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Human Rights Committee

**Information received from Viet Nam on follow-up to the
concluding observations on its third periodic report* ****

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** The annexes to the present document may be accessed from the web page of the Committee.



I. Introduction

1. With the careful examination of the Human Rights Committee's recommendations, the Prime Minister has issued a National Action Plan on Strengthening the Effectiveness of the Implementation of the International Covenant on Civil and Political Rights (the Covenant) and the United Nations Human Rights Committee's Recommendations, including those in paragraphs 24, 46 and 52 of the Concluding Observations (CCPR/C/VNM/CO/3) (*see Appendix 1 for more details*).
2. In implementing effectively the Plan, during 2019–2020, the Ministry of Justice, in co-operation with the United Nations Development Programme (UNDP), supported an expert team to prepare a research report on formulation of a monitoring and assessment mechanism on the implementation of the Human Rights Committee (HRCtee) recommendations, in consultation with domestic organizations and agencies.¹
3. By the end of February 2021, a large number of ministries, central and local agencies have developed their plans to implement the recommendations that fall under their management purview (*see Appendix 2 for more details*). The recommendations have been effectively implemented together with the national socio-economic development strategies and programmes, such as the Master Plan on Socio-Economic Development for Ethnic Minority and Mountainous Areas for the period of 2021–2030. Viet Nam has made regulatory scrutiny and improvement as recommended by the Committee. For example, in 2019, the Labor Code, the Law on Criminal Judgment Execution (LCJE), and the Law on Exit and Entry of Vietnamese Citizens (LEEVS) were enacted (*see Appendix 3 for more details*).
4. From the beginning of 2020 to date, the COVID-19 outbreak and the severe effects of climate change have had an adverse impact on all aspects of people's lives in many countries, including Viet Nam. The Government of Viet Nam has proactively taken response measures and put as the first priority the protection of people's lives and health though Viet Nam is a low middle-income country. An equitable approach has been applied by the Government to all its decisions and policies to ensure that people have access to health care facilities and services, including masks, protective clothes and hand sanitizers, during the pandemic; to provide a support package worth of VND 62,000 billion (equivalent to USD 2.7 billion) to targeted groups of persons in difficulty due to the pandemic, mainly women, people of ethnic minorities, the poor and the near poor, etc.
5. Viet Nam is one of the very few countries having the capability to effectively respond to and contain the COVID-19. Strong response measures taken by the Government of Viet Nam has been highly supported by its people and appreciated by the international community. More than 96 percent of the surveyed persons rated the responses from the National Steering Committee on COVID-19 Prevention and Control as good or very good, while nearly 94 percent had the same rating for their provincial governments' responses.² Moreover, as evaluated by Australia-based Lowy Institute at the end of January 2021, Viet Nam ranked second in the world in effectively managing the COVID-19 pandemic.³

¹ The Ministry of Justice already organized two consultative and launching workshops on the research report on formulation of a monitoring and assessment mechanism on the implementation of the HRCtee recommendations. The activities were carried out under the EU Justice and Legal Empowerment Programme in Viet Nam (EUJULE).

² According to the survey results of citizens' opinions and experiences with government responses to the COVID-19 pandemic in Viet Nam under "the Viet Nam Provincial Governance and Public Administration Index" (PAPI). See <http://papi.org.vn/eng/citizens-opinions-of-and-experiences-with-government-responses-to-covid-19-pandemic-in-viet-nam/>.

³ See : <https://interactives.lowyinstitute.org/features/covid-performance/>.

II. Follow-up information

A. Response to the recommendations in Paragraph 24(a) and (b)

6. Viet Nam is of the view that the values of human rights are global and universal, but each country has its own mechanism to apply the values properly and effectively. Like other countries, Viet Nam retains death penalty for extremely serious crimes in accordance with the provisions in paragraph 6(2) of the Covenant, and it is a necessary measure to deter extremely serious crimes.

7. Reduction in the application of death penalty is a long-term policy of the State of Viet Nam. Such reduction is made by means of (i) reducing the number of crimes subject to death penalty; (ii) non-application of death penalty to persons when they commit the crime or during trial in a number of cases stipulated by the Penal Code (PC)⁴; (iii) non-application of death penalty to a number of cases stipulated in the PC⁵. Such measures have been carefully studied in the process of amending the 1999 PC, the 2015 PC, the 2015 Criminal Procedure Code (CPC), and the 2019 LCJE that came into force on 1 January 2020 and elaborates the execution procedures.

8. The PC was amended and enacted in 2015 and 2017 after its being publicly consulted. However, with the recommendations in paragraph 24 CCPR/C/VNM/CO/3, Viet Nam, under its National Plan, continues its study of the possible reduction in the number of crimes punishable by death penalty, which will be completed in 2022. Prior to and after receiving the HRCtee recommendations, Viet Nam has implemented the following:

(a) From 2018 to date, under the support of UNDP and IRZ⁶, many in-depth research on death penalty have been implemented and published, such as the Study on the Possibility of Viet Nam Ratifying the Second Optional Protocol to the ICCPR⁷; the Study on the Formulation, Retention and Abolition of the Death Penalty in a Number of Countries, and Recommendations for Viet Nam. According to the Studies, the HRCtee recommendations as well as law-making experiences on death penalty from countries with social and economic conditions similar to Viet Nam has been carefully examined;

(b) A consultative workshop on the possibility of ratifying the Second Optional Protocol was organized with the participation of many agencies and organizations working in the criminal justice field. It aimed at providing and exchanging information and opinions of laws and regulations on death penalty and the world tendency.

B. Response to the recommendations in Paragraph 24(c)

9. Under the specific law provisions on crimes, certain crimes are punishable by either death penalty, or other penalties, namely termed imprisonment (up to 20 years) and life imprisonment. For example, under Article 123(1) on murder in the PC, this crime shall be “punishable by a termed imprisonment of between 12 and 20 years, life imprisonment, or

⁴ Under Article 40(2) of the Penal Code, “*death penalty shall not be imposed upon persons under 18 years of age when they commit the crime, women who are pregnant or raising children under 36 months of age, or persons of full 75 years of age or older when they commit the crime or during trial*”.

⁵ Under Article 40(3) of the Penal Code, “*death penalty shall not be executed in any of the following cases:*

a) The sentenced person is pregnant or a woman raising a child under 36 months of age;

b) The sentenced person is full 75 years of age or older;

c) The person sentenced to death for embezzlement or taking bribes, after being sentenced, has returned at least three fourths of the property embezzled or bribes taken, has closely cooperated with the authorities in the process of investigation or trial, or has made reparation in an effort to atone for the crime”.

⁶ The German Foundation for International Legal Cooperation.

⁷ See https://www.vn.undp.org/content/vietnam/en/home/library/democratic_governance/on-the-possibility-of-viet-nam-ratifying-the-second-optional-pro.html.

death penalty". And, the law provisions also stipulate types of penalty applicable to a specific crime, depending on the facts of the case. Such regulatory requirements enable the trial panel to consider and decide which penalty and to what extent the penalty shall be applied in the case after the panel carefully examines all the grounds stipulated in Articles 40, 50 and other relevant provisions of the 2015 PC. Accordingly, death penalty is not mandatory in the application of law. Death penalty shall apply only to cases where extremely serious crimes are committed and cause particularly serious consequences.

10. The criminal procedures in the CPC, including the principle of fair trial, apply to all crimes, regardless of applicable penalties. In addition, under the CPC, in case the accused or criminal defendant is charged with a crime punishable by a termed imprisonment of 20 years, life imprisonment, or death penalty as the maximum penalty set forth on the PC, the competent litigation-conducting agency shall appoint a defense counsel who cannot be sought by the accused or criminal defendant, or his/her representative or relative (Article 76).

11. Under Article 83(1) of LCJE, within 3 days from the date of issuance of a decision on execution of death sentence, the president of the court that has issued the decision shall notify the relative or representative of the person sentenced to death penalty of the decision. Viet Nam will continue to study the HRCtee recommendations in Paragraph 24(c) with respect to giving notice to persons sentenced to death penalty and their relatives, for the purpose of considering appropriate law amendments in the coming time.

C. Response to the recommendations in Paragraph 24(d) and (e)

12. Under Article 367 of the CPC, any judgment on death penalty shall be reviewed automatically and independently by the Chief Justice of the Supreme People's Court or the Procurator-General of the Supreme People's Procuracy prior to its execution. The person sentenced to death penalty shall, in any event, have the right to file a petition with the State President for commutation.⁸ Judicial review of judgments on death penalty, and commutations of death penalty sentences regardless to the crimes committed are ensured, as recommended by the HRCtee in Paragraph 24(d). In reality, in a number of cases, the death penalty sentences have been commuted to life imprisonment sentences. In addition, data on death penalty sentences have been published in accordance with law.

⁸ Under Article 367 of the Criminal Procedure Code,

1. The following review procedures shall apply to any judgment on death penalty before its execution:

a) Upon the entry into force of the judgment, the case file shall be promptly sent to the Chief Justice of the Supreme People's Court and the judgment shall be promptly sent to the Procurator-General of the Supreme People's Procuracy;

b) The Supreme People's Court, after reviewing the case file to decide whether or not to file a protest against the judgment in accordance with the retrial or cassation procedures, shall transfer the case file to the Supreme People's Procuracy. Within a one-month time limit as of the date of receipt of the case file, the Supreme People's Procuracy shall return it to the Supreme People's Court;

c) The Chief Justice of the Supreme People's Court or the Procurator-General of the Supreme People's Procuracy, within a two-month time limit as of the date of receipt of the case file, shall decide whether or not to file a protest against the judgment in accordance with the retrial or cassation procedures;

d) The sentenced person shall be entitled to, within a seven-day time limit as of the date of entry into force of the judgment, file a petition with the State President for commutation;

dd) The judgment shall be executed if the Chief Justice of the Supreme People's Court and the Procurator-General of the Supreme People's Procuracy do not file a protest against the judgment in accordance with the retrial or cassation procedures, and the sentenced person does not file a petition with the State President for commutation.

If the judgment is protested in accordance with the retrial or cassation procedures but the Retrial Panel or Cassation Panel of the Supreme People's Court rejects the protest and upholds the judgment, the Supreme People's Court shall promptly notify the sentenced person of such for the latter's filing a petition for commutation;

e) If the sentenced person files a petition for commutation and the State President then rejects the petition, the judgment shall be executed.

D. Response to the recommendations in Paragraph 46

13. Human development is at the center of the development progress in Viet Nam. Accordingly, Viet Nam has made great efforts in improving its policies and laws to promote and protect human rights, including the rights to freedom of speech, freedom of the press and access to information. Pieces of legislation in this field have been developed in the way of proactively promoting and facilitating the development and activities of the press and media; contributing to Viet Nam's human and cultural development; and being in conformity with the world tendency and Article 19(3) of the ICCPR. Viet Nam is in the group of countries of high human development, and its Human Development Index (HDI) value is 0.704 in 2019.⁹ From 1990 to 2019, Viet Nam HDI value increased 46% and fell in the category of countries having a sharp increase in HDI.

14. To better guarantee the activities of journalists and correspondents, the Government issued Decree 119/2020/ND-CP¹⁰, under which unlawfully obstructing press activities may be fined up to VND 60 million (as twice as much as that set forth in Decree 159/2013/ND-CP dated 12 November 2013 of the Government). Any person who obstructs unlawfully press activities can be, depending on the nature and severity of the act, held criminally liable.

15. To ensure a safe and sound information environment and to fight against any fake, false and/or harmful news on the Internet, Viet Nam has made efforts in further improving its cyber security laws and regulations. Viet Nam's regulatory improvement has been made with reference to experiences of other countries, and the international treaties of which Viet Nam is a member, and in a series of consultations with relevant agencies and organizations, domestic and foreign businesses and its people. The Government promulgated Decree 15/2020/ND-CP,¹¹ which specifies acts of violation against laws and regulations on use of social network services, online information security and etc. Moreover, to have a more effective management of the Internet and online information, the Government considers the possibility of an amendment to Decree 72/2013/ND-CP¹² (though it was already amended by Decree 27/2018/ND-CP).

16. Vietnamese people's right to freedom of expression has been gradually guaranteed by laws and regulations, and by the efforts of the whole society, which have facilitated a good press and information environment in Viet Nam. For example:

(a) Up to December 2020, in Viet Nam, there have been 87 radio channels, 196 television channels (5 more channels as compared to 2018) and 70 foreign channels; more than 41,000 persons working in press agencies, and over 20,000 of them have been granted journalist cards. Journalist are encouraged and facilitated to work freely and creatively in accordance with law. To promote private media, businesses are allowed to publish news in accordance with Article 3(18) and Article 34 of the Law on the Press;

(b) By December 2020, there have been 68 million internet users (more than 11 million users as compared to 2017) or 68.7 internet users out of every 100 persons; 19,158,310 family households have had access to the Internet, or 71.3 out of every 100 family households. Viet Nam's public fund for telecommunications has supported people of ethnic minorities living in remote and mountainous areas to have access to the Internet through 5,435 access points in schools and hospitals. Viet Nam is the country that has the highest number of internet users in SEA (41%);¹³

(c) For raising the awareness of the people and state agencies in the implementation of the Covenant and the recommendations, from March 2019 to January

⁹ According to the UNDP Human Development Report 2020. See <https://report.hdr.undp.org/>.

¹⁰ Decree No. 119/2020/ND-CP dated 7 October 2020 stipulating the handling of administrative law violations in journalistic and publishing activities.

¹¹ Decree No. 15/2020/ND-CP dated 3 February 2020 stipulating the handling of administrative law violations in fields of postal services, telecommunications, radio frequencies, information technology and electronic transactions.

¹² Decree No. 72/2013/ND-CP dated 15 July 2013 on the management, provision and use of internet services and online information.

¹³ According to e-Conomy South East Asia (SEA) Report 2020. See <https://economysea.withgoogle.com/>.

2021, a large number of workshops/seminars were organized at the central and local levels to disseminate the Covenant's contents (*see Appendix 4 for more details*). The national reports and plans on the implementation of the Covenant have been published on the web portal of the Ministry of Justice.¹⁴ Vietnam Television has broadcasted legal dissemination reports of civil and political rights in the languages of ethnic minorities, which helps Vietnamese people have a quick access thereto and exercise their right to freedom of expression in many matters;

(d) The press is used as an open forum for people to follow and contribute their opinions to matters of national importance. Radio and television broadcasting service providers have live coverage of the National Assembly's inquiry sessions, and the National Assembly Standing Committee's topic-based sessions. Central and local state agencies have their official web portals to provide information to and consult with the public, especially in the law-making process.

17. During the COVID-19 outbreak, Viet Nam's Government has always made available to the public information of the pandemic to help people have a convenient and sufficient access thereto and to avoid public confusion. Such measures have been globally recognized and appreciated.¹⁵ For example:

(a) Information about mandatory quarantine measures, the transmission situation and the treatment of infected patients in Viet Nam has been regularly updated and published in mass media;

(b) Free Wi-Fi access has been provided in mandatory quarantine institutions; free high-speed access to the web portals of the Ministry of Health is enabled;

(c) To secure online learning and working, telecommunications service providers have increased data capacity by up to 50%, which is applicable to both existing and new internet subscribers, with unchanged subscription fees; bandwidth for all FTTH packages has been doubled with unchanged subscription fees;

(d) Many digital services have been provided quickly and promptly to help people overcome difficulty in their lives. For instance, 43,000 schools with 25 million teachers and students get free data to access the online learning system; 14 television channels broadcast general education lectures; 92 out of 240 universities have applied online lecturing; the Ministry of Education and Training has had more than 5,000 e-learning lectures which can be used and accessed free of charge; remote medical counseling, examination and treatment platforms have been created as required by the Ministry of Health.

18. Exercise of the right to freedom of speech is respected and guaranteed, and is not treated as a crime in Viet Nam. However, any abuse of such right to commit acts of law violation shall be handled in accordance with law. For example:

(a) During the COVID-19 pandemic, the spreading of fake or false information on the pandemic situation and discrimination has triggered people's confusion and fear, and troubled to a certain extent the efforts in response to the pandemic. Any act of publishing such information in websites and/or social networks shall be administratively handled in accordance with the law on the press, electronic information and social network.¹⁶ For instance, on 28 July 2020, Ms. N.T.H shared the statement supposedly made by Deputy Prime Minister Vu Duc Dam warning that people should refrain from traveling during this period because COVID-19-infected persons "would increase from 75 to 100 - 150 persons", which caused public confusion. However, the Ministry of Health affirmed that the Deputy Prime Minister did not make such a statement. The Inspectorate under the Ho Chi Minh City Department of Telecommunications and Information then imposed a fine of VND 7.5 million as an administrative sanction on Ms. N.T.H for her sharing of false information, in accordance with Decree 15/2020/ND-CP;

¹⁴ See <https://moj.gov.vn/tttp/thongbao/Pages/thong-bao.aspx?ItemID=15>.

¹⁵ See <https://www.un.org/ar/node/97757>.

¹⁶ Giving false information, collecting, processing and use of information without consent, or provision, transmission or exchange of digital information to infringe upon the prestige, honor and dignity of another person, and etc. shall be administratively handled.

(b) In Viet Nam, some individuals and organizations still show unwillingness or have prejudice, and have abused the right to freedom of expression to incite riots or violent terrorism, thereby disturbing social safety and stability, and infringing upon the rights and legitimate interests of individuals. The PC's provisions as stated in the Concluding Observations do not aim at restricting the right to freedom of expression, but set up a mechanism to deter any abuse of such right to commit acts of law violation as mentioned above.

19. Information of the case of Nguyen Ngoc Nhu Quynh was sufficiently provided by Viet Nam in its responses to the communications of the Working Group of Arbitrary Detention dated 24 February 2017 (VNM 11/2017), 26 June 2017 (VNM 4/2017), and 13 March 2018 (VNM 3/2018) respectively. On 17 October 2018, Nguyen Ngoc Nhu Quynh's execution of the imprisonment sentence was suspended, and she and her family departed for the US to reside there for humanitarian purposes.

E. Response to the recommendations in Paragraph 52

20. Every individual is equal before law and entitled to enjoy all constitutional rights, including the rights to freedom of speech, assembly, association, movement and demonstration. Such rights are exercised in accordance with the law and shall be only restricted in certain circumstances set forth in Article 14(2) of the 2013 Constitution. Individuals or organizations in Viet Nam shall not be threatened, intimidated or attacked for their participation in activities that they have the latitude to do so in accordance with law, especially their contact or collaboration with the United Nation agencies.

21. In 2019 and 2020, the National Assembly of Viet Nam enacted the 2019 LEEVS and the 2020 Law on Residence. The Government also promulgated pieces of implementing legislation for the LEEVC. For a better guarantee of the right to freedom of movement and the right to freedom of residence, such pieces of legislations were well prepared with a careful study of Article 12 of the Covenant, and the HRCtee general comments and recommendations. None of the provisions in the said pieces of legislation allow any restriction on the right to freedom of movement of any individuals or organizations that engage in international cooperation or exchange, including the United Nations activities.

22. As for the activities of foreign non-governmental organizations in Viet Nam, the Government of Viet Nam is now studying and drafting a new Decree that will substitute Decree 12/2012/ND-CP¹⁷.

23. During the COVID-19 outbreak, Viet Nam has constantly cooperated and discussed with other countries to carry out rescue flights for Vietnamese people living abroad. Up to December 2020, Viet Nam has taken about 80,000 Vietnamese citizens from 48 countries and territories back home safely. Such efforts have shown the State of Viet Nam's guarantee of the right to freedom of movement in such a challenging context as well as its sense of humanity.

24. Lawful demonstration activities are not prohibited in Viet Nam. Only unlawful assemblies that disturb public security and order, or infringe upon the rights and legitimate interests of individuals or organizations are not allowed. For example:

(a) There are some unlawful assemblies that are not peaceful demonstrations, not registered with local government bodies in accordance with law, and carry out aggressive activities of destroying property and infringing upon the health and life of related persons. For instance, according to the interim reports, in 2018, the persons, who participated in an unlawful assembly in Binh Thuan province, attacked and injured 30 officers on duty, and burnt 10 cars in Tuy Phong district. In Bac Binh district, those persons destroyed a fire station, burnt 12 government cars and destroyed other 16 vehicles;

(b) In video clips posted on the Internet, some persons, for the purposes of opposing the State or attracting more viewers or visitors..., often set the stage for incidents

¹⁷ Decree No. 12/2012/ND-CP dated 1 March 2012 on the Registration and Management of the Activities of Non-Governmental Organizations in Viet Nam.

where they are beaten or tortured, or cut off their use of violence or primitive weapons against duty officers, or posed as police officers to accuse functional forces of attack and suppression.

25. Acts of law violation are handled in accordance with the law. Persons are arrested or tried for their acts of law violation, but not for their exercise of fundamental rights and freedoms as citizens. Arrest or trial/hearing against persons who violate the law in Viet Nam must strictly comply with Vietnamese law. And, the PC criminally handles any person who arrests or detains illegally another person (Article 157), or abuses his/her position or power to illegally arrest, detain or hold in custody another person (Article 377).

26. Arrest, investigation, prosecution or trial/hearing against law violators (including perpetrators of national security-related crimes) must be conducted in accordance with Vietnamese legally-prescribed protocols and procedures and in conformity with Article 26 of the Covenant, without any discrimination. People's courts hold public trials/hearings; in case a trial/hearing is held in camera as required by the law, the sentencing must be made public. The representatives of diplomatic missions of foreign countries, such as the US, France, Germany, or the EU Delegation, have attended a number of court trials/hearings.

27. Clothing, meals, accommodation, health care, visitation, receipt of gifts, correspondence and etc. of detained persons are guaranteed under legally-stipulated standards. The Government of Viet Nam has allowed many groups of domestic and foreign journalists to visit detention camps and to have access to information provided in person by Vietnamese and foreign inmates. For example, in December 2019, Vietnamese competent authorities arranged a visit of permanent foreign correspondents in Viet Nam to Thu Duc Detention Camp in Binh Thuan province. Thanks to the visit, the correspondents have understood the actual implementation of the detention and reformatory education policies and regimes and the living conditions and lives of the inmates with their rights being fully secured in accordance with the law. Such information has been reflected in the journalists' reports and posts.
