



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

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**Committee against Torture**

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

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\* The present document is being issued without formal editing.

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**Response to Comment No. 6 and Recommendation No. 7 of the concluding observations (CAT/C/VNM/CO/1)**

1. It has been explicitly stated in Viet Nam's Initial Report on the implementation of the Convention against Torture that while Viet Nam currently has no official definition of torture, the nature of torture-related acts and relevant penalties have been provided for in the Constitution and numerous provisions of the 2015 Criminal Code (amended and supplemented in 2017), the 2015 Criminal Procedure Code, the 2015 Law on Execution of Temporary Detention and Custody and the 2019 Law on Execution of Criminal Judgments.
2. All acts with signs of torture are criminalized under the laws of Viet Nam. They are identified as criminal offenses and regulated in relevant provisions of the Criminal Code (please refer to Paras. 42 and 43 of Viet Nam's Initial Report on the implementation of the Convention against Torture). These provisions are, to a certain extent, broader than the definition of "torture" in the Convention because these acts may constitute other crimes in the performance of official duties, such as: murder by a law enforcement officer in performance of his/her official duties (Art. 127), Threat of murder (Art. 133), Deliberate infliction of corporal harm by a law enforcement officer in performance of his/her official duties (Art. 137), Abuse (Art. 140), Insults to another person (Art. 155) and Illegal arrest, detention, or imprisonment of a person (Art. 157).
3. Moreover, several articles of the Criminal Code prescribe the act of "abuse of the offender's position or power" as an aggravating factor of criminal liability. This further affirms the consistent policy of Viet Nam in imposing stricter punishments for people who abuse their position or power to commit crimes.
4. The 2015 Criminal Code broadened the subjects and offences, and stipulated more severe sentences for torture-related offenses as a measure to comply with the definition of torture in the Convention and the situation in Viet Nam. This can be seen in Article 373 (use of corporal punishment), Article 374 (Obtainment of testimony by duress) and Article 384 (Bribing or coercing another person to give testimony or provide documents).
5. The instigation or consent of a public official or another person acting in an official capacity as defined in Article 1 of the Convention is also considered as "complicity". Should criminal offenses relating to torture involve complicity, they shall be referred to Article 17 of the 2015 Criminal Code and the offender shall be subjected to appropriate punishments based on the offense's severity and consequences, and other factors.<sup>1</sup> Furthermore, the offender could also be punished for the offence of "negligence that results in serious consequences" regulated in Article 360 of the Criminal Code.
6. Thus, given the differences in legislative techniques between Viet Nam and other countries, the comment that "serious discrepancies between the Convention's definition and its incorporation into domestic laws created actual or potential loopholes for impunity" is not correct. The laws of Viet Nam have adequate provisions to punish acts of torture as defined in Article 1 of the Convention, including acts committed via instigation or consent (please refer to Paras. 42 and 43 of Viet Nam's Initial Report on the implementation of the Convention against Torture).
7. The Criminal Code of Viet Nam was recently amended and entered into force. In the time to come, when the Criminal Code is amended in response to new circumstances, Viet Nam shall consider the possibility of issuing a separate article on torture via consultation with governmental agencies, socio-political, professional and non-governmental organizations and the people.

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<sup>1</sup> Vietnamese laws do not stipulate the complicity for each criminal offense. Complicity is stipulated separately in Article 17 of the 2015 Criminal Code. Complicity includes organizer, perpetrator, instigator, or helper. Perpetrator means the person who directly commits the crime. Organizer means the mastermind behind the commission of the crime. Instigator means the person enticing or encouraging other people to commit the crime. Helper means the person who provides spiritual or material assistance in the commission of the crime.

### **Response to Comment No. 8 and Recommendation No. 9 (a)**

8. Viet Nam has been acting on this recommendation. In the 2015 Criminal Code (amended and supplemented in 2017), each article on a crime includes: clause 1 stipulates the fundamental factors constituting a crime, and following clauses of the same article stipulate aggravating factors such as the severity and consequences of an offense identified in the first clause. For example, in Article 373 of the Criminal Code (use of corporal punishment), even if there is no consequence, the perpetrator still has to face criminal liability. Moreover, the highest penalty for the offence of use of corporal punishment and obtainment of testimony by duress is life imprisonment. These are testaments to Viet Nam's resolution in strictly punishing the torture-related acts.

### **Response to Recommendation No. 9 (b)**

9. From January 1, 2018 (when the 2015 Criminal Code entered into force) to December 31, 2019, People's Courts at all levels have tried 05 cases with 15 accused for the offence of "use of corporal punishment" (some of which were mentioned in Annex 11 of Viet Nam's Initial Report on the implementation of the Convention against Torture and at the 65th Session on Consideration of State Reports held by the Committee against Torture in Geneva in November 2018); and did not try any case for the offence of obtainment of testimony by duress.

10. In the time to come, when the Criminal Code is amended in response to new circumstances, Viet Nam shall consider the possibility of issuing a separate article on torture via consultation with the people (please refer to Viet Nam's response to Paras. 6 and 7).

### **Response to Comment No. 10**

11. According to Article 3 of the 2015 Criminal Code, every crime must be promptly discovered and quickly and impartially solved in compliance with the law. This principle requires the State's competent authorities, organizations and the entire population to prevent and combat crimes by promptly discovering and reporting criminal offenses; the proceeding agencies have the responsibility in solving quickly and fairly the criminal acts in compliance with law.

12. According to clause 3, Article 27 of the 2015 Criminal Code, if the offender deliberately evades arrest and a wanted notice has been issued, the statute of limitations will be recalculated when he/she turns himself/herself in or gets arrested. Thus, the statute of limitations shall not be applied if the torture-related offender evades or conceals criminal offenses; in other words, in this situation, the statute of limitations would be unlimited. The torture-related offender shall be investigated, prosecuted and tried upon his/her arrest.

### **Response to Recommendation No. 11**

13. As mentioned in Viet Nam's response to Para. 10, the amendment of the Criminal Code related to the statute of limitations is not necessary.

14. Parole, amnesty, commutation of sentence and early parole are parts of Viet Nam's humanitarian policy towards offenders who have demonstrated goodwill during their sentence and rehabilitation, assisting them in the rehabilitation and reintegration into the society. All offenders are equal in receiving humanitarian policies and leniency from the State and the society. Thus, Viet Nam shall not amend the law relating to this issue because it is contradictory to the humanitarian principle that Viet Nam has committed to.

**Response to Comment No. 12**

15. Maintaining discipline and following orders from superiors are core factors constituting the basic principle in ensuring high consensus in will and action of the armed forces. This fosters the power of armed forces in Viet Nam and all countries around the world. This provision ensures the fighting strength of armed forces, harmonious, stable and effective operations, and the discipline of the State's administrative agencies. It also serves to protect officers, soldiers and cadres in the case that they have to follow an unlawful order from their superiors.

16. The exemption from liability for the perpetrator only applied if he/she has reported to the superior who issued the order but the execution was still requested (receiving an order twice); and this exemption is only applied to the armed forces in implementing national defense or security duties. In these cases, the superior who issued the order would bear criminal liability for the offence that he/she requested to execute (please refer to Viet Nam's response to Para. 13c).

17. In reality, this provision has never been cited in resolving offenses involving the use of corporal punishment or obtainment of testimony by duress in Viet Nam.

**Response to Recommendation No. 13 (a)**

18. Prohibition of torture is a compulsory provision in Viet Nam's legislative system. The 2013 Constitution, the 2015 Criminal Procedure Code, the 2015 Law on Execution of Temporary Detention and Custody, the 2015 Law on Organization of Criminal Investigation Agencies, the 2019 Law on Execution of Criminal Judgments and recently promulgated documents all have provisions that directly prohibit acts of torture. The officials executing public power have received meticulous training and guidance on prohibition of torture. This is a compulsory principle in their work, and all officials are requested to strictly adhere to this principle.

**Response to Recommendation No. 13 (b)**

19. Vietnamese competent authorities have been implementing this recommendation (please refer to Viet Nam's response to Paras. 6 and 7).

**Response to Recommendation No. 13 (c)**

20. According to clause 3, Article 17 of the 2015 Criminal Code, "Organizer means the mastermind behind the commission of the crime". Thus, for offenses involving the use of corporal punishment or obtainment of testimony by duress, the person who ordered the execution of said offense shall be considered as an accomplice and shall also bear criminal liability.

21. Article 26 of the 2015 Criminal Code prescribes that the perpetrator can be exempted from criminal liability if the following conditions are satisfied: (i) the offense occurred within the scope of the armed forces' activities; (ii) the perpetrator carried out the order in service of national defense and security; (iii) while the perpetrator has complied with procedures by reporting to the person who gave the order, he/she still requested that the order must be followed. In this case, the person who gave the order shall bear criminal liability.

22. The 2015 Criminal Code has stipulated a new offence on "giving orders against the law" with the maximum penalty being up to 15 years of imprisonment (Art. 393).

23. Thus, despite the lack of a separate provision on the principle of giving orders or the responsibility of superiors for acts of torture committed by their subordinates, the above-mentioned provisions have demonstrated the will to uphold this principle. Viet Nam shall continue researching, amending and supplementing related provisions in the future.

**Response to Recommendation No. 13 (d)**

24. Clause 1, Article 32 of the 2018 Law on People's Public Security Forces prescribes that the People's Public Security officers, non-commissioned officers and soldiers are prohibited from abusing delegated positions and powers to infringe upon the interests of the State and the lawful rights and interests of agencies, organizations and individuals. Viet Nam shall review, research and learn from other countries' experience to improve this mechanism.

**Response to Recommendation No. 13 (e)**

25. Viet Nam has been implementing this recommendation. All persons alleged to have committed torture-related acts that constitute a crime provided in the Criminal Code shall bear criminal liability in accordance with the gravity of the crime committed (please refer to Viet Nam's response Para.15 b).

**Response to Recommendation No. 13 (f)**

26. Viet Nam shall continue researching and learning from other countries' experience to amend the laws in appropriate time (please refer to Viet Nam's response to Paras.12 and 13c).

**Response to Recommendation No. 14**

27. There have been allegations of the widespread use of torture and ill-treatment, particular in police stations, and in certain places where persons are deprived of their liberty. These are all unsubstantiated and inaccurate claims, presenting non-objective perspectives about the situation in Viet Nam. Viet Nam resolutely punishes all acts of torture, obtainment of testimony by duress and use of corporal punishment. It does not tolerate anyone, including public officials who infringe upon fundamental human rights, and affirms its strong commitment to the respect for and preservation of human rights.

28. Viet Nam has publicly and fully provided the data, information, details, time, place, perpetrators and results of handling torture-related cases in Appendix 11 attached to Viet Nam's Initial Report on the implementation of the Convention against Torture and the Appendix attached to the opening statement of the Head of the Vietnamese Delegation at the 65th Session on Consideration of State Reports held by the Committee against Torture in Geneva in November 2018. All cases have been publicly and transparently adjudicated and widely reported by the media.

29. So far, Viet Nam has not recorded any case involving medical doctors having participated in the physical abuse of detained persons in order to force them to confess or having refused to provide them with medical care.

30. In order to demonstrate Viet Nam's resolution to punish and eradicate torture-related crimes, obtainment of testimony by duress and the use of corporal punishment from its society, all detected torture cases have been strictly and publicly adjudicated. Any detected violation shall certainly be handled based on its nature, severity and consequences. Viet Nam does not tolerate and condone acts of torture.

31. The 2011 Law on Complaints (Para.1, Art. 6) and the 2018 Law on Denunciations (Para. 8, Art. 8) absolutely prohibit acts of retaliation against victims or their relatives when they complain or denounce against acts of officials, including acts of torture.

32. Information about reprisal against victims or their relatives for their complaints about acts of torture is entirely unsubstantiated. Reprisal against victims or their relatives is prohibited in the 2011 Law on Complaints and the 2018 Law on Denunciations.

**Response to Recommendation No. 15 (a)**

33. Vietnamese law strictly prohibits acts of torture and ill-treatment, which are directly stipulated in the 2013 Constitution (Para. 1, Art. 20), the 2015 Criminal Code (Arts. 373, 374, 384, 127, 137, 140, etc.), the 2015 Criminal Procedure Code (Art. 10), the 2015 Law on Execution of Temporary Detention and Custody (Arts. 4 and 8), the 2015 Law on Organization of Criminal Investigation Agencies (Art. 14) and the 2011 Law on Complaints (Arts. 1 and 6), etc.

34. All cases are publicly and transparently adjudicated, and are widely reported and condemned by the media in accordance with the Law on the Press and other relevant legal documents. Many cases were posted on 20 online newspapers, including the most frequently accessed sites in Viet Nam such as vnexpress.net and dantri.com.vn. Thus, all acts of torture and ill-treatment are condemned at the highest level.

**Response to Recommendation No. 15 (b)**

35. The criminal investigation of torture is conducted in accordance with the 2015 Criminal Code, the 2015 Criminal Procedure Code, the 2015 Law on Organization of Criminal Investigation Agencies and other relevant documents, including the detailed regulations on the penalty system, procedure and competence of investigation, etc. Based on the objective facts of cases, consequences, nature and severity of torture-related offenses, wherever such acts took place, even at police stations, perpetrators, be they police officers or doctors, will be prosecuted and adjudicated in accordance with Article 4 of the Convention. Viet Nam has also enacted the 2017 Law on State Compensation Liability to protect the rights of victims in case the damage was caused by official-duty performers.

36. Viet Nam has publicly provided statistics of these cases to the Committee against Torture (please refer to Viet Nam's response to Paras. 9b and 14).

**Response to Recommendation No. 15 (c)**

37. Viet Nam has been implementing this recommendation. If the persons with the authority to conduct proceedings, including the police, violate the criminal law, they shall be investigated and prosecuted by the Investigation Agency of the Supreme People's Procuracy and the Investigation Agency of the Central Military Procuracy (clause 2, Art. 30 and clause 2, Art. 31 of the 2015 Law on Organization of Criminal Investigation Agencies), which are completely independent from the Investigation Agencies of the Ministry of Public Security and Ministry of Defense and adjudicated by a Court to ensure independence and objectivity.

38. According to Article 81 of the 2008 Law on Cadres and Civil Servants, a cadre or civil servant would be suspended from his/her work when he/she is under consideration for discipline, if it is deemed that his/her continued work may cause difficulties in handling his/her violation.

39. Pursuant to Articles 49 and 51 of the 2015 Criminal Procedure Code, if there is any institutional or hierarchical connection between the investigators and the alleged perpetrators, they must be replaced to ensure objectivity. Individuals authorized to request for replacement include: prosecutors, detainees, accused, defendants, crime victims, civil plaintiffs, civil defendants and their representatives, defense counsels and protectors of legitimate rights and benefits for crime victims, civil plaintiffs and defendants (Art. 50 of the 2015 Criminal Procedure Code).

40. If the suspects' assumption of their positions is perceived as an obstruction to investigation, investigation authorities, units assigned to conduct certain investigations, and Procuracies shall be entitled to request authorities or organizations in charge of the suspects to suspend them from duty (Art. 181 of the 2015 Criminal Procedure Code). In this spirit, subjects related to the use of corporal punishment, including Le Khac Sau – a police officer of the Phan Rang-Thap Cham City Police (the deceased victim was Tran Gon); Nguyen

Than Thao Thanh, Nguyen Minh Quyen, Pham Ngoc Man, Nguyen Tan Quang, Do Nhu Huy, Le Duc Hoan – police officers of the Tuy Hoa City Police, Phu Yen Province (the deceased victim was Ngo Thanh Kieu), were all suspended from their work during the time when they were under discipline consideration. These people have been removed of formal rank, prosecuted and adjudicated after investigation findings came in.

41. On October 15, 2019, the Ministry of Public Security issued Circular No. 49/2019/TT-BCA regulating the discipline of the People’s Public Security officers and soldiers. Accordingly, discipline and punishments would be considered in accordance with the law should officers and soldiers commit any act of law violation; violation of internal rules, regulations, statutes, working procedures, responsibilities, tasks and powers assigned to them as regulated by the law and the Ministry of Public Security; violation of regulations on the responsibilities of an official and a Vietnamese Communist Party member; violation of the code of conduct of the People’s Public Security officers and soldiers; violation of ethic and status of a People’s Public Security officer and soldier. The officers and soldiers, during their disciplinary consideration and handling, will be temporarily suspended from their work as their continued work will obstruct the verification and conclusion of their violations or lead to further violation of laws and regulations (point a, clause 1, Art. 6). Officers and soldiers showing signs of violating criminal law will also be suspended from their work in service of investigation (point a, clause 2, Art. 6).

42. According to the laws and in practice, Viet Nam has established a system of independent monitoring mechanisms, such as the inspection and monitoring mechanism of the National Assembly, the National Assembly Deputies, the Viet Nam Fatherland Front, the Government Inspectorate, Inspection Agencies of each Ministry, and particularly the regular, continuous, direct and comprehensive inspection and monitoring of the People’s Procuracy at all stages, from receiving and handling reports, information on crimes and prosecution recommendations to the entire handling process of criminal cases. In performing the function of supervising judicial activities, People’s Procuracies have the duties and powers to request agencies, organizations and individuals to provide dossiers and documents for the Procuracies to examine the legality of their courses of actions and decisions in judicial activities; directly supervise, verify and collect documents to clarify violations committed by agencies, organizations and individuals in judicial activities; handle violations and request or recommend competent agencies, organizations and individuals to strictly resolve and handle violations in judicial activities; supervise the settlement of complaints and denunciations about judicial activities and settle complaints and denunciations falling under their competence.

### **Response to Recommendations No. 15 (d) and 15 (e)**

43. In order to prevent law enforcement officials from violating the law, all branches have provisions on codes of conduct, professional ethics and disciplinary regulations in case cadres, civil servants, officers and non-commissioned officers violate the law and professional rules, particularly for medical doctors and staff (Arts. 3 and 6 of the 2009 Law on Medical Examination and Treatment, Arts. 3 to 6 of the Ministry of Health’s Circular No. 07/2014/TT-BYT dated February 25, 2014). Every year, doctors and nurses working in detention facilities would receive training in treatment of detainees (please refer to Paras. 94 to 99 and 160 to 168 of Viet Nam’s Initial Report on the implementation of the Convention against Torture). Viet Nam affirms its intention to better implement this recommendation in the coming time.

44. Perpetrators, including doctors, who commit torture-related acts constituting criminal offenses regulated in the 2015 Criminal Code will have to bear criminal liability (without exception). For example, doctors who violate regulations on medical examination, medical treatment, and manufacturing and preparation of medicine may be borne criminal prosecution for offences against regulations on medical examination, medical treatment, manufacturing, preparation, distribution and sales of medicines, or other medical services (Article 315 of the 2015 Criminal Code). Accordingly, any person who violates regulations on medical examination, medical treatment, manufacturing, preparation, distribution and sales medicines, or other medical services, such as causing the death of another person or

inflicting harm to his/her health, except for cases stipulated in Article 259 of the 2015 Criminal Code, shall face a penalty from 01 to 05 years of imprisonment.

45. To date, Viet Nam has not recorded any case in which medical doctors participate in the physical abuse of detained persons or refuse to provide detained persons with medical care (please refer to Viet Nam's response to Para. 14).

### **Response to Recommendation No. 15 (f)**

46. Viet Nam has provided statistics on the number of investigations, prosecutions, trials of crimes related to torture and compensation for victims to the Committee against Torture (please refer to Viet Nam's response to Para. 9b and 14). Viet Nam will continue updating these statistics and report to the Committee in its next report cycles.

### **Response to Comment No. 16**

47. The defense counsels (lawyers, representatives of persons facing charges, people's advocates, legal assistants) would engage in legal proceedings upon the prosecution of the suspects. Defense counsels for arrestees and temporary detainees would engage in legal proceedings upon the arrestees' presence in an office of investigation authorities or units assigned to carry out certain investigation activities or upon the issuance of a decision on temporary detention. When confidentiality of investigations is necessary in the cases of national security breach, the Head of the Procuracy is authorized to sanction defense counsels' engagement in legal proceedings after investigations have concluded (Art. 74 of the 2015 Criminal Procedure Code). This is a very special measure to ensure confidentiality of investigation into national security breaches. However, this measure is rarely utilized. It only temporarily limits the participation of defense counsels during the time for investigation and still ensure other legitimate rights of detainees in compliance with the law and the decisions of competent People's Procuracies.

48. Article 7 of the 2015 Law on Execution of Temporary Detention and Custody stipulates the supervision of the execution of temporary detention or custody as follows: "The National Assembly, the People's Councils and the Viet Nam Fatherland Front shall supervise the activities of the authorities managing and executing temporary custody and detention and other agencies, organizations and individuals related to temporary custody and detention in accordance with the law".

49. The pre-trial detention of suspects in general and suspects committing crimes against national security in particular has been clearly and strictly stipulated in the 2015 Criminal Procedure Code (Arts. 241, 278 and 347, etc.). There is no concept of "solitary confinement" in Vietnamese law, and only disciplinary measures are applied (Art. 23 of the 2015 Law on Execution of Temporary Detention and Custody). These disciplinary measures are applied to detained persons violating the rules of detention facilities rather than to offenders against national security, and the methods, duration, extent, etc. of such measures have been clearly stipulated in detail. Disciplinary measures are strictly non-torture, and do not involve other forms of cruel, inhuman or degrading treatment.

50. In fact, the competent procedural authorities and persons must absolutely comply with these regulations. All violations, if detected (through complaints and denunciations), shall be strictly, objectively and independently punished. Thus, Viet Nam has had a comprehensive legal system to ensure the rights of persons arrested, held in custody and detained, and close monitoring is carried out by multiple agencies representing the people. Viet Nam will continue to learn from the experiences of other countries to further ensure the rights of detainees.

51. After Viet Nam presented and defended its Initial Report on the implementation of the Convention against Torture before the Committee against Torture, the Ministry of Information and Communications and the Ministry of Public Security have arranged for numerous groups of domestic and foreign reporters to conduct field operations to acquire information directly from Vietnamese and foreign inmates who are serving their sentence.

**Response to Recommendation No. 17 (a)**

52. The 2015 Criminal Procedure Code (Arts. 58, 59, 60, 61, etc.) and other relevant documents ensure that all detainees enjoy all basic legal and practical protection measures, including the right to notify a relative, the right to access a lawyer, the right to a medical examination, the right to present statements and express opinions and bear no obligation to testify against themselves or admit to guilt, the right to defend themselves or to be defended by another person, etc. (please refer to Paras. 195 and 205 of Viet Nam's Initial Report on the implementation of the Convention against Torture). All violations if detected shall be strictly, objectively and independently punished (please refer to Viet Nam's response to Paras. 16, 30d, 30e and 30f).

**Response to Recommendation No. 17 (b)**

53. Currently, Viet Nam has a system of state management agencies on the execution of temporary detention, custody and criminal judgments, including the management of transfers to other detention facilities (Chapter II of the 2015 Law on Execution of Temporary Detention and Custody and Chapter II of the 2019 Law on Execution of Criminal Judgments). These are placed under the management and supervision of various different agencies, particularly the close, constant and continuous management and monitoring of the People's Procuracies at all stages (please refer to Viet Nam's response to Paras. 34 and 35b).

54. Information related to the identity of persons deprived of liberty, the reason for detention, the criminal offenses committed, the transfer to other detention facilities, health status, etc. are all carefully and thoroughly preserved in accordance with regulations. In order to ensure accurate record keeping, Vietnamese authorities have implemented various measures, particularly the issuance of forms of document and books on detainee management and the execution of close, constant and direct inspection and supervision by the People's Procuracies and the People's Courts. In addition, agencies managing the execution of temporary detention, custody and criminal judgments at higher levels also regularly issue plans to inspect and examine their subordinate agencies. All violations, if detected, shall be strictly handled.

55. The disclosure of information and data related to the prosecution, investigation, and execution of criminal judgments, temporary detention and custody, etc. need to comply with the laws of Viet Nam.

**Response to Recommendation No. 17 (c)**

56. Viet Nam has an effective independent system to monitor the compliance by all public officials with the fundamental legal safeguards for detained persons. At the same time, any public official violating those safeguards will be investigated, prosecuted and punished (please refer to Viet Nam's response to Paras. 15c, 15d, 15e, 16, 21e and 34).

57. The 2015 Criminal Code has supplemented multiple articles, including: Offence of bringing criminal prosecution against an innocent person (Art. 368), Offence of failure to bring criminal prosecution against a guilty person (Art. 369), Offence of passing an illegal judgment (Art. 370), Offence of abuse of position or power to hold a person in temporary detention or custody against the law (Art. 377), etc.

**Response to Comment No. 18**

58. Article 3 of Resolution No. 83/2014/QH13 dated November 28, 2014 of the National Assembly of the Socialist Republic of Viet Nam ratifying the Convention against Torture clearly stated that "The Socialist Republic of Viet Nam drafts and perfects its legislation to comply with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". Thus, Viet Nam will incorporate the provisions of the Convention into its domestic law. This principle has also been upheld by

many countries around the world. The 2016 Law on Treaties stipulates that “if a legal document, except for the Constitution, and a treaty to which the Socialist Republic of Viet Nam is a contracting party, have different provisions on the same issue, the treaty shall prevail” (Art. 6). The 2015 Law on Promulgation of Legislative Documents also states that “Application of Viet Nam’s legislative documents must not obstruct the implementation of international agreements to which the Socialist Republic of Viet Nam is a signatory” (Art. 156).

59. In fact, the Court has applied the provisions of certain treaties to which Viet Nam is a signatory. For instance, when handling a case related to the crime of illegal trading of wild animals, the Court has cited the appendix of the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES). To date, there has been no record on any direct application of the Convention against Torture.

### **Response to Recommendation No. 19 (a)**

60. The Vietnamese legal documents have fully stipulated the application of international conventions, including the Convention against Torture (please refer to Viet Nam’s response to Para. 18). Viet Nam will continue to research into issuing more detailed guidance of this matter.

### **Response to Recommendation No. 19 (b)**

61. Viet Nam has been actively implementing this recommendation and confirms that it will continue to promote communication and dissemination activities in the future.

62. Viet Nam is one of the few countries which has organized hundreds of conferences, workshops, training sessions and educational programs at universities and through radio shows, television programs, media platforms and the Internet. Such efforts have been taken in the Government and in Ministries, agencies and localities. Viet Nam has also cooperated with foreign partners, such as the United Nations Development Program in Viet Nam, the Kingdom of Netherlands and the Kingdom of Belgium, to disseminate the contents of the Convention against Torture to thousands of public officials and the entire Vietnamese people. The information, statistics and relevant figures of these activities have been publicly provided by Viet Nam in Appendixes No. 2 and 3 attached to Viet Nam’s Initial Report on the implementation of the Convention against Torture and at the 65th Session on Consideration of State Reports held by the Committee against Torture in Geneva in November 2018.

63. Viet Nam has also adopted the Project for the Dissemination of the contents of the Convention against Torture to cadres, civil servants, public officials and the people in Decision No. 65/2018/QĐ-TTg of the Prime Minister dated January 12, 2018. The Ministry of Information and Communication has collaborated with the Ministry of Public Security to provide press agencies with information on the contents of the Convention against Torture and Viet Nam’s Initial Report on the implementation of the Convention against Torture to publish both in Vietnamese and foreign languages to provide the people with necessary information.

64. In 2019, the Ministry of Public Security issued a book on “Viet Nam’s Initial Report on the implementation of the Convention against Torture”, including the State Report and the contents of the Convention against Torture in Vietnamese and English and distributed to other ministries and agencies in the People’s Public Security. Most recently, on April 23, 2020, the Ministry of Public Security also issued the Project for the Dissemination of the contents of the Convention against Torture to the People’s Public Security Forces in Decision No. 3234/QĐ-BCA of the Minister of Public Security.

**Response to Comment No. 20 (a)**

65. All cases of death in the process of detention are subjected to crime scene investigation, autopsy and forensic examination under the close inspection and supervision of the People's Procuracies and the witness of concerned persons; the conclusions on causes of these deaths are publicly notified to relevant agencies and families of these deceased detainees according to the provisions of the 2015 Criminal Procedure Code (particularly Arts. 201 and 202) and other relevant documents.

66. All cases demonstrating signs of crime are objectively investigated in accordance with the law. The detected crime cases are strictly, publicly and fairly initiated the criminal proceeding, prosecuted and tried in accordance with the processes, procedures and time limit of legal proceedings stipulated by the law (please refer to Viet Nam's response to Paras. 9b and 14).

67. Viet Nam has already established a comprehensive legal system on safeguarding the rights of detained persons and the close monitoring by many agencies representing the people, particularly the close supervision of the People's Procuracies at all stages (please refer to Viet Nam's response to Paras. 15c, 16, 21e, 34). However, Viet Nam will continue to learn from other countries' experiences to improve the effectiveness of its monitoring work.

**Response to Comment No. 20 (b)**

68. Viet Nam disagrees with the comment on "The reported excessive use of force by the police, including severe ill-treatment and humiliation during the dispersal of demonstrations in June 2018". The measures taken by state agencies corresponded to the severity of the mass gatherings and in accordance with Vietnamese law, international law and international conventions to which Viet Nam is a party.

69. The Vietnamese law has provided in detail on mass gatherings (the Government's Decree No. 38/2005/ND-CP dated March 18, 2005 on measures to guarantee public order and the Government's Decree No. 167/2013/ND-CP dated November 12, 2013 on administrative penalties on violation in social security, order and safety, prevention and fighting of social evils, fire, domestic violence and mass gatherings in public places). However, the mass gatherings in June 2018 were illegal. They were not registered with the local authorities, and numerous extremist acts occurred, causing the destruction of agencies and organizations' properties and infringing upon life and health of civilians and public officials. Some participants, who were previous convicts, offenders and drug addicts, committed a number of illegal offenses, including using knives, machetes, bricks, stones, sticks and petrol bombs to attack state agencies and officials at various locations. As a result, dozens of police officers were wounded in their duties, numerous vehicles and offices were burnt and destroyed. For example, according to preliminary statistics, perpetrators attacked and injured 30 officials and burned 10 cars in Tuy Phong District, Binh Thuan Province. In Bac Binh District, Binh Thuan Province, they smashed the office of the fire prevention and search and rescue police, burned 12 cars and damaged 16 others.

70. In any country, for the purpose of suppressing violent illegal mass gatherings and re-establishing public order, using lawful measures by competent agencies is necessary, and there has been no "excessive use of force" as mentioned in the Committee's report.

**Response to Recommendation No. 21 (a)**

71. Viet Nam has been implementing this recommendation. All alleged cases of death in custody and complaints of excessive use of force, both in detention facilities and on the street, are promptly, effectively and impartially investigated by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators. The cases of death in the process of detention are subject to crime scene investigation, autopsy and forensic examination under the close inspection and supervision of the People's Procuracies and the witness of concerned persons as stipulated in detail in

the 2015 Criminal Procedure Code and other relevant documents. The alleged cases of torture are investigated by the Investigation Agency of the Supreme People's Procuracy and the Investigation Agency of the Central Military Procuracy which are completely independent from the Investigation Agencies of the Ministry of Public Security and Ministry of Defense (please refer to Viet Nam's response to Paras. 9b, 15b, 15c, 20a, 20b, 21e, 21g, 23b).

### **Response to Recommendation No. 21 (b)**

72. Viet Nam has been implementing this recommendation and commits to a better implementation (please refer to Viet Nam's response to Paras. 6, 9a, 15b, 15c).

### **Response to Recommendation No. 21 (c)**

73. According to gathered information, materials and evidences and the trial process of the People's Court of Ha Noi City, Viet Nam has confirmed that the death of Do Dang Du was caused by the accused Vu Van Binh (who was temporarily held in the same cell with Do Dang Du), and there was no act of torture and inhuman treatment by the prison's officer. The People's Court of Ha Noi City tried and sentenced Vu Van Binh to 10 years of imprisonment for the crime of "Deliberate infliction of bodily harm upon another person" and a compensation for the victim's family of nearly 83 million Vietnamese dong (VND).

### **Response to Recommendation No. 21 (d)**

74. According to clause 3, Article 4 of the 2018 Law on People's Public Security Forces, activities of the People's Public Security Forces must abide by the Constitution and the law; they shall rely on the people and be subject to the people's supervision; they shall protect the interests of the State, and the lawful rights and interests of organizations and individuals. According to Article 10 of this law, the supervision of activities of the People's Public Security Forces is conducted as follows: "The National Assembly, the Standing Committee of the National Assembly, the National Assembly's Ethnic Council, the National Assembly's Committees, the National Assembly deputies and delegations, the People's Councils, the Standing Commission of the People's Councils, the Commissions of the People's Councils, and People's Councils deputies' groups and deputies shall, within the scope of their respective tasks and powers, supervise the activities of the People's Public Security Forces."

75. Regarding the use of weapons, explosives and combat gears, Viet Nam has enacted the 2017 Law on Management and Use of Weapons, Explosives and Combat gears (amended and supplemented in 2019) to govern this matter.

76. Regarding the treatment and protection of persons held in custody and detention and prisoners, Viet Nam has enacted the 2015 Criminal Procedure Code, the 2015 Law on Organization of Criminal Investigation Agencies, the 2015 Law on Execution of Temporary Detention and Custody, the 2019 Law on Execution of Criminal Judgments, the 2011 Law on Complaints, the 2018 Law on Denunciations and the 2017 Law on State Compensation Liability to govern this matter.

77. On the basis of reviewing and research, Viet Nam's current laws are basically consistent with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Annually, relevant persons and agencies of Viet Nam have been provided with information on relevant regulations and received training in this field.

### **Response to Recommendation No. 21 (e)**

78. Viet Nam has established not just one, but multiple independent mechanisms for receiving complaints and denunciations about the police. Viet Nam has the mechanism of the National Assembly, which exercises the supreme supervision role over the State's activities. The National Assembly's agencies are in charge of receiving and settling requests, complaints and denunciations and supervising competent authorities' settlement of requests, complaints and denunciations. The Vietnamese Government has the Government Inspectorate, a governmental agency completely independent from Ministries, agencies and localities. This agency oversees the receipt and settlement of complaints, denunciations across the entire country. This is an independent mechanism to which the people can submit their complaints and denunciations about the police. Viet Nam also has the Supreme People's Procuracy, which is completely independent from the Ministry of Public Security, performing the functions of receiving and resolving complaints and denunciations about crimes related to torture, obtainment of testimony by duress and use of corporal punishment. This is another independent mechanism to which the people can submit their complaints and denunciations about the police. Apart from the aforementioned mechanisms, within the Ministry of Public Security, there is the Ministry of Public Security's Inspectorate, which has the authority to receive and settle complaints and denunciations about crimes related to torture, obtainment of testimony by duress and use of corporal punishment. This is another mechanism inside the Ministry of Public Security to strictly handle violations. It also demonstrates the Ministry of Public Security's determination to prevent and punish every act of torture, obtainment of testimony by duress and use of corporal punishment.

### **Response to Recommendation No. 21 (f)**

79. Viet Nam guarantees redress and rehabilitation, including medical and psychological assistance, are provided to all victims of crimes in general and crimes of torture and ill-treatment in particular. Regarding redress for the families of the deceased, according to clause 2, Article 5 of the 2017 Law on State Compensation Liability, if the victims die, their inheritors have the right to request the State for compensations.

80. Viet Nam has assisted victims of crimes in their reintegration through hundreds of reintegration programs at both central and local levels, such as the model of Centers for Reception of Victims (Humane homes in Lao Cai and An Giang provinces) and Self-reliant Groups (in Thanh Hoa, Tay Ninh and Thua Thien Hue provinces). Viet Nam will continue to study assistance models to better implement these provisions in the time to come.

### **Response to Recommendation No. 21 (g)**

81. According to Article 26 of 2015 Law on Execution of Temporary Detention and Custody, if detainees die during the time of temporary detention or custody, the head of the custody facility must protect the scene and immediately inform competent investigation agencies and Procuracies to identify the cause of death while informing the relatives and legal representative of the deceased. The representative of the custody facility must bear witness to the scene examination and autopsy. If the deceased is a foreigner, the agency handling the case shall inform the consular agency and his/her relatives or legal representative. According to clause 1, Article 56 of the 2019 Law on Execution of Criminal Judgments, when an inmate dies in the prison, detention camp or criminal judgment execution agency of a district-level police office or a state-owned medical treatment establishment, said agency or establishment shall promptly report the case to the district-level investigation agency and People's Procuracy, or the military investigation agency and Military Procuracy of the area in which the inmate dies, in order to identify the cause of his/her death. If a foreign inmate dies, the warden of his/her prison shall promptly report the case to the provincial-level investigation agency and People's Procuracy, or the military investigation agency and Military Procuracy of the area in which the inmate dies, in order to identify the cause of his/her death, and concurrently report to the criminal judgment

execution management agency of Ministry of Public Security, Ministry of Defense or Ministry of Foreign Affairs to inform the representative mission of the country of which the deceased is a citizen.

82. The disclosure of information and data related to the prosecution, investigation and execution of criminal judgment need to comply with the laws of Viet Nam.

### **Response to Comment No. 22 (a)**

83. This comment is based on untrue information about the situation of Viet Nam. There are 54 ethnic groups in Viet Nam and all people have the right of equal citizenship and are protected by law (Arts. 9 and 10 of the 2015 Criminal Procedure Code). In Viet Nam, people are not arrested or detained for their ethnicity, beliefs, religion or social status. They are arrested and detained because they have committed illegal acts, such as abusing freedom of speech, freedom of the press, freedom of religion, freedom of association, and other democratic freedoms to incite violence and hatred, disrupting or undermining security, social stability and public order, and infringing upon the legal rights and interests of organizations and individuals. These acts constitute offenses in accordance with the Criminal Code. The investigation, arrest and trial are conducted in compliance with the provisions of the law. The laws of Viet Nam, as well as other countries, have regulations to safeguard territorial integrity and social security (please refer to Viet Nam's response to Para. 20a).

84. In Viet Nam, there is neither "a high number" of deaths in custody of members of ethnic minorities, nor discrimination against ethnic and religious minorities in the process of detention (please refer to Viet Nam's response to Para. 21g).

### **Response to Comments No. 22 (b) and 22 (c)**

#### *Nguyen Huu Tan*

85. After the suspect Nguyen Huu Tan died, the Investigation Police Agency of the Vinh Long Provincial Public Security Department established a crime scene investigation team led by the Office of Investigation Police Agency in collaboration with Vinh Long Provincial People's Procuracy, the Criminal Technical Division of Vinh Long Provincial Public Security Department and Vinh Long Provincial Forensic Inspection Division. The examination team arrived at the Detention Center of the Provincial Public Security Department and conducted a scene examination and autopsy with the witness of Mr. Nguyen Huu Quang (Nguyen Huu Tan's father) and Mrs. Huynh Thi Muoi (Nguyen Huu Tan's wife).

86. On the basis of the results of scene examination, autopsy, testimony of relevant people and other collected documents, there are sufficient grounds to conclude that the suspect Nguyen Huu Tan committed suicide without the influence or assistance of others.

87. After finishing the autopsy, the Detention Center handed Nguyen Huu Tan's body over to his family for burial.

88. Therefore, there was an independent investigation on the death of Nguyen Huu Tan. Nguyen Huu Tan's family was absolutely not subjected to reprisals from the local police after filing complaints and denunciations to the authorities.

#### *Ma Seo Sung*

89. Ma Seo Sung was arrested and held in custody because he committed criminal offenses. In the process of detention, the Detention Center of the Provincial Public Security Department applied the benefits in accordance with the Regulations on temporary detention and custody.

90. On the basis of the results of scene examination, autopsy under the inspection and supervision of the People's Procuracy, the witness of relatives of the victim's family and the conclusion of forensic examination in combination with the collected documents, the

Investigation Police Agency of the Dak Lak Provincial Public Security Department identified that the detainee Ma Seo Sung committed suicide by hanging. Therefore, the Investigation Police Agency of the Dak Lak Provincial Public Security Department issued a decision not to prosecute a criminal case and notified the Provincial People's Procuracy, the Detention Center of the Provincial Public Security Department and Ma Seo Sung's family.

91. Mrs. Sung Thi Sai, Ma Seo Sung's wife, filed two complaints (the first on July 31, 2017 and the second on August 23, 2017) to request competent authorities to provide information on the arrest, detention, cause of death and handover of the corpse of Ma Seo Sung. The Office of Investigation Police Agency of Dak Lak Provincial Public Security Department issued a document on August 22, 2017 for the first complaint and on September 8, 2017 for the second complaint. Thus, there have been no complaints about threats of reprisals made by Mrs. Sung Thi Sai or the relatives of Ma Seo Sung.

*Ksor Xiem (Ksor Siam)*

92. Ksor Siam (1958) resided in Hoang village, Ia Sao commune, Ayun Pa district, Gia Lai province.

93. On November 8, 2015, the Ayun Pa District Public Security coordinated with Ia Sao Commune People's Committee and the Commune Public Security to interview Ksor Siam at the Headquarters of Ia Sao Commune People's Committee regarding illegal religious activity. In this process, all activities are conducted in accordance with the law, and there is absolutely no obtaining testimony by duress or use of corporal punishment.

94. At 8.30 am on December 24, 2015, Ksor Siam was taken to the Ayun Pa Regional General Hospital by his family members with the following symptoms: abdominal pain and edema. Ksor Siam was directly examined, scanned, tested and diagnosed by the hospital's doctors, with their conclusion being: Ksor Siam had gastritis, chronic renal failure and grade II heart failure.

95. Due to his worsening conditions, Ayun Pa Regional General Hospital encouraged the family members of Ksor Siam, and transferred him to Gia Lai Provincial General Hospital for treatment. In early January 2016, due to poor health and prognosis, his family asked to bring him home for self-treatment. On January 14, 2016, Ksor Siam died at his home.

96. On the basis of the results of the medical records, the certificates of the victim's family and the opinion of the public and those who were involved, Ksor Siam died due to his disease.

*Y Ku Knul*

97. Y Ku Knul (born in 1969) permanently resided at M'Duk Village, Ea Tam Ward, Buon Ma Thuot City, Dak Lak Province.

98. In December 2016, Y Ku Knul worked in the coffee field in Buon Ma Thuot City. At around 10 a.m on December 29, 2016, Y Ku Knul's wife found her husband dead in a hanging position in a bamboo bush within the coffee field. The Dak Lak Provincial Public Security Department conducted scene examination and autopsy and confirmed that there was no external involvement. The cause of death is a result of asphyxiation. Y Ku Knul's family conducted his burial in the cemetery with no complaint.

*Thich Quang Do*

99. The punishments imposed on Mr. Thich Quang Do is completely consistent with the law, as declared by the competent People's Court for committing criminal offences.

100. In 1995, defendant Thich Quang Do was sentenced to 5 years of imprisonment and 5 years of probation for violating the law. Since 2003, Mr. Thich Quang Do ended his probation sentence, enjoying all fundamental rights of a citizen in accordance with Vietnamese law and resuming normal religious activities at Thanh Minh Pagoda, Phu Nhuan District, Ho Chi Minh City. He is free to travel and interact with people, including representatives of many foreign diplomatic missions in Viet Nam such as the United States

of America, the European Union and the United States Commission on International Religious Freedom. In October 2018, he returned to his hometown to live with his relatives. From November 2018 to February 2020, he moved to Tu Hieu Pagoda, District 8, Ho Chi Minh City. On February 22, 2020, Mr. Thich Quang Do passed away due to old age (93 years old). The funeral of Mr. Thich Quang Do was held according to Buddhist rituals and his wishes.

101. According to Article 38 of the 1999 Criminal Code (Art. 43 of the 2015 Criminal Code), probation means forcing the sentenced persons to reside, work and reform in a certain locality under the supervision and education of the local administration and people where he/she resides after having served his/her imprisonment sentence. Mr. Thich Quang Do's execution of his imprisonment sentence and probation sentence is completely in accordance with existing laws and the judgment awarded by a competent court.

### **Response to Recommendation No. 23 (a)**

102. Viet Nam has been implementing this recommendation. Accordingly, public officials on duty must abide by the principle of non-discrimination in any form. Viet Nam affirms that it shall continue implementing these commitments. This is also a Constitutional principle in Vietnamese law (please refer to Viet Nam's response to Para. 22a).

### **Response to Recommendation No. 23 (b)**

103. Viet Nam has been implementing this recommendation. Accordingly, all alleged cases of torture and ill-treatment, deaths in the process of detention and related complaints and denunciations are promptly, effectively and impartially investigated. When having grounds as provided for in Article 143 of the Criminal Procedure Code and detecting signs of criminal acts regulated in Article 373 (use of corporal punishment), Article 374 (Obtainment of testimony by duress) and in some other articles of the Criminal Code, competent agencies shall institute the case, prosecute the suspect and conduct the investigation, handle the case in accordance with the provisions of the Criminal Procedure Code. In the course of handling a case, the suspension of the position of the suspect is specified in Article 181 of the Criminal Procedure Code. Based on the case files and the results of the litigation at the trial, the trial panel will issue the judgment which is commensurate with the danger and serious level of the criminal act. In order to guarantee their legitimate rights and interests, concerned persons have the right to lodge complaints and denunciations in accordance with Chapter 33 of the 2015 Criminal Procedure Code, the 2011 Law on Complaints, the 2018 Law on Denunciations and other relevant legal documents (please see also Viet Nam's response to paras.14, 15b, 15c, 15d, 15e and 21e).

### **Response to recommendation No.23 (c)**

104. Viet Nam has provided sufficient information on the deaths of Nguyen Huu Tan, Ma Seo Sung, Ksor Xiem and Y Ku Knul in Viet Nam's response to Para. 22b and 22c.

### **Response to Recommendation No. 23 (d)**

105. Viet Nam has provided sufficient information on Mr. Thich Quang Do in Viet Nam's Response to Para. 22b and 22c.

### **Response to Comment No. 24**

106. Vietnamese law clearly stipulates cases, conditions, duration and procedures for temporary detention and custody (Arts. 109 to 119 of the 2015 Criminal Procedure Code). Only persons who are required by the law to be temporary detained or held in custody would be subjected to such measures to prevent new crimes from being committed and

ensure strict and fair trial of offenses. Therefore, there is no frequent and prolonged use of pretrial detention (please refer to Paras. 55 and 56 of Viet Nam's Initial Report on the implementation of the Convention against Torture).

107. According to Article 173 of the 2015 Criminal Procedure Code, the conditions, subjects, duration and extension of detention are clearly and specifically stipulated. Therefore, there is no prolonged use of pretrial detention, incommunicado detention and solitary confinement in Viet Nam. No one shall be indicted or adjudicated for the legitimate exercise of fundamental freedoms.

108. Individuals who are arrested and tried for criminal offense of infringing upon national security receive similar treatment to the prisoners who are tried for other crimes, and are fully entitled to clothing, visits from relatives and medical care in accordance with the provisions of the 2015 Law on Execution of Temporary Detention and Custody, the 2019 Law on Execution of Criminal Judgments and other related documents.

109. There is no incommunicado detention in Viet Nam (please refer to Viet Nam's response to Para. 16).

### **Response to Recommendation No. 25 (a)**

110. Viet Nam has been implementing this recommendation. Viet Nam has established a network of mechanisms to ensure that pretrial detention is closely monitored. Viet Nam also pledges to further promote the effectiveness of these monitoring mechanisms (please see also Viet Nam's response to paras. 15c, 15d, 15e, 17c, 21e, 24, 34).

### **Response to Recommendation No. 25 (b)**

111. Viet Nam has been implementing this recommendation. The 2015 Criminal Procedure Code (Art. 32, 33, 469, 470, etc.) and the 2015 Law on Execution of Temporary Detention and Custody (Chapter IX) stipulate that persons held in temporary detention or custody can exercise their right to appeal against the decisions or proceedings of competent procedure-conducting agencies and persons, including decisions regarding pretrial detention, when there are grounds indicating that such decisions and acts are illegal, infringing upon their legitimate rights and interests. These laws also strictly prohibit reprisal against complainants and denouncers.

### **Response to Recommendation No. 25 (c)**

112. Viet Nam has been implementing this recommendation. Viet Nam has established a network of mechanisms to monitor pretrial detention (please see also Viet Nam's response to paras. 15c, 15d, 15e, 17c, 21e, 24, 34), and ensured that the custody classification is in accordance with the law (please see also paras. 57, 58, 152 and 153 of Viet Nam's Initial Report on the implementation of the Convention Against Torture).

### **Response to Recommendation No. 25 (d)**

113. Viet Nam has been implementing this recommendation. In addition to detention measure, Chapter VII of the 2015 Criminal Procedure Code stipulates many non-custodial preventive measures such as bail, financial sureties, house arrest and temporary exit suspension. For each measure, the Code specifies the grounds, conditions, authority, order, procedures and time limit for application.

114. For cases where temporary detention measures have been applied but later deemed unnecessary, the procedure-conducting agencies must promptly cancel these measures or replace them with other preventive measures. In addition, the procedure-conducting agencies only consider the application of preventive measures in cases where there are grounds to believe that suspects and defendants are capable of obstructing the investigation,

prosecution or adjudication of competent agencies or committing new crimes (para.1, Art.109 of the 2015 Criminal Procedure Code).

115. The application of preventive measures, including detention, is conducted in a transparent and lawful manner under the close monitoring of the People's Procuracy. According to the Criminal Procedure Code, procurators have the right to reject the adoption of, and make decisions to cancel or change preventive measures in cases where the application of such measures are deemed not in compliance with the provisions of law by investigation agencies or courts.

116. Viet Nam shall continue to study the possibility of adopting alternatives to pretrial detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), appropriate to the conditions and circumstances of Viet Nam to ensure the prevention of escaped offenders, new criminal offenses and to ensure trial proceedings.

### **Response to the Comment No. 26**

117. The comments in paragraph 26 are completely unsubstantiated and inaccurate. The 2012 Law on Handling of Administrative Violations, Decree No. 02/2014 /ND-CP of the Government dated January 10, 2014 and other relevant documents have clearly identified competent authorities and persons in charge of sending individuals to reformatories, compulsory education institutions and compulsory detoxification establishments. The law also determined conditions, order and procedures for sending individuals to reformatories, compulsory education institutions and compulsory detoxification establishments.

118. Accordingly, sending people to reformatories is defined as an administrative penalty applied to persons committing acts violating the law, specified in Article 92 of the Law on Handling of Administrative Violations, which aims to assist them with education, vocational training and labour under the management of the reformatories. The time limit for the application of this measure is between 6 months and 24 months (Article 91 of the 2012 Law on Handling of Administrative Violations).

119. Sending individuals to compulsory education establishments is defined as the administrative penalty applied to persons committing acts violating the law, specified in Article 94 of the Law on Handling of Administrative Violations, which aims to assist them with education, vocational training and labour under the management of the compulsory education establishments. The time limit for the application of this measure is between 6 months and 24 months (Article 93 of the 2012 Law on Handling of Administrative Violations).

120. Sending individuals to compulsory detoxification establishments is defined as the administrative penalty applied to persons committing acts violating the law, specified in Article 96 of the Law on Handling of Administrative Violations, which aims to provide the persons with treatment, labour, education and vocational training under the management of compulsory detoxification establishments. The time limit for the application of this measure is between 12 months and 24 months (Article 95 of the 2012 Law on Handling of Administrative Violations).

121. Therefore, sending people to reformatories, compulsory education establishments and compulsory detoxification establishments is one of the preventive and educative measures aimed at violators of administrative laws. This measure will provide these individuals with education, labour, vocational training and daily activities under the management of reformatories, compulsory education establishments, compulsory detoxification establishments. This shall also provide treatment for physical and mental health conditions, facilitate increased awareness and behavioural change, reduce recidivism and assist with stabilizing their lives.

122. The measure of sending individuals to reformatories, compulsory education establishments and compulsory detoxification establishments is conducted in accordance with the order and proceedings at the People's Courts, which is considered and determined

by the People's Courts, under the close monitoring of the People's Procuracy (please see also Viet Nam's response to para.27c).

123. These individuals can exercise the right to prove, by themselves or through their legal representatives, that they did not commit administrative violations. They can also enjoy the rights to be protected by law for their lives, health, honour and dignity, and to have access to lawyers and legal assistance as prescribed by law. They also have their rights guaranteed by the State, including the rights to adequate standard of living including food, clothing, accommodation, study, labour, vocational training, career guidance, prevention and treatment of conditions, as well as cultural, artistic and recreational activities. They are allowed to watch television, read books and newspapers at the library of a compulsory education institution or a reformatory. They are also allowed meetings with relatives as well as sending and receipt of letters and gifts from relatives. Participants in a reformatory are entitled to education identical to the general curriculum of the Ministry of Education and Training, and elementary and secondary education are compulsory to participants. Participants are allowed interaction with students from other schools, and enabled to participate in cultural and sports activities nationwide (point d, para.2, Art.3; para 3, Art.99; para 3, Art.101; para.3, Art.103, etc. of the 2012 Law on Handling Administrative Violations; Paras.1 to 5, Art.27 of Decree No.221/2013/ND-CP dated December 30th, 2013 defining the application of administrative handling measures to be put into a compulsory detoxification establishment; Arts.14, 15, 17, 18, 19, 20, 29, 30, 32, 34, 35, etc. of Decree No.02/2014/ND-CP dated January 10, 2014 defining the application and enforcement of the administrative handling measure of sending individuals into reformatories and compulsory education establishments). According to preliminary statistics, as of April 15, 2020, there are three compulsory education establishments with 594 persons and three reformatories with 304 participants.

#### **Response to Recommendation No. 27 (a)**

124. Viet Nam has provided information and data on compulsory education establishments and reformatories at Viet Nam's response to para.26.

#### **Response to Recommendation No. 27 (b)**

125. Viet Nam has been implementing this recommendation, and pledges to continue the active implementation of these provisions to ensure the rights of persons in reformatories, compulsory education establishments and compulsory detoxification establishments (please see also Viet Nam's response to para.26 and para.27c).

#### **Response to Recommendation No. 27 (c)**

126. The district court has the authority to make decisions on sending individuals to reformatories, compulsory education establishments and compulsory detoxification establishments according to the provisions of the 2012 Law on Handling Administrative Violations (Arts.100, 102, 104). Therefore, these measures are conducted in accordance with the order and proceedings at the People's Court under the close monitoring of the People's Procuracy.

127. Custody of persons according to administrative procedures is guaranteed not to be held in criminal custody suites, detaining room (paras.5 and 6, Art.122 of the 2012 Law on Handling Administrative Violations). Viet Nam affirms its determination to continue the active implementation of these regulations, to ensure the rights of persons held in custody according to administrative procedures.

#### **Response to Recommendation No. 27 (d)**

128. Viet Nam has been implementing this recommendation. Accordingly, individuals and organizations sanctioned for administrative violations may lodge complaints or initiate

lawsuits against decisions on handling of administrative violations according to the law. Individuals have the right to denounce law violations in handling administrative violations, in accordance with the law (Paras.1 and 2, Art.15 of the 2012 Law on Handling Administrative Violations).

### **Response to Comment No. 28**

129. A basic principle in the 2015 Criminal Procedure Code is the strict prohibition of torture, obtaining testimony by duress, applying corporal punishment or any other form of treatment that infringe upon the human body, life or health. Clause 2, Article 87 of the 2015 Criminal Procedure Code provides that evidence not collected in accordance with the procedures prescribed by the Criminal Procedure Code holds no legal value and cannot be used as a basis for resolving a criminal case. One of the most important attributes of evidence is objectivity. Therefore, the evidence collected by torture, testimony under duress and corporal punishment will not be legally valid and shall not be used by the Court as a basis for the hearing of criminal cases (please see also paras.229 and 231 of Viet Nam's Initial Report on the implementation of the Convention against Torture).

130. Example: On July 8th, 2013, the Police Investigation Agency of Soc Trang Provincial Public Security Department issued a decision to institute a murder case and conducted an investigation against seven individuals, including Tran Van Do, Thach So Phach and Khau Soc. During the process of investigation, Nguyen Hoang Quan and Trieu Tuan Hung, who were investigators, used corporal punishment on these three people to force their confession of involvement in killing Mr. Ly Van Dung. After the investigation, there is no legal ground to conclude that these three individuals committed murder. On May 21st, 2014, Soc Trang Provincial Public Security Department suspended the investigation of the case and the suspects. Thus, the testimonies and evidence gathered from using corporal punishment by the investigators were disposed and could not be used to charge the suspects with murder in the case of Mr. Ly Van Dung. In addition, several other cases whose evidences were a result of torture have been cancelled during the criminal proceeding (please see also para.231 of Viet Nam's Initial Report on the implementation of the Convention against Torture).

131. Therefore, the Vietnamese law has guaranteed that both in legal and practice, all testimony obtained by torture and other cruel, inhuman or degrading treatment or punishment shall not be cited as evidence before court, except in opposition to the person who has committed such acts.

### **Response to Recommendation No. 29 (a)**

132. Viet Nam has been implementing this recommendation (please see Viet Nam's response to para.28).

### **Response to Recommendation No. 29 (b)**

133. Viet Nam has been implementing this recommendation. Viet Nam affirms its commitment to further adhering to this principle to ensure the strictness of the law (please see also Viet Nam's response to the para.28).

134. All persons who commit torture-related acts constituting a crime prescribed in the 2015 Criminal Code shall face criminal prosecution. This is Viet Nam's consistent principle (please see also Viet Nam's response to paras.15b and 23b).

### **Response to Recommendation No. 29 (c)**

135. All officials who have allowed evidence to be obtained as a result of torture and persons providing false testimony and false documents that constitute a crime prescribed in

the 2015 Criminal Code are subject to criminal prosecution (please see also Viet Nam's response to paras.6, 7, 9b, 15a, 15b, 20a).

136. When having sufficient grounds as provided for in Article 143 of the Criminal Procedure Code to identify signs of criminal acts prescribed in Article 373 (use of torture), Article 374 (Obtainment of testimony by duress) and in some other articles of the Criminal Code, competent agencies shall institute the case, prosecute the suspect and conduct the investigation, and handle the case in accordance with the provisions of the Criminal Procedure Code (please see also Viet Nam's response to para.23b).

137. Viet Nam has publicly and sufficiently provided the data, information, developments, time, place, perpetrators and results of handling torture-related cases (please see also Viet Nam's response to paras. 9b and 14).

138. Therefore, Viet Nam has been implementing this recommendation. Viet Nam remains committed to further enhancing the implementation of this recommendation to ensure the strictness of the law. Viet Nam affirms its strong commitment to respecting and protecting human rights, and making substantial progress in preventing and punishing all human rights violations in general, and torture-related violations in particular, which shall contribute to effectively adhering to the Convention.

### **Response to Recommendation No. 29 (d)**

139. Clause 2, Article 87 of the 2015 Criminal Procedure Code provides that evidence not collected in accordance with the procedures prescribed by the Criminal Procedure Code has no legal value and cannot be used as a basis for resolving a criminal case. One of the most important attributes of evidence is objectivity. Therefore, the evidence collected by torture, testimony obtained by duress or corporal punishment will not be legally valid and shall not be used by the Court as the basis for hearing a criminal case.

140. All officials of the competent authorities have been trained on the provisions of the 2015 Criminal Procedure Code, including those providing that extorted confessions shall not be accepted by the courts.

### **Response to Recommendation No. 29 (e)**

141. Cases that have been evidenced as a result of torture have been cancelled during the criminal proceeding (please see also para.231 of Viet Nam's Initial Report on the implementation of the Convention against Torture and Viet Nam's response to para.28).

### **Response to Comment No. 30 (a)**

142. The increase in the number of detention facilities is due to Viet Nam's rising population growth, socio-economic conditions and other factors, which leads to an increase in the number of offenders (please see Viet Nam's response to the para.24).

143. The increase in the number of detention facilities also contributes to further ensuring the rights of persons held in temporary detention and custody and prisoners, especially regarding the condition of the accommodation facilities.

### **Response to Comment No. 30 (b)**

144. In fact, in previous years, there occasionally was prison overcrowding in Viet Nam. Given the circumstances, the Ministry of Public Security has taken various measures to build, renovate and upgrade detention facilities. To date, these measures have initially resolved overload in detention facilities. Currently, the average floor area per inmate has reached 2 square meters. The cells are properly lit, ventilated and cleaned, and inmates are sufficiently provided with quality food suitable to each individual, in accordance with the law. Viet Nam has issued specific regulations on providing prisoners with food, clothing,

accommodation, study, labour and healthcare for prisoners, and these regulations are strictly implemented. In addition, the transfer of detainees between detention facilities will be arranged in accordance with the number of detainees, the situation of detention and the detention facilities of each locality. This serves to minimize overload, ensure safety and effective management of detention, and secure the benefits and policies for persons held in custody and temporary detention and prisoners (please see also Vietnam's response to paras. 30d, 30e, 30f).

### **Response to Comment No. 30 (c)**

145. In Viet Nam, there is absolutely no case where prison officers use or instruct the use of corporal punishment or impose harsh measures against prisoners in disciplinary rooms. In Viet Nam, there is also no use of "solitary confinement" and no such concepts as "solitary confinement" or "security rooms" in Viet Nam's legal system. The format and level of detention in disciplinary rooms are clearly stipulated in the Law on Execution of Criminal Judgments and other related documents. Prisons only assign separate detention areas for prisoners who repeatedly commit discipline or legal violations. The purpose of detention in a disciplinary room for these prisoners is to ensure the life and health of other prisoners and these prisoners themselves, and to ensure the security and order of detention facilities, without affecting the management, education and rehabilitation of other prisoners.

146. During detention in a disciplinary room, prisoners are ensured access to food, clothing, accommodation and medical care. In cases where prisoners show intentions of sabotage, escape or suicide, they may be shackled. However, shackles shall not be used on female prisoners, prisoners under 18 years old or elderly prisoners, in accordance with the provisions of the law. During separate detention, should a prisoner comply with the rules of their prison, they shall be considered for transition back to prison population before the term.

### **Response to Comments No. 30 (d), 30 (e), 30 (f)**

147. Viet Nam's Initial Report on the Implementation of the Convention Against Torture has clearly stated that prisoners are entitled to adequate rights and benefits on food, clothing, accommodation, labour, medical care, meetings with relatives, receipt and sending of letters. They are also entitled to keeping contact with their relatives by phone and informing their relatives of the address of the institution where the prisoners serve their sentence. The prison has the duty to inform the prisoners' relatives of their admission and their execution of the sentence in accordance with the law. The distribution of allowance, gifts and medicines sent to prisoners by their relatives shall comply with the provisions of law, monitored by written records and signed by each prisoner upon receipt, in order to ensure discipline and transparency. For example, prisoners are entitled to contact with their family through telephone, letters and monthly meetings with their relatives at detention facilities.

148. Prisoners are entitled to consume the food and drinks sent by their relatives in their daily meals, under the condition that the order and hygiene of their cells are ensured. There has not been any case where prison staff steals prisoners' food, medicines and personal items sent by their families. Unused items or items on the prohibited list must be returned to their families or temporary kept in the prison's depository. Prisoners' medicines sent by their families must be dispensed to prisoners on daily prescription and closely monitored on written records by the prison's medical officers, to ensure their health and avoid complications, in particular medicines containing addictive substance and psychotropic substance.

149. Detainees admitted to detention facilities will be examined by physicians. The medical examination results shall be recorded in examination papers and archived in the detainees and prisoners' dossier. 100 percent of prisons and detention centers are equipped with infirmaries for medical examination and treatment for prisoners. All doctors and nurses in these infirmaries are professionally trained at medical training establishments.

150. Statistics on medical examination and treatment for prisoners from 2016 to 2019 are as follows.

<i>No.</i>	<i>Item</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>
1.	Total number of examinations for prisoners in infirmaries	4 892 421	3 327 095	4 328 623	4 766 515
2.	Total number of cases treated for prisoners in infirmaries	215 342	52 332	40 785	48 816
3.	Total number of cases treated for prisoners in civil hospitals	6 872	4 217	4 415	4 224

151. Prisoners are entitled to disease prevention measures, medical examination and treatment in medical facilities of prisons, detention centers or civil medical facilities at the district-level. In cases of severe illness or injury beyond the capacity of said medical treatment facilities, they shall be transferred to medical treatment facilities at provincial-level, and their relatives or lawful representatives must be notified. Expenses for their treatment are paid by the detention facilities from the State budget.

152. The prisoners can be temporarily suspended from their execution of sentence to return to their place of residence for medical treatment in cases of severe illness (such as HIV infection progressing to AIDS, Class III heart failure and above, Stage IV kidney disease and above, and final stage of cancer).

153. Prisoners contracting particularly dangerous infectious diseases and persons held in custody or temporary detention contracting Group A infectious diseases shall have their detention arranged in separate areas. Prisoners contracting Group B infectious diseases may be detained separately depending on conditions of their detention facilities. In cases where detainees and prisoners are infected by HIV, they shall be examined and treated. Detainees and prisoners are entitled to prevention of HIV transmission.

154. Prisoners who are drug addicts are detoxified by prisons. The expenses for medical examination and treatment, drug detoxification as well as all expenses of construction and arrangement of treatment rooms for prisoners in the medical treatment facilities are covered by the State.

155. In Viet Nam, there is absolutely no such thing as the practice of “using poor conditions of detention as an additional punishment for inmates” nor is there any recorded case of “using punitive transfers to separate prisoners from their families”. Only few prisoners who are particularly dangerous, gathering in gangs and disrupting security and safety in prisons shall be considered for transfer to other prisons to separate them from those who regularly violate prison rules, to strictly manage and prevent complications and to ensure the safety of other prisoners.

### **Response to Recommendation No. 30 (g)**

156. Labour is one of the rights of prisoner. Prison labour is also aimed at vocational training for prisoners, with a view to providing stable job opportunities and enhancing prisoners’ capacity to support themselves and their families after serving their sentences, to prevent their repeat of offences and contribute to their successful community reintegration.

157. The arrangement of labour for prisoners always complies with the provisions of the law, especially the Law on Execution of Criminal Judgments. In particular, prisoners are enabled to work in accordance with their age and health conditions; the time allowed for prisoners’ labour, studying and vocational training shall not exceed 8 hours per day. Prisoners are entitled to take leaves from work on Saturdays, Sundays, holidays and New Year in accordance with the laws. Female prisoners and juvenile prisoners are assigned jobs suitable to their gender, health and age. Female inmates and juvenile inmates are exempted

from heavy and hazardous jobs (the 2019 Law on Execution of Criminal Judgments). Inmates' labour fruits shall be used to increase food rations for inmates, provide assistance for prisoners suffering from work accidents, or are sent to their relatives or kept by the prison's staff to be returned to prisoners after completing their sentences.

### **Response to Recommendation No. 31 (a)**

158. Viet Nam has made continued efforts to invest in detention and prison facilities, and remains committed to further improving these facilities to ensure the rights and interests of detainees and prisoners (please see also Viet Nam's response to paras. 30b, 30d, 30e, 30f).

159. Viet Nam has applied alternatives to the penalty of imprisonment in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures such as community sentence, fine, expulsion and warning. For those who have been sentenced to imprisonment, the sentence is still applied but prisoners may enjoy probation, commutation, general amnesty, pardon, other non-custodial measures. Viet Nam's latest measure known as conditional release (parole) has recently been approved (Art. 66 and 106 of the 2015 Criminal Code). Therefore, Viet Nam has applied many different alternatives to imprisonment.

### **Response to Recommendation No. 31 (b)**

160. In Viet Nam, there is no such practice as using poor conditions of detention as an additional punishment for inmates, and death penalty prisoners are entitled to the benefits in accordance with the law (please see also Viet Nam's response to paras. 30b to 30g and para. 32).

### **Response to Recommendation No. 31 (c)**

161. Viet Nam has been implementing this recommendation. The Vietnamese law clearly stipulates the conditions, order and procedures for prisoners to be placed in separate detention areas and these are only applicable to prisoners who have repeatedly violated the law or the prisons' disciplines. Every year, prison staff are sent to training programs and enabled to participate in workshops and seminars to improve their professional skills relating to treatment of prisoners, including the provisions of ban on torture (please see also Viet Nam's response to paras. 16, 30c, 32).

### **Response to Recommendation No. 31 (d)**

162. Viet Nam does not apply punitive transfers to separate prisoners from their families (please see also Viet Nam's response to paras. 30b, 30d, 30e, 30f).

### **Response to Recommendation No. 31 (e)**

163. Based on the situation, the capacities and available resources in Viet Nam, Viet Nam pledges to make every effort to ensure the adequate number of prison staff and their capabilities in managing detention facilities (please see also Viet Nam's response to paras. 15d, 15e, 31c, 40, 41a, 41b, 41c, 41d).

### **Response to Recommendation No. 31 (f)**

164. Viet Nam has adopted various mechanisms and measures to cross-monitor among forces as well as perform domestic monitoring (please see also Viet Nam's response to paras. 15c, 21e, 34, 35b). Acts of stealing food and personal items sent to prisoners by their families are considered law violations. Therefore, Viet Nam remains committed to strict punishment of these acts.

165. Viet Nam pledges that prisoners will receive adequate medical care and treatment in accordance with the Vietnamese law (please see also Viet Nam's responses to paras. 30d, 30e, 30f).

### **Response to Recommendation No. 31 (g)**

166. The recruitment of additional doctors and nurses who have adequate professional knowledge to carry out their tasks must be based on the situation, demands and resources availability of Viet Nam.

167. Viet Nam ensures adequate referral and emergency medical care for prisoners and detainees in accordance with the law (please see also Viet Nam's response to paras.30d, 30e, 30f). All violations if detected (via reports, denunciations, complaints) shall be handled strictly, objectively and independently.

### **Response to Recommendations No. 31 (h)**

168. Viet Nam has been implementing this recommendation. Prisons' medical staff in Viet Nam are not allowed to deliberately withhold medical treatment or act negligently in performing their duties. The independence of the doctors employed by penitentiary institutions is guaranteed. Violations of such kind are strictly punished.

### **Response to Recommendation No. 31 (i)**

169. The Vietnamese law has clearly stipulated the use of various measures to prevent transmission of infectious diseases throughout the process of detention (please see also Viet Nam's response to paras. 30d, 30e, 30f, 31j, 31k of this Report; paras. 57, 58 and 152 of Viet Nam's Initial Report on the Implementation of the Convention Against Torture).

### **Response to Recommendations No. 31 (j), 31 (k)**

170. Viet Nam has been implementing this recommendation. Currently, most detention centers managed by the Ministry of Public Security and the Ministry of Defense have medical infirmaries for examination and treatment of persons in temporary detention or custody and prisoners (please see also Viet Nam's response to paras. 30d, 30e, 30f).

171. Infirmaries of detention centers have all adhered to the legal provisions on medical examination and treatment for persons in temporary detention or custody from the stage of admission, detection of illness, examination, treatment, medicine supply or referral to hospitals and confirmation of health conditions for prisoners to serve their sentences. The epidemic prevention and control measures have been strengthened. Hygienic standards of prisons and cells are ensured. The detention centers have actively coordinated with the local preventive medical centers to organize tuberculosis and HIV testing for people at high risk of infection such as drug addicts and sex workers, to promptly detect illnesses and provide them with better medical counselling and medical care. As a result, in the last 15 years, there has been no epidemic recorded in detention centers and custody facilities (please see also para. 236 of Viet Nam's Initial Report on the Implementation of the Convention Against Torture).

172. Medical treatment: distribution of food, medicine and health improvement measures shall be determined by the medical facilities, according to their pathologies and the severity of inmates' diseases. Daily medical expenses for inmates are provided with the equivalence of 2 kilograms of rice per person per month (please see also para.158 of Viet Nam's Initial Report on the Implementation of the Convention Against Torture).

173. Medical ethics and regulations are closely observed in Viet Nam, namely: adhering to the law, strictly following professional protocols, respecting the people's right to medical examination and treatment, preventing discrimination to patients, refusing to provide patients with poor quality medicines and drugs failing to meet the requirements and severity

of the disease for personal interests etc. (Art. 2, 3, 5 and 11 of the Regulation on Medical Ethics issued together with Decision No.2088/BYT-QD dated November 6, 1996 of the Minister of Ministry of Health) (please see also Viet Nam's response to paras.15d and 15e of this Report, para. 165 of Viet Nam's Initial Report on the Implementation of the Convention Against Torture).

### **Response to Recommendation No. 32**

174. Persons sentenced to death penalty do not receive any physical and psychological ill-treatment and torture. They are not shackled in disciplinary cells, not detained in unventilated cells with inadequate food and drink. They may be shackled only as a preventive measure when they show clear signs of escaping, committing suicide or committing other particularly dangerous acts.

175. According to provisions of the 2015 Law on Execution of Temporary Detention and Custody, persons sentenced to death penalty are detained in separate areas and are provided with food, clothing, medical care, receipt of gifts, sending and receipt of letters, books and newspapers similar to other prisoners. They also have the right to meet their relatives according to the law (para. 2 of Art.14; Arts.18, 36, 37). The order and procedures for the execution of the death penalty are strictly and specifically regulated in the 2019 Law on Execution of Criminal Judgement and relevant guiding documents (Arts from 77 to 83).

### **Response to Recommendation No. 33**

176. Viet Nam affirms that persons sentenced to death penalty are detained in separate areas and are provided with food, clothing, medical care, receipt of gifts, sending and receipt of letters, books and newspapers similar to other detainees. They are also entitled to meet their relatives according to the provisions of law (please see Viet Nam's response to para.32). Viet Nam pledges to continue its efforts to further implement these regulations.

177. Viet Nam's consistent policy is to strictly punish anyone who commits acts of torture and ill-treatment on detainees.

### **Response to Comment No. 34**

178. The supervision system of detention facilities in Viet Nam includes: The National Assembly, National Assembly Delegations, National Assembly Deputies, the National Assembly Judicial Affairs Committee, the Viet Nam Fatherland Front, the Inspectorates, the Media and Press and especially the People's Procuracy, which inspects and supervise activities of temporary detention and execution of criminal judgement (please see Viet Nam's response to paras. 15c, 21e). Article 167 of the 2019 Law on Execution of Criminal Judgments specifies that the People's Procuracy has the competence to directly inspect the execution of criminal judgment by criminal judgment execution agencies at the same and lower levels, agencies assigned to perform certain criminal judgment execution tasks; to examine criminal judgment execution dossiers of criminal judgment execution agencies at the same and lower levels, and agencies assigned to perform some tasks of criminal judgment execution; to receive and settle complaints and denunciations about management and education of persons subject to imprisonment sentence; to inspect the observance of law in the settlement of complaints and denunciations related to criminal judgment execution, among others.

179. In fact, Viet Nam has allowed consular visits, and numerous foreign and international organizations, diplomatic missions have been permitted to visit prisons within the framework of experience exchange and management capacity building (see also Viet Nam's response to para. 35c). In 2019, after Viet Nam presented its Initial Report on the implementation of the Convention against Torture before the Committee against Torture, the Ministry of Information and Communication and the Ministry of Public Security have organized for various domestic and foreign press correspondents delegations to operate on-

the-ground and access information directly from Vietnamese and foreign prisoners who are serving their sentences in several prisons.

### **Response to Recommendation No. 35 (a)**

180. Viet Nam will further look into the possibility of acceding to the additional Protocol to the Convention at an appropriate time (see also Viet Nam's response to para. 45).

### **Response to Recommendation No. 35 (b)**

181. In fact, Viet Nam has already been implementing these recommendations. Viet Nam has established a system of different inspection and supervision mechanisms carried out independently, effectively and regularly for all detention facilities. These mechanisms may be carried out without prior notice and allow for separate meetings with detainees to receive their complaints, denunciations (see Viet Nam's response to paragraphs 15c, 21e and 34). The Supreme People's Procuracy and the People's Procuracy at all levels shall actively monitor the situation and supervise prisons of the Ministry of Public Security and the Ministry of Defense to ensure the legitimate rights and interests of persons held in custody, detainees, and prisoners (at least once a month in accordance with Directive No.06/CT-VKSTC dated June 18th, 2019). However, Viet Nam will continue to research other countries' inspection and supervision models to further strengthen this activity in the time to come in order to ensure that no persons held in custody, detainees and prisoners are subject to torture and ill-treatment.

### **Response to Recommendation No. 35 (c)**

182. Viet Nam has already been implementing these recommendations. Viet Nam's Initial Report on the implementation of the Convention against Torture stated that the notification and organization of consular visits applied to foreign diplomatic and consular agencies in Viet Nam; prisons, temporary detention camps in Viet Nam, foreign prisoners in Viet Nam and relevant organizations and individuals are in accordance with the Joint Circular No. 03/2012/TTLT-BCA-BQP-BNG dated February 13th, 2012 of the Ministry of Public Security, the Ministry of Defense and the Ministry of Foreign Affairs. The Joint Circular details that consular visits and contacts with prisoners must be in accordance with international treaties to which Viet Nam is a party, including the 1963 Vienna Convention on Consular Relations (please see also paras.112 and 113 of Viet Nam's Initial Report on the implementation of the Convention against Torture) as well as provisions for international inspections or inspections by non-governmental organizations into prisons (see also para. 177 of Viet Nam's Initial Report on the implementation of the Convention against Torture).

183. In fact, Viet Nam has allowed consular visits and contacts and also permitted numerous foreign organizations, international organizations, diplomatic missions to visit prisons for purposes of experience exchange and management capacity building. However, it is necessary to have specific procedures for organizations and individuals who are not prisoners' relatives to meet prisoners, in order to ensure that the prisoners' sentence serving is not negatively impacted (see also Viet Nam's response to paras. 16 and 34).

### **Response to Comment No. 36 and Recommendation No. 37**

184. Viet Nam has been implementing this recommendation. Viet Nam explicitly prohibits the use of physical and psychological punishment on children in all facilities stipulated in the 2016 Law on Children.

185. According to clauses 6, 7 and 8 of Article 4 of the 2016 Law on Children, child violence means acts of persecuting, maltreating, beating; infringing upon the body and health; insulting or hurting the honour or dignity; isolating, driving away and other intentional acts that cause physical and psychological harms to a child. Child exploitation

means acts of forcing a child to work in contravention of the labour law; performing or manufacturing pornographic products; organizing or supporting tourist activities for the purpose of child sexual abuse; giving, receiving or supplying children for prostitution activities and other acts of employing children for mercenary purposes. Child sexual abuse is the use of violence, threat to use violence, coercion, incitement, or seducement of a child into sex-related activities, including raping, coercive intercourse, sexual intercourse, molestation with a child or employing a child for prostitution or pornographic purposes in any form.

186. Clauses 7 and 12 of Article 6 of the 2016 Law on Children also strictly prohibit “declining to provide, or concealing, hindering the provision of information on children being abused or children at risk of exploitation or violence to their families, educational institutions, or competent agencies and persons”; “make corrupt use of the child’s care custodian care to harm such child; take advantage of state policies and aid for children granted by organizations or individuals to seek profit”.

187. The 2015 Criminal Code also stipulates a number of child abuse-related offences such as: Abuse (Art. 140), Rape of a person under 16 (Art. 142), Sexual abuse of a person aged from 13 to under 16 (Art. 144), Engaging in sexual intercourse or other sexual activities with a person aged from 13 to under 16 (Art. 145), Molestation of a person under 16 (Art. 146), Employment of a person under 16 for pornographic purposes (Art. 147), Trafficking of a person under 16 (Art. 151), Swapping a person under 01 year of age (Art. 152), and Insults to another person (Art. 155), in which offences against “a person who the offender has the responsibility to care for, teach, or provide medical treatment for “or against “a person who the offender has the responsible to provide care or nurture” are all aggravating factors of criminal liability. Offenders in these cases are strictly punished.

188. On 1 October, 2019, the Council of Justices of the Supreme People’s Court also issued Resolution No.06/2019/NQ-HDTP guiding the application of provisions of Articles 141 (Rape), 142 (Rape of a person under 16), 143 (Sexual abuse), 144 (Sexual abuse of a person aged from 13 to under 16), 145 (Engaging in sexual intercourse or other sexual activities with a person aged from 13 to under 16), 146 (Molestation of a person under 16), 147 (Employment of a person under 16 for pornographic purposes) of the 2015 Criminal Code and trial procedures of sexual abuse cases of persons under 18 years old.

### **Response to Recommendations No. 39 (a), 39 (b), 39 (c) and 39 (d)**

189. The establishment of a national refugee system should be based on the real demand and the practical circumstances of Viet Nam. Viet Nam is not a party of the 1951 Convention or the 1967 Protocol on Refugees. At present, Viet Nam has no need for a national refugee system or training related to review procedures for refugee status.

190. Viet Nam has not yet received any request from asylum seekers and others seeking to request international protection.

### **Response to Recommendation No. 39 (e)**

191. The Vietnamese law does not have specific provisions regarding cases where deportation is inapplicable if there are reasonable grounds to believe that deportees would be subject to torture. However, to come up with appropriate decisions on deportation, the Court or competent persons shall take into account the interests of the deportees, the provisions of domestic and international law, including Article 3 of the Convention against Torture.

### **Response to the Comment No. 40 and Recommendations No.41 (a), 41 (b), 41 (c)**

192. According to the 2015 Law on Organization of Criminal Investigation Agencies and the 2018 Law on the People’s Public Security Forces, it is mandatory to receive legal

training at universities and institutes and have at least one year of practical working experience to be appointed as an investigation official and 04 years practical working experience to be appointed as an investigator or prison official. Provisions of the prohibition of torture, obtainment of testimony under duress, use of corporal punishment in criminal procedures are emphasized in all of these training courses. They are strictly prohibited acts stipulated in guiding documents of criminal procedures, especially in investigation and detention activities.

193. Viet Nam has been implementing these recommendations. On the basis of the Government's Plan (detailed in Decision No. 364/QD-TTg of the Prime Minister dated March 17th, 2015), all ministries, agencies and local authorities have been developing plans to implement and promulgate communication projects, compile specialized books and organize hundreds of communications programs, conferences, workshops, and seminars that are broadcast on mass media such as newspapers, radio, and television. Other plans include organizing training courses on human rights and combat against all forms of torture, and improving capacity and experience for thousands of civil servants, public employees and the people, especially for officials in charge of investigating, prosecuting, adjudicating, and executing criminal judgments, and officials providing medical examination and treatment for detainees. Through these activities, Viet Nam affirms that violations of the Convention against Torture are unacceptable, and such violations will be investigated, and the offender will be prosecuted. Viet Nam has provided a complete and detailed list of these activities, attached to Viet Nam's Initial Report on the implementation of the Convention against Torture and updated at the 65th Session of consideration of State Reports held by Committee against Torture in Geneva in November 2018.

### **Response to Recommendations No. 41 (d) and 41 (e)**

194. Medical personnel and other persons involved in the custody, interrogation or treatment of persons subjected to any form of arrest, detention or imprisonment have received mandatory education and training on basic rights, obligations and responsibilities as well as the order of procedures, methods and measures of conducting investigation and gathering evidence, etc. according to provisions of the 2015 Criminal Procedure Code, the 2015 Law on Organization of Criminal Investigation Agencies, the 2019 Law on Execution of Criminal Judgments, the 2015 Law on Execution of Temporary Detention and Custody, the 2011 Law on Complaints, the 2018 Law on Denunciations, the 2017 Law on State's Compensation Liability, which include the provisions of the Istanbul Protocol.

195. For example: According to clause 2, Article 16 of the 2015 Law on Execution of Temporary Detention and Custody, when receiving persons held in custody and detainees, medical staff of the detention and custody centers shall conduct health examinations and body checks and make a record of it. In the course of temporary detention or custody, persons held in custody and detainees are entitled to free medical care according to Article 7 of the Government's Decree No.120/2017/ND-CP guiding the implementation of the 2015 Law on Execution of Temporary Detention and Custody. For prisoners, inmates, trainees will all be examined and have their health records made in order to supervise their compliance to requirements on disease prevention and treatment as well as health care immediately following their arrival to prisons, compulsory education institutions, or reformatories.

196. Thus, Vietnamese legal system has incorporated provisions of the Istanbul Protocol into relevant laws, codes, decrees and circulars.

### **Response to Recommendation No. 42**

197. The statistics on criminal investigation and handling have been stipulated in legal documents such as Joint Circular No. 05/2018/TTLT-VKSNDTC-TANDTC-BCA-BQP dated November 12th, 2018 on coordination among agencies in collecting criminal statistics, which specifies collection of statistics on receiving, handling with complaints and information on crimes and petition for prosecution; initiation, investigation, prosecution

and adjudication of criminal cases; execution of temporary detention and custody, execution of criminal judgements among the agencies of the Supreme People's Procuracy, the Supreme People's Court, the Ministry of Public Security and the Ministry of Defense. Annually, the Government of Viet Nam reports to the National Assembly on the prevention and fight against crimes and law violations. In the general statistical report, there are also detailed appendices including lists, information on gender, age, ethnicity or nationality; information on complaints, denunciations, investigations, prosecution, adjudication and execution of criminal judgements.

198. The death penalty is the most severe punishment and Vietnamese law has provided in great detail regarding to whom it can be applied. Moreover, this is a penalty related to the convicts' right to life, therefore arrangements and procedures are very strictly carried out, from sentencing to execution. It is also conducted in a transparent manner in accordance with procedures and processes provided in the Criminal Procedure Code, the 2019 Law on Execution of Criminal Judgments and other relevant guiding documents. Every year, in the general report of the Vietnamese Government presented before the National Assembly, there are statistics on the sentencing and execution of death sentences, detailing on the crimes (denominations), execution agencies, and the number of prisoners on death row (see more in response to paras. 17b, 32).

### **Response to Recommendation No. 43**

199. Torture-related activities are investigated and examined by Vietnamese authorities. Law enforcement officers who commit torture-related acts are punished according to the law. Viet Nam has responded adequately to the specific cases which the Committee against Torture mentioned in the preceding paragraphs (please see also Viet Nam's response to paras.9b, 14, 22b, 22c).

200. For suitable recommendations, relevant Vietnamese agencies will formulate a plan on implementation of these recommendations. The outcomes of these implementations will be updated in Viet Nam's Report on the implementation of the Convention against Torture in the next report cycle.

### **Response to Recommendation No. 44**

201. The declaration of reservations on certain provisions of an international treaty is a normal deed for all countries. The Convention against Torture itself allows for reservation and none of its provisions prevent a member state from making a reservation.

### **Response to Recommendation No. 45**

202. Relevant Vietnamese agencies will carefully study international experience in participating in this Protocol, as well as the ability to participate in the remaining basic international conventions on human rights.

### **Response to Recommendation No. 46**

203. Viet Nam attaches great importance to cooperation and dialogue with the Special Rapporteurs of the United Nations Human Rights Council in the spirit of transparency, efficiency, balanced, and suitability with the functions and duties of the Special Rapporteur. From 2010 to 2019, Viet Nam hosted a total of seven Special Rapporteurs. A number of Special Rapporteurs of the United Nations Human Rights Council have proposed visits to Viet Nam. Viet Nam is currently planning to receive the Special Rapporteur on the Right to Development, Special Rapporteur on Adequate Housing. Viet Nam is always willing to welcome Special Rapporteurs, however, the reception of Special Rapporteurs depends on the schedule of the Vietnamese ministries, agencies, as well as the schedules of Special Rapporteurs. Therefore, with the visit proposals of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on

Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders, Viet Nam will consider to issue invitations to visit the country at an appropriate time.

#### **Response to Recommendation No. 47**

204. According to the conventional reports so far, Viet Nam has not submitted a common core document but only integrated basic information about Viet Nam in each national report on the implementation of the international convention on human rights. The HRI/GEN.2/Rev.6 Guidelines also do not make it compulsory to submit a common core document.

#### **Response to Recommendation No. 48**

205. Viet Nam will consider the possibility of cooperation based on practical needs. Recently, Viet Nam has cooperated with the United Nations High Commissioner for Refugees (UNHCR) in many projects, non-projects, technical assistance programs such as improving the professional capacity of judicial working staff in some provinces bordering Thailand, Laos and Cambodia; supporting ethnic minorities in the Central Highlands who crossed the border to Cambodia to repatriate and reintegrate into the community; supporting to settle issues related to stateless individuals, especially promoting the rights to nationality of women and children in the implementation of the Convention on the Elimination of All Forms of Discrimination against Women; assisting Viet Nam in studying the possibility of joining the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Viet Nam has also cooperated with UNDP, the EU and the Netherlands in organizing seminars and training courses on implementation of the Convention against Torture.

#### **Response to Recommendation No. 49**

206. Viet Nam has been implementing this recommendation. Viet Nam has published the contents of the Convention against Torture, Viet Nam's Initial Report on the implementation of the Convention against Torture and related documents on the web portal of the ministries, agencies and in media, newspapers and television (see also Viet Nam's response to para. 19b). The media also regularly reports on the organization of conferences, seminars of ministries, agencies and local authorities on their official websites accessible to the people. In drafting this report, due to the impacts of the Covid-19 pandemic, Viet Nam has not organized workshops. However, we have consulted on multiple occasions with agencies, organizations and individuals. Viet Nam will continue to promote these activities in the time to come.

#### **Response to Recommendation No. 50**

207. Viet Nam will proceed to develop and submit its 2nd Report on the implementation of the Convention against Torture in accordance with the normal procedures.

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