer skills that facilitate access to employment opportunities. It should ensure that they are equally accessible in rural areas. The Committee refers the State party to its general comment No. 18 (2005) on the right to work.**

#### **Conditions of work, including in the informal economy**

18. The Committee is concerned at the persistence of poor working conditions in the State party as well as at the limited awareness of labour safety and hygiene among workers and employers, exacerbated by the size of the informal economy and the limited capacity of labour inspection (art. 7).

**The Committee recommends that the State party continue efforts to:**

- (a) Raise awareness of labour safety and hygiene among workers and employers;
- (b) Ensure that the level of the minimum wage provides a decent living for workers and their families, and that mechanisms are in place for enforcing the legal provisions on fair wages and equal remuneration for work of equal value;
- (c) Take steps, such as the promotion of the use of standard contracts, to reduce the vulnerability of workers in the informal economy to abuse, and gradually reduce the number of workers outside the formal economy;
- (d) Allocate the necessary resources so that the inspection system is sufficiently staffed with trained inspectors to monitor conditions of work, including in the informal economy.

#### **Migrant workers**

19. The Committee is concerned that irregularities in the recruitment of Vietnamese migrant workers, the limited scope of the Law on Vietnamese People Working Abroad

under Contracts, as well as the lack of access to tailored assistance, render Vietnamese migrant workers vulnerable to abuse and exploitation (art. 7).

**The Committee recommends that the State party:**

(a) **Broaden the scope of the Law on Vietnamese People Working Abroad under Contracts to include those who emigrate under individual contracts or irregularly;**

(b) **Regulate and monitor recruitment services, and ensure that criminal acts perpetrated by those involved in the recruitment industry are duly prosecuted and punished;**

(c) **Improve the complaints mechanisms and legal assistance to take into account the vulnerability, mobility and complexity of migration;**

(d) **Adopt targeted policies that respond to the needs of vulnerable migrants, such as irregular migrants and domestic workers.**

#### **Right to strike**

20. The Committee notes with concern the strict conditions for the lawful exercise of the right to strike as well as the broad definition of “essential services”, which restrict civil servants’ right to strike. Moreover, the Committee is concerned that participation in illegal strikes can lead to payment of compensation to employers up to the equivalent of three months’ salary (art. 8).

**The Committee recommends that the State party remove excessive restrictions on the right to strike, in law and in practice, and limit the scope of “essential services” to services where interruption would endanger the life, personal safety or health of the whole or part of the population. The Committee also urges the Committee to amend the legislation that provides for the payment of damages by workers.**

#### **Trade union rights**

21. The Committee notes with concern that, under the revised Law on Trade Unions, the establishment of trade unions and participation in trade union activities are still subject to the statutes of the Viet Nam General Confederation of Labour (art.8).

**The Committee calls upon the State party to bring its legislation on trade union rights into line with international standards on the right to form and join the trade union of one’s choice. The Committee invites the State party to ratify International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).**

#### **Access to health insurance and health care**

22. The Committee is concerned that, in spite of the progress achieved in expanding enrolment in health insurance, its low coverage among workers in the informal economy as well as the co-payment requirement impedes access to health care among disadvantaged and marginalized groups. The Committee notes also with concern the limited availability of quality health-care services, particularly in remote areas. Additionally, the Committee is concerned at the health protection divide in the society and at the adverse impact of privatization on the affordability of health care.

**The Committee recommends that the State party:**

(a) **Step up efforts to improve health insurance coverage in the informal economy and undertake campaigns to encourage disadvantaged and marginalized groups to participate in the insurance;**

(b) **Ensure that health insurance co-payments remain affordable for all, including socially disadvantaged groups, and expand the list of prescribed medicines under the insurance scheme so as to limit out-of-pocket payments;**

(c) **Invest in the improvement of the quality of health-care services in community health centres and district hospitals.**

**The Committee refers the State party to its general comments No. 19 (2007) on the right to social security and No. 14 (2000) on the right to the highest standard of health.**

#### **Unemployment insurance**

23. The Committee is concerned that there is no State-funded social assistance unemployment safety net in the State party and that unemployment insurance is only available to paid-up contributors, which resulted in very low unemployment insurance coverage to 5.32 per cent of the workforce in 2013 (art. 9).

**The Committee recommends that the State party take the necessary policy and legislative measures to promote access to unemployment insurance, including by putting in place non-contributory social assistance unemployment benefits, providing subsidies in order to promote enrolment in unemployment insurance and ensuring that qualifying conditions for benefits are reasonable and proportionate. The Committee invites the State party to provide information on progress achieved in its next periodic report.**

#### **Older persons**

24. The Committee is concerned at the overall situation of older persons in the State party, as only a small number of them receive either pension benefits or the older persons' allowance, with the latter paid only to persons who are older than 80 years and without a caregiver, pension or social insurance allowance. Moreover, the Committee is concerned that the amount of the allowance is lower than the poverty line (arts. 9–11).

**The Committee recommends that the State party revise the eligibility criteria for the social allowance for older persons so that those in need are not excluded. It also recommends that the State party increase the amount of social allowance so as to enable an adequate standard of living for the recipients.**

**Additionally, in the light of the ageing population in the State party, the Committee recommends that the State party adopt measures to respond to the specific needs of older persons, including measures to ensure income security in old age, through both contributory and non-contributory schemes, the delivery of adequate and affordable health-care services and the conduct of awareness-raising activities on the rights of older persons.**

**In that regard, the Committee recommends that the State party take account of its general comments No. 6 (1995) on the economic, social and cultural rights of older persons and No. 19 (2007) on the right to social security.**

### **Marriage with foreigners**

25. The Committee is concerned at the vulnerability to abuse of women married to foreigners, especially those who proceed through brokerage, which, though illegal, is practiced in the State party (art. 10).

**The Committee recommends that the State party ensure that counselling centres provide women with information on the legal framework on domestic violence and the rights of marriage immigrants in receiving countries, including information on complaints mechanisms available to foreign women. It also recommends that the State party prosecute those found in breach of the law prohibiting marriage brokerage.**

### **Stateless children**

26. The Committee is concerned that children of returned marriage immigrants whose legal status is not resolved remain stateless, and thus cannot enrol in schools or receive other social services (art. 10).

**The Committee recommends that the State party recognize and register children of marriage immigrants who are currently stateless, and ensure that they receive the necessary education, health care and other social services.**

### **Economic exploitation of children**

27. The Committee notes with concern that economic exploitation of children remains widespread in the State party (art. 10).

**The Committee recommends that the State party act upon the findings of the first National Child Labour Survey and eradicate the economic exploitation of children. It also calls upon the State party to bring provisions on permissible work for children, such as those contained in the 2013 Circular 11 of the Ministry of Labour, Invalids and Social Affairs, into line with international standards.**

### **Poverty among persons living in rural areas and ethnic minorities**

28. The Committee notes with concern the regional disparities in the enjoyment of the right to an adequate standard of living: those living in rural areas as well as ethnic minorities in remote and mountainous areas are particularly disadvantaged (art. 11).

**The Committee recommends that the State party adopt effective and human rights-based strategies and targeted programmes to address the challenges of regional disparities in poverty and living standards. The Committee refers the State party to its statement on poverty adopted on 4 May 2001. The Committee invites the State party to report on the progress achieved and to provide respective statistical data, disaggregated by year, region and other appropriate factors, in its next periodic report.**

### **Impact of development programmes, such as sedentarization and land revocation**

29. The Committee is concerned at the adverse impact of development programmes, such as sedentarization and land revocation, on the enjoyment of economic, social and cultural rights by ethnic minorities. In particular, the Committee is concerned that:

(a) Laws and regulations governing land revocation and sedentarization fall short of international standards;

(b) Individuals and communities affected by development programmes have not obtained fair compensation for seized lands, while some have not been adequately resettled;

(c) Resettled individuals and communities have encountered difficulties in finding and alternative livelihood;

(d) Sedentarization policies have not taken into account the negative impact on the cultural rights of ethnic minorities (arts. 11 and 15).

**The Committee urges the State party to:**

(a) **Ensure, in law and in practice, the free, prior and informed consent of ethnic minorities on decisions that affect them, and provide legal assistance in that regard;**

(b) **Guarantee transparency of the processes, including by making information on compensation rates, places of resettlement and support policies available well in advance;**

(c) **Incorporate age-group-specific and gender-sensitive alternative livelihood strategies in revocation and sedentarization plans and enforce the obligation for enterprises benefiting from revoked lands to recruit landless persons;**

(d) **Ensure accessible and effective remedies, including by reviewing complaints received and providing compensation where appropriate;**

(e) **Undertake an assessment of the impact of revocation and sedentarization policies on the enjoyment of Covenant rights and involve ethnic minorities in policy-making and the design of plans aimed at addressing identified issues.**

**The Committee refers the State party to its general comment No. 7 (1997) on forced evictions.**

#### **Right to sexual and reproductive health**

30. The Committee is concerned at the unmet need for sexual and reproductive health services for certain groups, including women from ethnic minorities and in rural areas as well as unmarried women (art. 12).

**The Committee recommends that the State party accord priority to groups such as women from ethnic minorities and in rural areas, as well as unmarried and young people, in sexual and reproductive health programmes. The Committee also calls upon the State party to remove the birth control regulation in national laws so as to respect the right of everyone to freely and responsibly decide on the number and spacing of their children.**

#### **Water and sanitation**

31. The Committee is concerned at the limited access to sufficient and safe water and improved sanitation in rural areas, in spite of the progress made in the implementation of the National Target Programme on Rural Water and Sanitation by 2020. The Committee is also concerned about reports of water contamination due to mining and abuse of fertilizers and pesticides as well as in urban areas and industrial zones (art. 12).

**The Committee recommends that the State party:**

(a) **Allocate more resources for the provision of safe water and improved sanitation, particularly in rural areas, and ensure that direct and indirect costs, such as loans, associated with securing safe water and improved sanitation are affordable;**

(b) **Enforce regulations on water treatment in industrial zones, take measures to protect water sources from contamination and ensure the safety of water supplied to the population.**

The Committee refers the State party to its general comment No. 15 (2002) on the right to water and its statement on the right to sanitation, adopted on 19 November 2010.

#### **Education for disadvantaged and marginalized groups**

32. The Committee notes with concern that access to and the quality of education remains limited in remote and mountainous areas and islands where ethnic minorities live, in spite of the notable achievements in education elsewhere in the State party (art. 15).

**The Committee recommends that the State party develop a comprehensive framework and allocate sufficient resources for the provision of quality education for ethnic minority children and children living in remote areas. In that regard, the Committee recommends that the State party:**

- (a) Adequately plan educational personnel needs;
- (b) Increase investment in early education for those children;
- (c) Improve the system for tracking children dropouts and their reintegration in school;
- (d) Implement mother tongue-based bilingual education approaches;
- (e) Strengthen the decentralized management of education.

#### **Self-identification**

33. The Committee expresses concern at the non-recognition of indigenous peoples in the State party, which has a negative impact on their enjoyment of cultural rights (art. 15).

**Recalling that self-identification is a fundamental principle of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee recommends that the State party respect the right of everyone, alone or in association with others or as a community, to choose his or her identity, including the right to identify as belonging to an indigenous people. It also recommends that the State party adopt a statutory law governing the recognition of ethnic minorities and indigenous peoples and guaranteeing their rights. The Committee invites the State party to ratify ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).**

#### **Cultural rights of ethnic minorities**

34. The Committee expresses concern at the State party's policy of phasing out certain traditional cultural values of ethnic minorities which it considers "obsolete", and attempting to replace them with new cultural policies premised on objectives of socio-economic stability and development. Moreover, the Committee is concerned at the adverse impact of commercial tourism on the cultural activities of ethnic minorities, such as the Bay Nui bull race and the Dragon Boat race (art. 15).

**The Committee urges the State party to refrain from submitting cultural policies to development objectives and to fully respect the right of ethnic minorities to take part in their cultural activities and to conserve, promote and develop their own culture. Limitations to this right should be restricted to negative practices which infringe upon other human rights. Moreover, the Committee recommends that the State party ensure that ethnic minorities are fully involved in decision-making processes regarding the economic exploitation of their cultural heritage and that they obtain tangible benefits from these activities. In that regard, the Committee draws the State party's attention to its general comment No. 21 (2009) on the right of everyone to take part in cultural life.**

**Artistic freedom**

35. The Committee is concerned at censorship enforced in the State party which infringes upon artistic freedom. The Committee is further concerned at reports of arrests and detention of bloggers under Decree 72 of 15 July 2013 (art. 15).

**Recalling the State party's obligation under article 15, paragraph 3, of the Covenant to respect the freedom indispensable for creative activity, the Committee urges the State party to abolish censorship of cultural activities and other forms of expression. Moreover, the Committee calls upon the State party to bring restrictions on freedom of expression into line with international standards, including by abolishing related prison sentences.**

**D. Other recommendations**

36. **The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

37. **The Committee requests the State party to disseminate the present concluding observations widely, at all levels of society, particularly among public officials, the parliamentarians, judicial authorities and civil society organizations, and to inform the Committee in its next periodic report on the steps taken to implement the recommendations.**

38. **The Committee requests the State party to submit its fifth periodic report in accordance with the guidelines adopted by the Committee in 2008 (E/C.12/2008/2) by 30 November 2019.**

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