

**VIET NAM**

**Civil Society Report on the Implementation of the ICCPR  
(Replies to the List of Issues CCPR/C/VNM/Q/3)**

For the Review of the Third State Report of Viet Nam  
(CCPR/C/VNM/3)

At the 125<sup>th</sup> session of the Human Rights Committee  
(Geneva, 4 – 29 March 2019)

Submitted by: *HRS – GPAR and Partners*

*Hanoi, 3<sup>rd</sup> February 2019*

**With the support from:**



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## I - Introduction

### 1. Joining organisations



**Human Rights Space** is a civil society platform working on human rights protection and promotion in Vietnam, founded in 2016. HRS focuses on business and human rights, human rights education, and monitoring & reporting.

[www.HRS.org.vn](http://www.HRS.org.vn)

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**GPAR** The Cooperation Group for Governance and Public Administration Reform was established in 2011 by 21 organisations and individuals' members.

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The Independent Human Rights Advisors (“IHRA”) is a public interest initiative among young lawyers, students, and social activists in Vietnam. IHRA promotes universal human rights values through shadow education, empowering communities, and advising nongovernmental organizations and civil society organizations on different public interest projects in Southern Vietnam.

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**And community-based groups and activists from** academic, journalists, lawyers, human rights advocates, LGBTI groups, people with disabilities, students, women, youth activists.

### 2. Methodology

In 2018, HRS and GPAR founded a coalition to prepare for the Universal Periodic Review process of Vietnam (the “UPR”) for which the 3<sup>rd</sup> review was on January 22, 2019 (the “Coalition”). The Coalition includes community-based groups and individuals, including academic, journalists, lawyers, human rights advocates, LGBTI groups, people with disabilities, students, women, youth activists, and representatives from international and national NGOs, amongst others. This report is based on the Coalition’s July 2018 UPR submissions and subsequent Factsheets on Recommendations for the UPR prepared in December 2018.

The UPR report was a combination of reports and testimonies from group members and supported by HRS and GPAR. The final submission to the UPR process also adopted comments, suggestions and recommendations from one national consultation with 92 participants, and one regional consultation with 41 participants from 74 international and local NGOs, media, academic institutions, community-based groups and individuals. The Coalition continued its research efforts to gather updated information for the compilation of factsheets in December 2018.

This report supplements the findings from the UPR submissions and Factsheets mainly through desk research and legal analysis. In a few instances, the Coalition conducted interviews with individuals who are directly involved in the relevant situation. This report also incorporates the advice and comments from national experts and CCPR Centre.

Several English translations of Vietnamese laws and regulations provided in this report were purchased through access to [www.luatvietnam.vn](http://www.luatvietnam.vn) and [www.thuvienphapluat.vn](http://www.thuvienphapluat.vn). In a few necessary cases, where translation from purchased version was incorrect, a minor edition from the author was made available.

### 3. Contact details

Email: [HRS@HRS.org.vn](mailto:HRS@HRS.org.vn)

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## II - Responses to the List of Issues

### A. Constitutional and legal framework within which the Covenant is implemented

#### Issue 1:<sup>1</sup>The status of the Covenant in the domestic legal system and in particular whether its provisions can be invoked directly before the courts.

##### 1. The primacy of the Covenant over national law

Apart from the Constitution, the Covenant has primacy over all national law, as per the Law of International Treaties No. 108/2016/QH13 dated 09/4/2016, article 6<sup>2</sup>. Under the law, when adopting an international treaty, Vietnamese legislators could indicate if a treaty would have direct application or only partial application in the national law. An example of this is the National Assembly's resolution to adopt the CPTTP.<sup>3</sup> Vietnamese legislators have also provided explicit primacy of international treaties such as in the Law on Gender Equality.<sup>4</sup>

Prior to the passage of the Law on Signing, Ratifying and Implementing International Treaties in 2005,<sup>5</sup> it was commonly understood that international treaties did not have direct application in the national law of Vietnam. Therefore, a treaty must be “domesticized” through the adoption and elaboration of domestic legislation. The ICCPR was ratified in 1982 and the resolution on the adoption of the Covenant in the domestic legal framework is not found publicly available, therefore, it was not clear at the time of ratification if the Covenant could be directly applicable, in parts or as a whole, in the national law.

Whether the Covenant can be invoked directly before the Court. In an analysis provided by Ministry of Foreign Affairs for the National Assembly's Committee on International Affairs on options of the Draft Law on International Treaties, it was suggested that without a legislation explicitly indicating direct application of an international treaty to which Viet Nam is a member, “judges could refuse to apply the relevant treaty” as “judges only act on laws” and “an international treaty is not considered (an integral

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<sup>1</sup> The numbering of issues is used in accordance with the numbering in the List of Issues by the Human Rights Committee, Document CCPR/C/VNM/Q/3

<sup>2</sup> “Article 6. Treaties and provisions of domestic laws: 1. In cases where a legal document and a treaty to which the Socialist Republic of Vietnam is a party, contains different provisions on the same matter, the provisions of the treaty shall prevail, except the constitution. 2. On the basis of the requirements, contents and nature of a treaty, the national assembly, the state president or the government, when deciding to consent to be bound by the treaty, shall also decide on the direct application of the whole or part of the treaty to natural, judicial or other entities in case the provisions of the treaty are express and specific enough for implementation; or decide or propose to amend, supplement, cancel or promulgate legal documents for the implementation of the treaty.”

<sup>3</sup> Resolution No.72/2018/qh14 dated 12/11/2018 on the Ratification of Comprehensive and progressive agreement for Trans-Pacific Partnership (CPTPP) and relevant documents, article 02. Another example is the resolution of the National Assembly on the ratification of CAT, Resolution No. 83/2014/QH13 on 28/11/2014. This resolution specified non-direct application of Article 8 para.2 of CAT. If there is no similar resolution on the adoption of ICCPR in the national law at its ratification in 1982, it could be interpreted that the Covenant applied directly in the national framework.

<sup>4</sup> Law on Gender Equality No. 73/2006/QH11. “Article 3: Application of treaties on gender equality. When a treaty to which the Socialist Republic of Vietnam is a contracting party contains provisions other than those of this Law, the provisions of that treaty shall be applied.”

<sup>5</sup> Revised in 2016 as Law on International Treaties No. 108/2016/QH13 dated 09/4/2016.

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part) of (national) laws”. In the same paper, however, the Ministry pointed out that this argument was flawed and contradicts the principles of the Law of Treaties 2005.<sup>6</sup>

Through Resolution 03/2017/HD-TP of the Council of Judges<sup>7</sup> in July 2017, Court decisions are required to be published and publicly available. To date, the Supreme Court published 221,026 decisions at all levels, including recommended precedents.<sup>8</sup> Through an analysis of published decisions we have not been able to identify a case in which the Covenant was referred.

### **Suggested Questions:**

- Please provide information on the national legislative document on the ratification of the Covenant in 1982, which specifies the status of the Covenant in the national law. Please comment if such resolution (if it is the case) could be updated to give a stronger status of the Covenant in light of recent increase commitment of the country to the international human rights, in line with Constitution 2013 and the Law of International treaties 2016.
- Please provide information on any case law or trial in which the Covenant was invoked and how to systematically identify these cases in the national jurisprudence, and if such cases would be considered “recommended precedents.”

## **2. Measures to ensure that the national legal framework is fully consistent with the Covenant.**

The National Assembly is mandated to oversee the ratification<sup>9</sup> and implementation<sup>10</sup> of international treaties. To date, it was not known if the National Assembly has conducted any specific reviews of the implementation of the Covenant.

In 2014, the Prime Minister has tasked the Ministry of Justice (MoJ) to coordinate the implementation, monitoring and reporting of the ICCPR. The implementation of the ICCPR was also boosted with the enactment of a pertinent government action plan. MoJ is also mandated to review the legality of laws and regulations. In 2017, the MoJ reviewed 9,988 legal documents, of which 932 documents were draft legal documents by different ministries.<sup>11</sup> Reporting from the review does not provide details of whether any legal instruments are inconsistent with the Covenant.

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<sup>6</sup> Ministry of Foreign Affairs. Department of International Law and Treaties. Impact Assessment Report of the Law on Signature, Ratification and Implementation of International Treaties (revised) (in Vietnamese: Báo cáo Đánh giá tác động của Luật Ký kết, gia nhập và thực hiện điều ước quốc tế (sửa đổi)). Page 18. Accessed at [http://quochoi.vn/uybandoingoi/content/tintuc/Lists/News/Attachments/110/\[8\]%20Bao%20cao%20danh%20gia%20tac%20dong-Final.pdf](http://quochoi.vn/uybandoingoi/content/tintuc/Lists/News/Attachments/110/[8]%20Bao%20cao%20danh%20gia%20tac%20dong-Final.pdf) on January 26, 2019 .

<sup>7</sup> <https://congbobanan.toaan.gov.vn> .

<sup>8</sup> By the adoption of the Civil Proceedings Code and the Administrative Proceedings Code in 2015, for the first time the application of legal precedents was recognised in Vietnam. It became a practice with the power of Resolution 03/2015/NQ-HĐTP of the Council of Judges, which came to effect on 16/12/2015.

<sup>9</sup> Constitution 2013, article 70, para. 14.

<sup>10</sup> Law of international treaties No. 108/2016/QH13 dated 09/4/2016, Article 7.

<sup>11</sup> Report No. 01/BC-BTP 02/01/2018 MoJ’s annual report 2017. Accessed at <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Bao-cao-01-BC-BTP-2018-tong-ket-cong-tac-tu-phap-phuong-huong-nhiem-vu-cong-tac-2017-2018-374232.aspx>

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Without a Constitutional Court, no mechanism exist which identifies or reviews legislation to ensure adherence to the Covenant nor to address legislation in contradiction of the Covenant once it is adopted by the National Assembly or the Prime Minister. The National Court is mandated by the Law on the Organisation of the People's Court 2014 to “detect and recommend competent agencies to consider and amend, supplement or annul legal documents which contravene the Constitution, laws or resolutions of the National Assembly, or ordinances or resolutions of the National Assembly Standing Committee in order to guarantee lawful rights and interests of individuals, agencies and organizations.”<sup>12</sup> However, Courts do not have a similar mandate if it finds any inconsistency of national laws with the Covenant or international treaties to which Vietnam is a party.

The national framework could completely ignore a right enshrined within the Covenant, which is the case of the right to freedom of thoughts and conscience. Freedom of thought and conscience is not included in the Constitution 2013 and elsewhere.

### **Suggested questions:**

- In the absence of recognition of the right to freedom of thought and conscience in the national framework, in particular Constitution 2013, please elaborate how this Covenant right is respected and protected in the national legislation and in practice and through which mechanism?

### **Recommendations for Issue 1:**

#### **The State Party should:**

- 1) Adopt explicit provisions to indicate the primacy of the Covenant over national law, either in a separate resolution or in relevant laws.
- 2) Have in place a mechanism to encourage a direct application of the Covenant, including the use of the Covenant in legal proceedings, and monitor these cases systematically.
- 3) Amend the Law on Organisation of the People's Court to require the Court to release findings and recommendations regarding inconsistency with the Covenant found in the national law.
- 4) Continue its programs on raising awareness about the Covenant, including providing the HR Committee's General Comments in Vietnamese and other applicable local languages.
- 5) Strengthen the role of the National Assembly in overseeing the implementation of human rights treaties to which Vietnam is a member, including ICCPR; Raise awareness and capacity of elected bodies on the obligations of Vietnam following relevant international human rights standards and instruments.

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<sup>12</sup> Law on the organization of the People's Court No. 62/2014/QH13: During a hearing, courts shall detect and recommend competent agencies to consider and amend, supplement or annul legal documents which contravene the Constitution, laws or resolutions of the National Assembly, or ordinances or resolutions of the National Assembly Standing Committee in order to guarantee lawful rights and interests of individuals, agencies and organizations; and competent agencies shall reply to courts on results of handling such legal documents in accordance with law to serve as a basis for courts to settle cases.

### Issue 2: Access to remedies

1. **Constitution Court or similar mechanisms** not available in Vietnam.
2. **A National Human Rights Institution** (“NHRI”) has been recommended by several countries at all three Vietnam UPR sessions in 2009, 2014 and 2019. Such an institution has been recommended by human rights bodies and Vietnam pledged the establishment of same as a candidate for the Human Rights Council in 2013. To date, however, the government has not published a clear action plan for the establishment of the institution.

The Penal Code 2017 provides a number of provisions on crimes on violations of freedom and rights of citizen in Chapter XV.<sup>13</sup>

### Suggested questions:

- Please provide statistics on the number of violations of civil and political rights of citizens with regard to Chapter XIII of the Penal Code 2002 and Chapter XV of the Penal Code 2017, the number and nature of convictions for those acts and if any conviction was made for violation from state-actors

### Recommendations for Issue 2

#### **The State Party should:**

- 1) Develop an action plan toward the establishment of an NHRI following the Paris Principle with clear indication on when the institution will be in place.
- 2) Ratify the first and second Optional Protocols to the Covenant.

## **B. Non-discrimination**

### Issue 3: Steps have been taken to adopt comprehensive anti-discrimination legislation

#### **1. Anti-discrimination framework**

Non-discrimination is a principle provided in the 2013 Constitution and a number of national legislations, as listed in detail in Annex 1. Yet the legal framework on non-discrimination is not comprehensive. For example, the 2013 Constitution forbids discrimination in five dimensions: civil, cultural, economic, political, and social life. While the dimensions may be considered comprehensive, the prohibited grounds for discrimination are not explicitly defined and therefore the Constitution is not compatible

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<sup>13</sup> Chapter XIII, Penal Code 2002; revised into Chapter XV, Penal Code 2017. The Chapter includes offenses on arbitrary arrest and detention (Article 157); intrusion of residence (Article 158); intrusion of private communications (Article 159); violation of the right to vote, to stand for election and to vote in referendum (article 160); fabricating election or referendum results (Article 161); Arbitrary terminate employments of public servants or employees (Article 162); violation of the right to association and assembly (Article 163); Violation of the right to freedom of religions or believes (Article 164); Violation of the right to gender equality (Article 165); Violation of the right to denunciation and allegation (Article 166); Violation of the right to freedom of speech, press, access to information, and demonstration (Article 167).

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with those as provided in ICCPR and other international human rights treaties. The table below provides an overview of non-discrimination prohibition in some major legislations.

Laws	Prohibited grounds of discrimination explicitly provided for											
	Race	Colour	Sex	Language	Religions	Age	Political and other opinions	Economic status	Birth	National and social Origin	Other listed status <sup>14</sup>	Other status as non-exhaustive listing
Constitution 2013	No	No	√	No	No	No	No	No	No	No	General	No
Civil Code 2015	No	No	No	No	No	No	No	No	No	No	No	No
Penal Code 2017	No	No	√	No	√	No	No	No	No	√	√	No
Labor Code 2012	√	√	√	No	√	No	No	No	No	√	√	No
Criminal Procedure Code 2015	√	No	√	No	√	No	No	No	No	No	√	No
Civil Procedure Code 2015	√	No	√	No	√	No	No	No	No	No	√	No
Law on Election 2015	No	No	No	No	No	No	No	No	No	No	No	No
Law on Access to Information 2016	No	No	No	No	No	No	No	No	No	No	No	No
Law on Press 2016	No	No	No	No	No	No	No	No	No	No	No	No
Law on Gender Equality 2006	No	No	√	No	No	No	No	No	No	No	No	No
Law on Children 2016	No	No	No	No	No	No	No	No	No	No	No	No
Law on Belief and Religion 2016	No	No	No	No	√	No	No	No	No	No	No	No
Law on Family and Marriage 2014	No	No	No	No	No	No	No	No	No	No	No	No
Law on Social Insurance 2014	No	No	No	No	No	No	No	No	No	No	No	No

**Table: Overview of non-discrimination provisions in some major legislations.**

<sup>14</sup> See Annex 1 for these status.

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Some laws provide other grounds of discrimination different from those grounds requested in the List of Issues, e.g. social stratum, educational level, occupation and social position as in the Law on Administrative Procedures 2015.<sup>15</sup>

**Social stratum** is a concept rooted in the Land Reform in the North Vietnam in 1954, and in the Social Reform in the South in 1976, where one family would be defined as belonged to different strata to construct different classes.<sup>16</sup> The concept remains valid in the administrative proceedings. For instance, to apply for a public job, one person would have to submit a self-declared “CV” certified by commune-level People’s Committee in which the person should identify the social stratum her/his family was given or self-identified. In the application for candidacy in the election, the applicant is required to do the same.<sup>17</sup>

Across different important legislation, the prohibited grounds of discrimination are not provided explicitly elsewhere for age, political and other opinions, health and disabilities status, and sexual orientation and gender identity.

### 2. Steps taken towards legal recognition of same-sex couples.

In 2014, the Law on Marriage and Family removed the ban on same-sex marriage and all fines related to same-sex weddings or ceremonies.<sup>18</sup> However, the Government does not formally recognize same-sex marriages or any form of same-sex cohabitation, including those conducted in other countries. As a result, same-sex couples are denied legal rights and protections, including inheritance rights, social security and adoption. Adoption is limited “*for a single parent or a couple of husband and wife*”.<sup>19</sup>

### 3. Ensure non-discrimination for transgender and intersex individuals

**a. Access to gender affirmation treatment and legal gender recognition.** Article 37 of The Civil Code 2015 recognized the rights of transgender people to access legal gender recognition and gender affirmation treatment<sup>20</sup>. Although the Civil Code took effect in 2017, an additional Law on Transgender Persons must be enacted to give effect to Article 37. This is not officially scheduled in the 2018/2019 law-making agenda of the National Assembly, and therefore this right cannot be and

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<sup>15</sup> See Annex 1 for details.

<sup>16</sup> These strata included, for instance, *có nông* (very poor peasants) *bần nông* (poor peasants), *trung nông* (middle peasants), *phú nông* (rich peasants), *địa chủ* (land owner), *công chức* (public officials), *viên chức* (public servants), *dân nghèo* (poor urban dwellers), *tiểu thương* (small merchants), *tiểu chủ* (small entrepreneurs), *tiểu tư sản* (small capitalists), *tư sản* (capitalists).

<sup>17</sup> See, for instance, guidelines in the Communication No.31/HD-HĐBC dated 28/02/2011 on instruction for filling in the application for candidacy of the Election of the National Assembly Term XIII and deputies of People’s Council at all levels, terms 2011-2016. Accessed at <http://www.sonoivu.hochiminhcity.gov.vn/baucuXIII/lists/posts/post.aspx?Source=/baucuxiii&Category=&ItemID=33&Mode=1> (Website of Ho Chi Minh city’s Department of Home Affairs) on January 30, 2019

<sup>18</sup> *Law on Marriage on Family 2014. Article 8.* <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11018>, accessed 11 July 2018.

<sup>19</sup> Law on Adoption, Article 8 para.3

<sup>20</sup> *The Article 37 reads, “The sex change is performed as regulated by law. Individuals who underwent surgery have the rights and obligation to register the change of civil status according to the law on civil status; have personal rights consistent with new gender as stipulated by this Code and other relevant laws.”*

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will not be practically realized in the near future. Additionally, the current approach in the Civil Code and subsequent drafts of Laws on Transgender People are written from a medical perspective and implies forced medical interventions, which violates the rights of self-determination on gender identity.

### **b. Right to bodily autonomy of intersex people**

The new Civil Code of 2015 reiterated the regulation in Decree 88/ND-CP/2008 on people who are born with intersex status. A young intersex person may have to undergo sex change surgery without their consent<sup>21</sup>, creating a risk that their assigned gender might not match with their gender identity, as well as other short-term and long-term health problems.

#### **Suggested questions:**

- Please provide information on any review of laws and regulations to identify possible discriminatory provisions, and elaborate on which specific grounds of discrimination were used in such review, in addition to the gender review as indicated in the Reply to the List of Issues by the Government, para 10.<sup>22</sup>
- Please elaborate on the application of category “social stratum” in the proceedings of recruitment of government officials and staff, and in the qualification of candidacy for election. Please provide information on the purpose of maintaining or using this categorisation and measures to prevent and address discrimination in this regard.
- In the absence of explicit prohibition of discrimination on political and other opinions, age and health status, and sexual orientation, please elaborate on measures taken to raise awareness on these areas, and address discrimination based on these grounds.
- Please elaborate on measures to implement Provision No.37 of the Civil Code 2015 on Gender re-assignment? Why an adopted law could only be enacted by another new law?
- Please elaborate on the measures Vietnamese Government will take to speed up the process and make sure transgender people enjoy their recognized rights in reality?
- Self-determination of gender identity without medical requirement is one of the key human rights principles. Please elaborate on the measures that the Vietnamese Government will take to ensure this principle in the upcoming Law on Transgender People?
- Please elaborate on the measures to address equal marriage issues in the upcoming midterm review of the Law on Marriage and Family?

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<sup>21</sup>*Civil Code 2015. Article 36. <http://hethongphapluatvietnam.net/law-no-91-2015-qh13-dated-november-24-2015-the-civil-code.html>, accessed 11 July 2018.* If a person is under 9 years of age, the requirement for medical intervention and changes to documents are decided by the parents and guardians without that person’s consent. If that person is between the age of 9 and 18, the requirement for medical intervention and changes to documents will need to have the consent of that person. Refer to *Form number 08, TP/HT-2012-TKTD, CCHT* in the attached appendix of *Circular number 05/2012/TT-BTP*.

<sup>22</sup> CCPR/C/VNM/Q/3/Add.1 Para.10

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- Please elaborate on the measures to stop non-consensual medical intervention on intersex infants and children and ensure their right to bodily autonomy?

### **Recommendations for Issue 3:**

#### **The State Party should:**

- 1) Comply with Article 2 of the Covenant, reinforce the protection against discrimination through an introduction of a comprehensive and non-exhaustive list of prohibited grounds for discrimination, including race, colour, sex, political or other opinions, property, birth, sexual orientation, gender identity, health and other status in the Constitution and relevant laws, in particular the Law on Election, the Law on Access to Information, the Criminal Procedure Code, the Administrative Procedure Code, the Law on Marriage and Family, and the Law on Children.
- 2) Adopt a Law on Anti-discrimination in accordance with the principles of non-discrimination including specific measures to identify and punish violators, and provide remedies for victims of discrimination.
- 3) Implement training programs for policy makers in the legislative, executive and judicial branches about the obligations of the Member State on the non-discrimination principles of international human rights conventions.
- 4) Review and revise all discriminatory laws and regulations to comply with international human rights standards, including: the Law on Marriage and Family; the Labor Code; the Law on Social Insurance and the Law on Election.
- 5) Conduct a comprehensive review on the status of discrimination across public services and provide measures to eliminate these practices, including public education programs and introducing a mechanism to address grievances.
- 6) Legalize same-sex marriage to ensure same-sex couples have the equal rights to founding a family and other civil protection before the law by 2025.
- 7) Enact a legal instruction, as required by the Civil Code, within 2 years, to give effect to Article 37 and ensure that all people can access gender affirmation treatment and legal gender recognition on the basis of self-determination.
- 8) Immediately outlaw non-consensual and non-medically-necessary medical interventions performed on intersex infants and children in the Civil Code and in other laws, and guarantee intersex people their rights to bodily integrity and self-determination.

## **C. Right to life (arts. 6, 7, 9, 10 and 14)**

### **Issue 8: The use of Death Penalty**

#### **1. Offenses subjected to the death penalty.**

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Vietnam has reduced offenses that may be subjected to the death penalty in the revised 2015 Penal Code. Vietnam is imposing the death penalty on a total of 18 offenses in the 2015 Penal Code, including eight non-violent crimes: attempting to overthrow the people's government (Article 109); espionage (Article 110); manufacturing and trading of counterfeit medicines for treatment or prevention of diseases (Article 194); illegal manufacturing, trafficking and dealing of drugs (Article 248, 250, 251); embezzlement (Article 253); and receiving bribes (Article 354). The country ended the use firing squad execution and instead uses lethal injection as of 2011. However the lethal chemical used for execution is unknown.

According to the response of Vietnamese delegation in the 3<sup>rd</sup> UPR session at the UN Human Rights Council on 22/01/2019,<sup>23</sup> data on the application of the death penalty is classified as a state secret.

### **2. Detention conditions of prisoners in the death row**

The condition is provided by the Circular 39/2012/TT-BCA of the Ministry of Public Security on 04/7/2012. Following the circular, prisoners on death row are allowed to meet with: grandparents, parents, legally adopted parents, parents-in-law, siblings, spouse, children, sons- and/or daughters-in-law. The family visits are for a maximum of one-hour, once a month, and may include up to five visitors. Detention managers must approve the family visit in advance. Prisoners on the death row may be shackled up to 24 hours a day, with maximum one break of 15 minutes a day for defecation.<sup>24</sup>

### **3. Measures for reviewing death penalty judgment.**

One particular case involves an inmate named Ho Duy Hai who was convicted for murdering two women in 2008. He was sentenced to death. In 2015, the execution was stayed upon heavy criticism and public appeal. A report by an independent committee of the National Assembly concluded that the investigation process was flawed. The murder weapon (i.e. a knife) was never found and in fact was later on bought by a police officer and introduced as an admitted exhibit, therefore effectively undermined Hai's right to fair trials and presumption of innocence. Both courts at the first instance and appellate failed to consider the evidence as inadmissible. Despite National Assembly investigation, the police authority and procuracy maintain that such violations by the investigation police are not sufficiently serious to change the court's verdict. As such, Hai is still in jailed and awaits his final judgment.

### **Suggested questions**

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<sup>23</sup>Webcasted through [www.webtv.un.org](http://www.webtv.un.org)

<sup>24</sup> In the An Lao Temporary Detention of Hai Phong Province, Nguyen Van Chuong, convicted of murder and sentenced to death in 2008, has been confined solitarily in a small cell for years. Chuong denied all charges against him and is still on the petition for reviewing his case. He has to lie down on a cement platform and get shackled for 24/7 even when he does not express any sign of wanting to commit suicide, escaping from, and/or any other dangerous acts, according to the law. In addition, he could not use the toilet for defecating because of being shackled, which violates the law as regulated that the inmates should be allowed to go to the toilet unshackled for once a day for 15 minutes and to change their shackle from one foot to another every week.

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- Please explain the grounds for which statistical and information on the application of death penalty are considered classified as state secret.
- Please provide more information on the steps taken to address cases such as Ho Duy Hai where credible evidence and observation exists suggesting a violation of fair trial rights.

### **Recommendations for Issue 8**

#### **The State Party should:**

- 1) Initiate a moratorium on imposing capital punishment and especially for non-violent crimes.
- 2) Increase transparency in the application of the death penalty through providing legal requirements for the publishing of adequate, and accessible information on the death penalty annually; to release a report on the use of the death penalty in Vietnam in the past 20 years; and announce to the public at once the name (or names) of the lethal drugs and its dosage which the government has been using for executions currently and in the past;
- 3) Initiate the appropriate legal proceedings to review death penalty judgments, in particular those cases of Ho Duy Hai, Le Van Manh, and Nguyen Van Chuong, and if possible, to dismiss the charges filed against them for lack of credible evidence and exonerate them at once;
- 4) Improve the detention conditions of prisoners on the death row, improve their access to visits by family members and friends.
- 5) Facilitate discussions on the abolition of death penalty at the national and international levels, by all stakeholders. Continue to raise awareness regarding the abolition of the death penalty within government's officials and among members of society as efforts towards eventual abolition of the death penalty in the country.
- 6) Ratify the 2<sup>nd</sup> Optional Protocol to the Covenant aiming at the abolition of the death penalty.

## **D. Right to a fair trial and independence of the judiciary (art. 14)**

### **Issue 15: Independence and Impartiality of judges**

#### **1. Independence and impartiality of judges**

The Constitution recognized that judicial officials must adjudicate independently and only in accordance with the laws and any interference to the adjudication by any persons, organizations, agencies, bodies shall be strictly prohibited.<sup>25</sup> In practice, the appointment of the Chief Justice of the Supreme Court must be made by the Communist Party's Politburo. Other key judicial official positions shall be decided by

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<sup>25</sup>Article 103.2 – Vietnam's Constitution

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relevant Communist Party’s bodies.<sup>26</sup> The Law on Organization of People’s Court stipulates that a “firm political stance”<sup>27</sup> is a key requirement to becoming a judge in Vietnam. No further provisions elaborate this criterion. The Joint Circular 01/2011/TTLT-TANDTC-BQP-BNV dated 20 October 2011<sup>28</sup> stipulates three criteria for judges in Vietnam, being: 1) “strictly comply with... the Party’s principles, policies”<sup>29</sup>, 2) “aggressively combat against persons, or actions which may jeopardize the Party”<sup>30</sup>, and 3) “being not among the cases as set forth in... Regulation 57-QD/TW of the Politburo on “Questions on Protecting the Party internally”. The National Council for Selection and Supervision of Judges consists of representatives from six organisations; all are officially under the leadership of the Communist Party.<sup>31</sup>

As a result, the reality is, most (if not all) judges in Vietnam are members of the CPV although art 5 of the *Ordinance on Professional and Lay Judges of the People’s Courts 2002* does not include this requirement.<sup>32</sup>

To enhance efficiency and also accountability, the Supreme Court has sought to limit the number of cases to be supervised and re-tried. The performance targets are set per year, and report to the Supreme Court by year-end. The performance review in Viet Nam is an emphasis of quantitative indicators; the counting on number of cases revised or annulled per year.<sup>33</sup> Since 2004, the review provides the criteria that is used by the Council for Judge Appointment to when decide if a judge qualifies for reappointment

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<sup>26</sup> There is no regulation in Vietnam’s legal system that forbids judges and people’s jurors from being politically affiliated. On the contrary, the only legally recognized political party in Vietnam, CPV, enjoys a significant position in deciding and appointing the judicial officers. The CPV’s Politburo passed the Regulation 105-QD/TW on 19 December 2017 on the hierarchy of management, appointment of cadres, nomination of candidates for public offices (“**Regulation 105**”). According to this Regulation, the CPV shall centralize its authority to staffing and cadres appointment (Article 2.1 – Regulation 105). In practice, the Chief Judge of the Supreme People’s Court currently serves as a member of the CPV’s Secretariat. Same practice is applied at local levels, and applied for the People’s Procurators.

<sup>27</sup> Article 67.1 – Law on Organization of People’s Court

<sup>28</sup> JC 2011 is to interpret the now obsolete Ordinance on Judges and People’s Jurors, but since it has never been officially repealed, it is still applicable in practice.

<sup>29</sup> Article 1.1.a) – JC 11

<sup>30</sup> Article 1.1.d) – JC 11

<sup>31</sup> The Council includes: Chief Justice of the Supreme Court, Deputy Chief Justice of the Supreme Court, Chief Justice of the Central Army’s Court, Justices of High level Court, Representative of the leadership of the Central Committee of the Fatherland Front, Representatives from the Office of the President, Ministry of Justice, and the Politburo of Vietnam Association of Jurists. (Law on Organization of People’s Court, No. 62/2014/QH13, Article 70. Among these agencies, the Vietnam Association of Jurist is an association under the leadership of the Party (see Charter of the Vietnam Association of Jurists, Preamble, accessed at the website of the association <http://hoiluatgiavn.org.vn:8080/dieu-le-hoi-luat-gia-viet-nam-d478.html>, 22/01/2019); the Fatherland Front is a political-social umbrella organization, in which “the Party is a member, and the leader of the Fatherland Front” (Official website of the Fatherland Front, accessed at <http://mattran.org.vn/Home/GioithieuMT/gtc4.htm> on January 20 2019. All 44 members organizations of the Fatherland Front are associations under the leadership of the Communist party. As a result, all members of the National Council for Appointment and Supervision of Judges were Party members.

<sup>32</sup> Ordinance No. 02/2002/PL-UBTVQH11 of the National Assembly’s Standing Committee of 4 October 2002 on Judges and Jurors of the People’s Courts, art 38(1).

<sup>33</sup> Also according to the annual report of the Supreme Court in 2012, in administrative cases, usually due to the nature of having one side is a member of the local government, it is difficult for local courts to come up with objective judgment. Many administrative judgment were canceled or corrected by the judge. (Supreme Court, Báo cáo tổng kết công tác năm 2012 and nhiệm vụ trọng tâm công tác năm 2013 của ngành Tòa án nhân dân (18/01/2013) (Annual Report of Operation in 2012 and Major Tasks for 2013 of the People’s Court System). BC05/BC-TA . Page 7. Available at the website of the Supreme Court: [http://toaan.gov.vn/portal/page/portal/tandtc/545500/3827663?p\\_state=6&p\\_nam\\_baocao=22&p\\_loai=1](http://toaan.gov.vn/portal/page/portal/tandtc/545500/3827663?p_state=6&p_nam_baocao=22&p_loai=1)).

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or not.<sup>34</sup> Decision No. 01/QĐ-TANDTC by the Supreme Court dated 02/01/2019 on the Regulations for Evaluation of Performance and Ranking of Judicial Officials, Servants and Employees specified that the first and foremost criteria to assess performance of judicial officials and employees is willingness to be “obedient to the directions, guidelines and policies of the Party and the laws of the State”.<sup>35</sup> The same decision provides that the performance evaluation of judicial senior officials is subject to guidelines in the Decision No. 89-QĐ/TW dated 04/8/2017 of the Party’s Central Committee.

### 2. Outdoor trials (*xet xu luu dong*):

In the period from January 2015 to July 2016, 7,283 cases were tried outside of the courtrooms (11.8% of the total trials) according to one report.<sup>36</sup> In 2017, the total number of cases that were tried outside of the courtrooms was 9,029 cases.<sup>37</sup> This increasing trend was to respond to the National Assembly’s “**Resolution 37**”<sup>38</sup> which requires the court system to increase the number of outdoor trials every year and report accordingly. There are no further rules, rationality or criteria on cases that may be tried outdoor. However, the common belief of judges (and National Assembly deputies) is that outdoor trial is to educate the mass on the consequences of legal violations and prevent future crimes.<sup>39</sup> In practice, it appears that outdoor trials rarely produce an acquittal verdict, some outdoor trials try juvenile offenders<sup>40</sup>. Such practice also limits the time that courts can adjudicate due to logistical reasons<sup>41</sup> and ultimately may undermine the presumption of innocence of defendants as the verdict may be pre-mediated to serve the purpose. The time limits may also limit a lawyers’ ability to defend his/her clients.

In 2018, there were calls among judges to abolish this practice. The Chief Justice announced in a press conference in early 2018 that the practice of outdoor trials would be halted and the Supreme Court was going to inform the National Assembly about such decision.<sup>42</sup> However, the abolishment is not within

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<sup>34</sup> Judges in Viet Nam to be re-appointed every 5 years - Law on Organization of People’s Court 2014, Article 74 Term of office of judges: The initial term of office of judges is 5 years. For judges who are reappointed or appointed to another judge rank, the subsequent term of office is 10 years.

<sup>35</sup> Decision No. 01/QĐ-TANDTC by the Supreme Court dated 02/01/2019 on Regulations for evaluation of performance and ranking of judicial officials, servants and employees. Article 12: Contents of performance evaluation, para. 1(a). The point was detailed in a previous decision No. 2927/QĐ-TANDTC dated 19/12/2013 as “ (i) the incumbent and his/her family members are obedient to the directions, guidelines and policies of the party and policies and laws of the State; (ii) attitude in the study of the Party’s resolutions and political training; attitude in the implementation of the Party’s resolution and orders; discipline in the speech, consistency between speech and actions; struggling to defend the Party’s credo, regulations and opinions against negative and deviated practices..” (Article 7, para. 1)

<sup>36</sup><http://daibieunhandan.vn/default.aspx?tabid=81&NewsId=383160>

<sup>37</sup><http://congly.vn/thoi-su/de-nghi-duoc-dung-thuc-hien-chi-tieu-xet-xu-luu-dong-236162.html>

<sup>38</sup> Resolution No. 37/2012/QH13 dated 23 November 2012 on prevention and combating against crimes and legal violations by the People’s Procuracy and People’s Court

<sup>39</sup><http://www.vkssoctrang.gov.vn/5-chitiettin7.html>;

<http://tcdcpj.moj.gov.vn/qt/tintuc/Pages/dien-dan-cong-tac-tu-phap.aspx?ItemID=147> etc.

<sup>40</sup>Saigon GP Daily 2012, “Thousands attend trial of 18-year-old killer Le Van Luyen”, viewed on 20 April 2014, <http://www.saigon-gpdaily.com.vn/Law/2012/1/99341/>

<sup>41</sup> For example, a very high-profile homicide case involving 3 defendants and 9 victims in 2015 was tried outside the courtroom. The trial took place within 12 hours and the verdict was issued at 7 PM same day.

<sup>42</sup> Zing.vn. Sắp dừng hẳn việc xét xử lưu động (is the practice of outdoor trials going to halt?) 09:22 01/02/2018 <https://news.zing.vn/sap-dung-han-viec-xet-xu-luu-dong-post816547.html?fbclid=IwAR2I3H-gBfy90xCfUz9f51mVA0NwXYzEZ5KuCoNATNH9O2GYLpzQV7jexw> accessed 23/01/2019.

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sight, especially when in a recent occasion, the Prime Minister has advocated for the introduction of outdoor trials against alleged perpetrators in some serious cases.

### Recommendations for Issue 15

#### **The State Party should:**

- 1) Immediately review and remove criteria on political stands in the selection and performance review of judges and judicial officers, and provide measures to ensure independence and impartiality of judges.
- 2) Amend the Constitution 2013 and the Law on Organization People’s Court 2014 in principle of independence of the court system with the legislature and the executive. The term of appointment of judges should be extended, and judges should receive decent pay.
- 3) Abolish the practice of outdoor trials to ensure the right to a fair trial, the right to presumption of innocence, effective legal representation, and fair trials for defendants; Repeal National Assembly’s Resolution 37 for the same effect.
- 4) Enhance participation and monitoring of citizens to guarantee the integrity of the Judiciary.
- 5) Ensure fair and public trials for all defendants, including those who are tried for crimes under Chapter XIII of the Penal Code 2017, and guarantee public access to such trials.
- 6) Consider establishing a task force to review and resolve all cases where wrongful convictions may have occurred and guarantee satisfactory reparation for exonerated persons.

### Issue 16: The role of lawyers

**1. Access to legal counsel.** According to the Vietnam Bar Federation, in 2017 its members “participated in 18,700 criminal cases, including 5,905 criminal cases assigned by the judicial bodies and 12,795 criminal cases requested by clients. In addition, lawyers were involved in 14,063 civil cases and 401 administrative cases”.<sup>43</sup> As the statistic on the number of cases heard by all courts in 2017 was not found, an estimation can be made based on relevant information: The number of cases admitted at the national Court system in the first half of 2014 was 243.180 cases;<sup>44</sup> In Hanoi, the total number of cases admitted at the court in the first six month of 2017 was 18,010;<sup>45</sup> Another report by the Supreme Court at the National Assembly provided a number of **405.382** criminal cases

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<sup>43</sup> Vietnam Bar Federation. 2018. Submission to the UN Human Rights Council’s Working Group on the Universal Periodic Review for the 3<sup>rd</sup> UPR of Vietnam. Accessed at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRVNStakeholdersInfoS32.aspx> 15/01/2019.

<sup>44</sup> Report No.25/BC-TA dated 16/5/2014 on the Implementation of the National Assembly Resolution No.69/2013 on hearing at Session 6<sup>th</sup> National Assembly XIII. Accessed on January 31<sup>st</sup> at <http://quochoi.vn/content/vankien/Lists/DanhSachVanKien/Attachments/1554/filedownload1554.doc>

<sup>45</sup> Report No. 1301/BC-VP dated 13/6/2017 on the results of work in the first six months and work plan for the last six months of 2017 by two levels of courts (district courts and city court) at Session IV, Hanoi People’s Council Term XV. Accessed at [http://dbndhanoi.gov.vn/portals/9/Tai%20lieu%20ky%20hop%20HDND/Ky%204%20-%20XV/TAND%20B%20C%20A1o%20c%20C3%A1o%20H%E1%BB%99i%20C4%91%E1%BB%93ng%20nh%20C3%A2n%20d%20C3%A2n%206%20th%20C3%A1ng%202017%20\(phat%20hanh\).doc](http://dbndhanoi.gov.vn/portals/9/Tai%20lieu%20ky%20hop%20HDND/Ky%204%20-%20XV/TAND%20B%20C%20A1o%20c%20C3%A1o%20H%E1%BB%99i%20C4%91%E1%BB%93ng%20nh%20C3%A2n%20d%20C3%A2n%206%20th%20C3%A1ng%202017%20(phat%20hanh).doc) January 31<sup>st</sup> 2019.

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admitted in five years.<sup>46</sup> Without directed data to confirm, it can be estimated that the proportion where a lawyer was involved was lies somewhere in between 20 -25% of criminal cases.

2. **Lawyer-client confidentiality.** The amended Penal Code 2015 requires lawyers to report on clients' actual and/or planned actions that may effect national security and/or may constitute a significantly serious crimes.<sup>47</sup> The Penal Code does not define what actions would constitute a crime against national security. This duty to report is against the principle of attorney-client privilege and jeopardizes the right to effective legal representation of defendants.

In many instances, the Court will only provide a Certificate of Lawyer Participation at the written request of an accused and will not accept the appointment of a defense lawyer by the family. This poses a problem as a detained accused does not have the ability to contact a lawyer and an unappointed lawyer cannot easily meet with accused. Thus, raising barriers for a criminally accused to have adequate representation. Furthermore, lawyers report experiencing difficulties while requesting Certification, contacting offenders held in custody, and/or copying relevant documents in case files.<sup>48</sup>

### **Recommendations for Issue 16:**

- 1) Amend the Criminal Procedure Code 2015 and other Procedural Law to be aligned with international human rights standards and to adopt good practices on fair trial.
- 2) Amend the Penal Code 2015 to ensure that attorney-client privileges are strictly respected, and that lawyers are not required to report on the actions clients have already undertaken. .
- 3) Provide effective measures to strengthen access to lawyers, in quantity and quality, especially in criminal cases.

## **E. Freedom of conscience and religious belief**

### **Issue 17: Law on Religions and Beliefs**

The Law on Religions and Belief 2016 provides that all religions are equal before the law.<sup>49</sup> As per chapter III, Belief Activities, it is required that “A belief establishment must have a representative or management board to take responsibility before law for activities taking place at the establishment.”<sup>50</sup> The appointment of the representative must meet conditions provided in Article 10,

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<sup>46</sup> People's Army. Gần 1.810.000 vụ án đã được ngành tòa án thụ lý trong 5 năm. (Nearly 1,810,000 cases admitted at the court system in five years). <http://www.qdnd.vn/chinh-tri/tin-tuc-su-kien/gan-1-810-000-vu-an-da-duoc-nganh-toa-an-thu-ly-trong-5-nam-467776> accessed on January 31 2019. The article reported a session of the National Assembly Standing Committee Session No.45 examine Draft report of the Chief Justice.

<sup>47</sup> Article 19.3 – Penal Code

<sup>48</sup> According to Báo cáo đánh giá thực trạng bảo đảm quyền bào chữa và quyền hành nghề của luật sư, kèm theo Kiến nghị sửa đổi, bổ sung Bộ luật tố tụng hình sự năm 2003 (Công văn số 251/LĐLSVN, 29/10/2012). [Report on right of litigation and right to defense of the lawyers in Vietnam, attached with proposals to amend the Criminal Procedure Code 2003 - Vietnam Bar Federation, Letter No.251/LĐLSVN, 29/10/2012.]

<sup>49</sup> Article 3 para. 1.

<sup>50</sup> Article 11. “Representatives, management boards of belief establishments: 1. a belief establishment must have a representative or management board to take responsibility before law for activities taking place at the establishment; 2. A representative or member of the management board of a belief establishment must be a Vietnamese citizen who permanently

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para.2 and 3, except for the case of kinship establishment.<sup>51</sup> Article 11 on registration of belief activities requires registration of activities at least 30 days in advance,<sup>52</sup> except for kinship ancestor's worship house activities.

### Suggested Questions

- Please elaborate the grounds on which the exception for the lineal ancestor worship house management and activities was provided in Article 11 and 12 of the Law on Beliefs and Religions 2016. Please explain how the principle of non-discrimination is applied in these exceptions.

## F. Freedom of expression and the right to privacy

### Issue 20: Internet freedom and Press

#### 1. Internet freedom

The Law on Cyber Security 2018 limits freedom of expression on the Internet and exercising freedom of assembly on the basis of “national security, social order, and safety.” “National security, social order, and safety” are not defined within the law. Articles 8 and 26 outline that the act of criticizing the people's government and/or political leaders will be considered “propaganda against the government of Socialist Republic of Vietnam.” To exasperate the issue, information found on the Internet that is deemed to have persuaded people to demonstrate or otherwise participate in public demonstrations is prohibited by the law and may be considered “provoking riots or disturbing the peace” particularly if demonstrators are seen as opposing law enforcement officer.<sup>53</sup>

The “security cyber units” or so-called “Force 47” was established under Direction no.47 by the military's political department and has the mandate to address and counterinformation and activity,

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resides in Vietnam, has full civil act capacity and enjoys prestige among the population community; 3. The commune-level People's Committee of the place where a belief establishment is located shall coordinate with the Vietnam Fatherland Front Committee of the same level in making arrangements for the population community to elect or appoint a representative or members to the management board of the religious establishment. Based on the election or appointment results and the conditions prescribed in Clause 2 of this Article, within 5 working days after the election or appointment day, the commune-level People's Committee shall issue a document recognizing such representative or member of the management board of the belief establishment.”

<sup>51</sup>Article 10, para. 5: “5. The election or appointment of a representative or establishment of a management board for a lineal ancestor worship house is not required to comply with Clause 3 of this Article.”

<sup>52</sup>Article 12. “**Registration of belief activities** 1. Belief activities of a belief establishment shall be registered, except for lineal ancestor worship houses; 2. At least 30 days before starting belief activities, the representative or management board of a belief establishment shall send a written registration to the commune-level People's Committee of the place where the belief establishment is located, except the case prescribed in Article 14 of this Law. A written registration must specify the name of the belief establishment, its belief activities and their contents, scope, time and places. The commune-level People's Committee shall issue a written reply within 15 days after receiving a valid registration document; in case of refusal, it shall clearly state the reason; 3. for a belief activity not yet stated in the registered document, within 20 days before it takes place, the representative or management board of a belief establishment shall make additional registration for it in accordance with Clause 2 of this Article.”

<sup>53</sup> Cybersecurity Law, Article 8 lists the prohibited acts (1c) distortion of history, denial of revolutionary achievements, undermining national solidarity, blasphemy, discrimination by gender or race; Article 16 lists out the cyberinformation that oppose the government such as: (1a) slanders or defames the people's government, (1c) offends the people or desecrate the national flag, national anthem, political leaders, honored people or national heroes, (2b) encourages, deceives, threatens or persuades people to participate in public gathering intended to cause disruption or oppose law enforcers or obstructs operation of an organization, thus threatens public order and security.

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which is seen as not being in line with the Communist Party's perspective, policies and laws of Vietnam. As of December 2017, this force has more than 10,000 people.<sup>54</sup> Reports of Force 47 activities are publically available. See, for example reporting on 9 March 2018 which outlined that 94 members of Force 47 in Quang Ninh province were trained to use Facebook for propaganda of Communist Party's perspective, policies and laws of Vietnam. Another report, dated 29 August 2018, outlines two-years of Force 47 operations in Thanh Hoa province.<sup>55</sup> In practices, many fake accounts on social media were created. These accounts joined social media groups to comment and write posts to counter “wrong” views on the Internet and media. SaveNet, a community group did an informal community survey in December 2018 and preliminarily found 44 responses including activists, journalists, dissidents reported about the attack on their Facebook account during 2014 - 2018. The typical attacks are Facebook accounts were blocked temporarily (23 cases) or were deleted (8 cases); their posts were removed because of being reported violate the community rules on Facebook (9 cases); being insulted by the pro-government trolls and other attacks (4 cases) were reported and shut down.<sup>56</sup>

**State promote Internet Censorship through requests to Google and Facebook to remove content against the government.** According Truong Minh Tuan, Minister of Information and Communication, Facebook has removed 159 accounts seen as anti-government at Vietnam’s request in 2017<sup>57</sup>. Google reported 6,724 requests from the government to remove the content in 2017 (4,621 content criticized the government, 2,076 content relates to national security) – as of May 2018, Google has received a further 602 requests in 2018 to delete contents criticized the government. Also in 2017, the Authority of Broadcasting and Electronic Information, Ministry of Information and Communications, based on **Decree 72/2013/ND-CP**, requested Google to remove a Google Play app that is “a game with characters named after Vietnamese political figures against whom Players can battle” as well as over 3,000 videos on YouTube that “mainly criticized the Communist Party and government officials”.<sup>58</sup>

### 2. State control over the media.

The Press Law, revised in 2016, enables state media to collaborate with private sector (Article 37). However, the law does not explicitly recognise private-owned press. Private media and newspapers is commonly viewed as a threat to the national media and should be prevented. Article 14 of the Press Law 2016 only permits the establishment of press agencies by agencies and institutions that are managed either by the government or its affiliated organizations. Article 4 of the Press Law 2016 affirms that the

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<sup>54</sup> Mai Hoa, 2017. More than 10,000 members of 47 Forces fighting on cyberspace. *Tuoi Tre Newspaper*. Online [available at]: <https://tuoitre.vn/hon-10-000-nguoi-trong-luc-luong-47-dau-tranh-tren-mang-20171225150602912.htm>

<sup>55</sup> QTV, 2018. Training for 47 Forces in Quang Ninh province. Online [available at]: <http://www.qtv.vn/channel/5982/201803/tap-huan-hoat-dong-luc-luong-47-cua-bo-chqs-tinh-quang-ninh-2592035/>; Baomoi, 2018. Reporting 2 years of fighting on cyberspace. *Bao Moi Newspaper*. Online [available at]: <https://baomoi.com/so-ket-2-nam-dau-tranh-chong-quan-diem-sai-trai-thu-dich-co-hoi-chinh-tri-tren-khong-gian-mang/c/27505442.epi>

<sup>56</sup> SaveNet’s unpublished community survey on Facebook account attacks against human rights defenders and dissidents.

<sup>57</sup> <https://e.vnexpress.net/news/news/facebook-removes-159-anti-government-accounts-at-vietnam-s-request-official-3688612.html>

<sup>58</sup> Google. 2017. .According to Transparency Report of Google. Accessed on February 3, 2019. <https://transparencyreport.google.com/government-removals/by-country/VN>

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press "is the voice of Party and state agencies" and have the task "to propagandize and disseminate, and contribute to the formulation and protection of, the line and policies of the Party".

**Article 15 (2b)** of the Press Law 2016 allows the institution managing the press agency "to appoint the head of the press agency", however such appointment only takes effect with an approval by the Ministry of Information and Communications (MOIC), which would be based upon the recommendation of the Department of Propaganda and Education of the Communist Party.<sup>59</sup> The Central Propaganda Department is the unit assigned by CVP to "guide, inspect and direct the politics, ideology in the activities of the press agencies". Meetings are held regularly (sometimes weekly or monthly) which are presided over by the Provincial Propaganda Department and are attended by representatives of each and every newspaper in which government officials debrief editors and press agency managers on which current events can be covered in the news and how they are to be described.

### 3. Openness and pluralism of the media.

The 2013 Constitution provides for freedom of speech, including for members of the press, however, the government continues to use broad national security and anti-defamation provisions to restrict these freedoms. For example, Article 9 of the Press Law 2016 prohibits the press from publishing and broadcasting information against the Socialist Republic of Vietnam that have the effect of "distorting, defaming or negating the people's administration", "distorting history; negating revolutionary achievements; offending the nation and national heroes." An illustration of the application of the law is the closure of the Tuoi Tre website – the most widely circulated newspaper of Vietnam. In July 2018, the government suspended the newspaper from publishing online for 3 months and fined it 220 million VND. The disciplinary action came after the newspaper published an article quoting the then President agreeing with the need for a new law regarding protests and left in place a reader comment in another article that was deemed "nationally divisive" by the Press Authority. The Press Authority determined that the content of the article quoting the President was "untrue" and "caused severe impact"

**Administrative measures in limiting freedom of speech. Decree No. 2/2011** increased fines for journalists who refuse to reveal their sources in order to "restrict the use of pseudonyms and anonymous sources and to exclude bloggers from press freedom protections". **Decree 159/2013/ND-CP** stipulates fines of 70 million to 100 million Vietnamese dong (VND) (\$3,200 to \$4,570) for journalists, newspapers, and online media that publish or broadcast information deemed harmful to national interests.

#### Suggested questions:

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<sup>59</sup> Decision No. 75-QD / TW dated 21 August 2007 of the Secretariat on the promulgation of the Regulation on the appointment, dismissal, commendation and disciplining of leaders of the press bodies and Decision No. 155-QD/TW On April 23, 2008, the Secretariat issued a regulation on the cooperation between the Central Department of Propaganda and Education, the Communist Party Civil Affairs Department of the Ministry of Information and Communications, the Party Committee of the Vietnam Journalists Association and other Party and State agencies in directing and managing the press.

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Please elaborate how principles of limitation of the rights, in particular the right to freedom of expression elaborated in the General Comment No.34 was applied in the drafting, review and adoption of the Law on Cybersecurity, among others.

### **Recommendations:**

#### **The State Party should:**

- 1) Respect and protect freedom of expression, the right to privacy and the right to access the Internet by amending Articles 8, 16, 26 of the Cybersecurity Law and Chapter V of the Draft of regulation the regulation on guideline implementing Cybersecurity Law in line with Articles 17 and 19 of the ICCPR.
- 2) Respect freedom of expression of Vietnamese citizens by immediately cancelling the 47 Forces.
- 3) Reform national legislation that permit the establishment and operation of national and international media, in accordance with its international human rights obligations under ICCPR.
- 4) Ensure the autonomy, independence, and freedom of press agencies by amending Articles 4, 9, 14 and 15 of the Press Law 2016 in accordance with Article 19 of the ICCPR and invalidate decisions No.155-QĐ/TW and No.75-QĐ/TW on the management of the press to increase the self-determination of the press.
- 5) Restrain the direction of the Propaganda Department with the press by immediately cancelling weekly/monthly press conferences in all localities and invalidate the code of conduct on social networks for domestic reporters.
- 6) Ensure that freedom of expression is protected both offline and online by amending or removing vague provisions in the Penal Code 2015 and bringing current laws such as Decree 2, 72, 159 into line with international human rights obligations, to make sure that any limitations on freedom of expression are strictly in line with ICCPR so that public officials may not use such laws to punish journalists.
- 7) Establish a national program of protection for journalists beside the Vietnam Journalist Association, in order to combat impunity in cases of violations of freedoms of journalism and the press, and create mechanisms for investigation and appropriate punishment of those responsible for attacks on journalists, reporters and media attacks.
- 8) Encourage and accept an official visit to Vietnam by the special rapporteur on freedom of expression and the situation of journalists and human rights defenders.
- 9) Amend the Law on Access to Information to ensure the principles of non-discrimination, maximum disclosure and enabling procedures in line with Article 19 ICCPR and international standards on right to information.
- 10) Consider the establishment of a national independent mechanism to oversee the implementation of the Law on Access to Information as well as to protect and promote the right to information.

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- 11) Invest more in the development of systematic, user-friendly and up-to-date online portals to meet the diverse needs of people.
- 12) Invest in a more efficient and inclusive access-to-information infrastructure to ensure the right to information of vulnerable groups such as people of ethnic minorities and people with disabilities.
- 13) Continue developing and implementing different training programs to improve the capacity of government officers in state agencies at all levels about the spirit of freedom of information in accordance with ICCPR, contents and measures to implement the Law on Access to Information.
- 14) Implementing activities to popularize, educate and raise public awareness about the right to access to information, access-to-information legislation and responsibilities of state agencies in ensuring the right to be fulfilled.

## G. Freedom of Association and Peaceful Assembly

### Issue 24: Freedom of Association

#### 1. Association registration process.

**Registration process is complicated with restricted options and is time-consuming.** In order to establish an association in Vietnam, it is required to carry out three compulsory administrative procedures, including: (i) establishing a preparatory committee, such committee needs recognition by the Government; (ii) application for the establishment of the association to be approved by the Government, and; (iii) organization of the congress with an approval by the government of the association and its leaders.<sup>60</sup> These required approvals further impedes the exercise of the right to association as well as demonstrates the interference of the State into internal affairs of associations. Many groups find it difficult and even impossible to register for a legal status because of: one or more of the following reasons: (i) could not find an “umbrella agency” under which to register; (ii) the existence of an organization operating in the same field, (iii) the requirement to join another existing association; (iv) because a new organization is deemed as "unnecessary, inadequate" and/or; (v) no response received from the authorized agency after submission of the organization registration form.<sup>61</sup>

**The current regulation on "the main working areas of the association [applying for a registration] should not overlap with those of the legally established association"<sup>62</sup>** creates a situation of a "monopoly on association". The decree severely restricts people from exercising the right to freedom to form or join an association of their choice. One example is of the Ho Chi Minh City Scout Association who have repeatedly applied for legal status and has been denied multiple times. The most recent failure of legal status approval was received in 2013 with the reasoning provided as follows: "because in Ho Chi

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<sup>60</sup>Articles of 6, 7, 9, 10, 12, 13 of Decree 45/2010/NĐ-CP

<sup>61</sup>People's Participation Working Group, 2016, *Associational life from citizens' perspectives*, Knowledge Publishing House, page 38.

<sup>62</sup>Para.1 Article 5 Decree 45/2010/ND-CP

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Minh City there are many youth organizations such as Ho Chi Minh Communist Youth Union, Ho Chi Minh City, Youth Union, Student Union<sup>63</sup>.

### **2. Discrimination among associations.**

Five mass organisations and those recognised as "associations of specific characteristics" are guaranteed funding through state budget<sup>64</sup> and are provided personnel to operate (following Article 33 of Decree 45/2010/NĐ-CP; Prime Minister enacted Decision 68/2010/QĐ-TTg dated 01/11/2010 and Prime Minister issued Decision 71/2011/QĐ-TTg).

Paragraph 2, Article 6 of Decree 45/2010 requires that the head of the association be a physically fit person and may result in exclusion of people with disabilities and elderly, amongst others, from holding the position. In practice, unregistered associations faced more obstacles and pressure than registered ones in their activities, especially for meetings or activities in public. These regulations and practices are contradictory to the principle of "non-discrimination" in Article 2 of the Covenant.

### **Recommendations for Issue 24**

- 1) Develop and implement a training program for officials and policy makers on freedom of association in accordance with the ICCPR and those recommendations by the Special Rapporteur on Freedom of Association and Peaceful Assembly.
- 2) Revise the legal framework and adopt a Law on Associations which complies with international standards, in particular to: (i) ensure the principle of equality and non-discrimination for citizens and assorted associations in Viet Nam; (ii) respect an association's autonomy without any interference into internal decisions of the association; (iii) simplify the process of association registration to a "notification procedure" to better comply with international standards; (iv) include effective implementation measures and remedy mechanisms, compensation for those whose right to freedom of association are violated, and; (v) clearly specify that any limitations of freedom of association be compatible with ICCPR and international standards and the 2013 Constitution.
  - 1) Introduce and implement policies and measures (possibly within the Law on Associations) to facilitate an association's access to and mobilization of domestic and international funding. More specifically, to replace Decree 93/2009/ND-CP with new legal document which responds to the state's obligation with regards to freedom of association.
  - 2) Collaborate with the Special Rapporteur on Freedom of Association and Peaceful assembly through accepting his request for a country visit before 2021.

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<sup>63</sup>Official letter of the Department of Home Affairs of Ho Chi Minh City to Mr. Pham Thanh Hiep on the establishment of Ho Chi Minh City Scout Association, No. 164 / SNV-VP dated February 8, 2013.

<sup>64</sup> Para 7 and 8, Article 8 of Law on State Budget 2015 confirm that State budget shall cover operating costs of political organizations and socio-political organizations while state budget supports performance of tasks given by the State as prescribed by the government for socio-political - professional organizations, social organizations, socio - professional organizations

### Issue 25: Freedom of peaceful assembly

#### 1. Restricted and contradict legal framework on peaceful assembly

The Constitution 2013, article 25 read “The citizen shall enjoy the right to freedom of opinion and speech, freedom of the press, to access information, to assemble, to form associations and to hold demonstrations. The practice of these rights shall be provided by the law”.

A Law on Demonstration was mentioned several times in the law-making agenda of the National Assembly XIII and XIV of Vietnam, however its schedule has not yet been approved by the Standing Committee of the National Assembly for discussion in Congress. The Ministry of Public Security has prepared a draft, but the draft text is not uploaded to the National Assembly legislative information page ([www.duthaonline.quochoi.vn](http://www.duthaonline.quochoi.vn)) or any other channel for public feedbacks. It was reported that in academic workshops to discuss the draft, a printed draft was handed out for discussion but was re-collected by organisers at the closure of the workshop. Law No.101/SL-L-003 (Law 101) on freedom of assembly issued on 20/05/1957 and Decree 38/2005/NĐ-CP dated 18 March 2005 on “Some measures for ensuring public order”, followed by Circular 09/2005/TT-BCA dated 5/9/2005 guiding the implementation of Decree 38/2005, are considered relevant and prevailing legislations governing the practice of assembly and demonstration: The most recent record on the application of Law No.101/SL-L-003 and Decree 38/2005 was on the decision to disburse a one-and-a-half day workshop on December 18, 2018 by a group of civil society organisations and NGOs.<sup>65</sup>

These three documents set out several restrictions on the exercise of assembly and demonstration. The Law 101 required all meetings and gathering in the public space to apply for permission,<sup>66</sup> with an exception for gathering of family, groups of friends and religious groups, and meetings by the Fatherland Front and its members.<sup>67</sup>

Decree 38/2005/NĐ-CP set out measures to protect “public order” but did not specify a definition of “public order”. Instead, it defined five prohibited acts<sup>68</sup> and required all gatherings of a crowd of people

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<sup>65</sup>The most recent record on the application of Law No.101/SL-L-003 and Decree 38/2005 was on the decision to stop a 1.5-day workshop on December 18, 2018 by a group of civil society organizations and NGOs. Information about the incident could be accessed at <https://www.amnesty.org/en/latest/news/2018/12/viet-nam-police-raid-major-meeting-local-ngos-alarming-repression/> (last access on February 3, 2019). While the workshop, organized in a five-star private meeting room, was forced to stop in the middle of the proceedings, other workshops, other workshops in the same premise did not receive similar treatment from the local authority.

<sup>66</sup>Article 3.

<sup>67</sup>Article 2. However, Decree 257-Ttg 14/6/1957 as an implementation guideline for the Law 101 required all meetings and gathering of these types, except for funeral and wedding, if involving more than 20 people to inform the local authorities.

<sup>68</sup>“Article 5: Strictly prohibited acts

1. To take advantage of the right to freedom and democracy by citizens to practice or enticing, inciting, bribing, coercing others to gather a crowd of people in order to disturb public order or to commit other law violations.
2. To illegally gather a crowd of people in the road, on the sidewalk, in front of the premises of public bodies, organizations, in those areas where occurring international conferences, national assembly sessions, sessions of people’s council or other important political events by the Party, the Government, the Fatherland Front and other social-political organizations, or in other public places.
3. To conduct other activities provided in Article 7 of this decree without permission by the relevant People’s Committee.
4. To obstruct ordinary activities by bodies, organizations and leaders of the Party, the Government, the Fatherland Front and other social-political organizations or to obstruct, act against officials in actions.

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in public places to register in advance to the local People’s Committee (though not required the Party, the Government, the Fatherland Front, and social-political organisations to do so.)<sup>69</sup> Circular 09/2005/TT-BCA dated 5/9/2005 guides the implementation of Decree 38/2005 and provides three more prohibited acts<sup>70</sup> and defines a “gathering of a crowd of people” as a group of more than 5 people.<sup>71</sup>

Despite the ratification of the Covenant and the introduction of the Constitution 2013, these restrictions in Law 101, Decree 38 and Circular 09 are still in practice. In the incident in December 2018 mentioned above, all three instruments were evoked to halt the meeting, suggesting that a private meeting room in a private hotel was considered a public place. Other meetings in the same premise did not receive the same treatment and therefore, it can be inferred that these instruments may be utilised discriminately against certain groups, such as, civil society organisations, or regards to certain topics of discussions, such as civil society development.

### 2. Peaceful protests and gatherings in public places are blocked by state agencies.

During several protests in summer 2016 and 2017, it was reported that protesters were intercepted and escorted to the police station, or violently intercepted by security officials, arbitrarily arrested, and prevented from taking part in peaceful demonstrations. Several individuals among protesters attacked protesters in front of the police force without being removed or quarantined. These groups also conducted arrests of other protesters and then handed them to the police. The events of the protests and testimonies of those who experienced violence and police brutality flooded social media; while official press almost did not cover any incident. Despite the call from civic groups and human rights organisations to conduct a review on measures to manage these demonstrations in lights of state’s obligations in assuring freedom of assembly, no such review is made available to the public.

### Suggested questions

- 1) Please provide information on instructions and guidance given for enforcement officials on the management of public protests or demonstrations.

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5. Taking advantage of positions and powers to tolerate, cover or do not strictly handle violations of law on public order.

6. Other acts that seriously affect public order, ordinary life of the people or contrary to the fine customs and habits, civilized life in public.”

<sup>69</sup>Article 7.

<sup>70</sup>Article 2:

“2.2. To hire, to agreed to be hired, or to help other people to commit acts of violating the law on public order.

2.7. To carry bandrolls, flags, posters in all forms in order to act against the directions, policies of the Party, the law of the nation, or to carry weapons, explosive materials, hazardous materials, stimulants or other substances which could affect on lives and health of other people, on properties of the state, other organisations or individuals in the gathering a crowd of people in the public place.

2.8. Failing to abide by the regulations on restricted areas, protected areas and the guidance of persons responsible for handling relevant cases; obstructing and preventing people on duty; committing acts of infringing upon the lives, health, honor and dignity of others, infringing upon property of the State, organizations and individuals or committing other acts of extremism such as shouting, cursing or breaking ; insulting, threatening to assault others.

<sup>71</sup>Article 4.1

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- 2) Please indicate what measures have been taken to ensure that individuals and human rights defenders are able to demonstrate peacefully without fear of threats or acts of intimidations or harassment, and that their right to peaceful assembly and freedom of expression are guaranteed.
- 3) Please comment on the compatibility of Decree 38/2005 and Law 101/SL-L-003 with the Constitution 2013.

### **Recommendations for Issue 25**

- 1) Make progress in providing an enabling environment for the legitimate exercise of the rights to freedom of peaceful assembly and expression, especially on issues of public interest.
- 2) Improve the legal framework to respect and protect the right to peaceful assembly of people in Vietnam. Specifically, provide a transparent and participatory legislative process on the drafting of the Law on Demonstration that will ultimately allows the adoption of a law that conforms international standards and good practices on demonstration management.
- 3) Introduce notification procedures for organisers of demonstrations.
- 4) Provide clear and transparent guidance on the functions and conducts of public security organs in the management of peaceful protests;
- 5) Assure timely access to legal assistance for protesters who are arrested during public demonstration.
- 6) Establish mechanisms (possibly through a law on demonstrations/protest) to facilitate monitoring of public demonstration especially by independent organisation and members of the press;
- 7) The Government should abolish or amend the Prime Minister's Decision No. 76/2010/QĐ-TTg dated November 30, 2010, on the organization and management of international conferences and seminars in Vietnam, so as to minimize interference while respecting the autonomy of organizations and individuals carrying out their activities;
- 8) Encourage the judicial bodies to take an active role in monitoring and protecting the exercise individual's rights to peaceful assembly. Make public data on complaints and grievances related to freedom of assembly.
- 9) Respond positively to the request by the UN Special Rapporteur on freedom of association and peaceful assembly for a country visit;

## **H. Right to participate in public life**

### **Issue 26: Election**

#### **1. Political pluralism.**

In 2002, the Human Rights Committee recommended Vietnam to “take all the necessary steps to enable national and international non-governmental human rights organizations and political parties to function

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without hindrance”.<sup>72</sup> To date, no action to implement the recommendation is evident. To the contrary, in 2015, the Prime Minister Nguyen Tan Dung asked the police force “not (to) allow the establishment of political opposition”.<sup>73</sup>

### 2. The National Electoral Council

The National Electoral Council (the Council) is a Constitutional mechanism established by the National Assembly.<sup>74</sup> The 2015 Law on Elections outlined that candidates for the election of National Assembly Deputies and People’s Council cannot serve in the electoral board in his/her own constituency.<sup>75</sup> However, it did not bar the potential candidates to stand in the National Electoral Council. Meanwhile the National Electoral Council is mandated to establish the final list of qualified candidates and announce the list by all electoral constituencies.<sup>76</sup> The body is also responsible for announcement of election result, and the list of elected people.<sup>77</sup> The Council would conclude its tasks after it submits a report on the election and results on verification of elected deputies to the newly elected National Assembly. By the closing of the operation, the Council transfers all documentations to the Standing Committee of the new National Assembly.<sup>78</sup>

The National Electoral Council of the Election of National Assembly XIV and People’s Council (at all levels) term 2016-2021<sup>79</sup> has 21 members. All 21 members are members of the Communist Party as are those who lead legislative bodies, executive bodies and social-political organisations.<sup>80</sup> All members of the National Electoral Council were candidates in the election<sup>81</sup> and elected<sup>82</sup> Within its short timeframe for operation, the Council could only address allegations and complaints on the process of election;<sup>83</sup> and transfer complaints related to elected persons to the Standing Committee of the National Assembly.<sup>84</sup> During its operation, this Council received 1,165 complaints, in which 481 complaints were not admitted. All admitted complaints were referred to relevant authorities. The Council received 157

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<sup>72</sup> Human Rights Committee’s Concluding Observation for Vietnam. CCPR/CO/75/VNM  
5 August 2002, para.20

<sup>73</sup> Address to Ministry of Public Security by the Prime Minister, on the occasion of launching the work plan 2015 by MPS. Access at <https://vietnamnet.vn/vn/thoi-su/khong-de-hinh-thanh-to-chuc-chinh-tri-doi-lap-trong-nuoc-212928.html> on February 3, 2019.

<sup>74</sup> Constitution 2013, Article 117.

<sup>75</sup> Law on Election 2015, Article 27

<sup>76</sup> Law on Election 2015, Article 57 para 4

<sup>77</sup> Law on Election 2015, Article 1 para. 86

<sup>78</sup> Law on Election 2015, Article 20

<sup>79</sup> Resolution 105/2015/QH13 dated 25/11/2015 by the National Assembly.

<sup>80</sup> Including Chairperson of the National Assembly, 3 Vice-chair persons of the National Assembly, Vice-president, Deputy Prime Minister, Chairperson of the Central Committee of the Fatherland Front, Director of the Department of Organisation of the Party’s Politbeuro, Chairperson of the Department on Inspection of the Party’s Politbeuro, Minister of National Defense; Minister of Public Security; Members of the National Assembly’s Standing Committee, Minister of Home Affairs, Minister of Information and Communication; Chairperson of the Women’s Union, Chairperson of the Vietnam’s General Confederation of Labour’s Union; Chairperson of the Farmers’ Union, Chairperson of the Veteran, and the first Secretary of the Ho Chi Minh Communist Youth’s Union.

<sup>81</sup> Official list of candidates for the Election of National Assembly XIV by constituencies nation-wide (provided by the Resolution No270/NQ-HĐBCQG dated 26/4/2016 of the National Electoral Council)

<sup>82</sup> Resolution 617/NQ-HĐBCQG dated 8/6/2018 of the National Electoral Council on the announcement of the results of the election and list of elected deputies of the National Assembly XIV

<sup>83</sup> Law on Election 2015, Article 15 para.9

<sup>84</sup> Law on Election 2015, Article 15 para.9

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responses. By its closing, there were unaddressed complaints related to 25 elected persons. All relevant documentations were transferred to the Standing Committee for following up. The final report of the National Electoral Council did not specify details on type of violations and sanctions applied.

### 3. Right to stand for election.

To be qualified as a listed candidate for election, a person would need to fulfill fixed criteria, which may result in indirect discrimination against youth, people with disabilities and people of different opinions.<sup>85</sup> Voters are not able to directly nominate candidates. A person could be nominated in one of the following ways: (1) by his/her own organisations,<sup>86</sup> or; (2) in case of independent candidates, adopted by either residents in his/her residential area<sup>87</sup> and his/her organisation to be a semi-final candidate. However, the semi-final candidate would have to go through two rounds of negotiation at the Fatherland Front to be selected as a listed candidate (official candidate) for the election.<sup>88</sup> Once qualified as a candidate, candidates cannot run election campaigns but instead must participate in meetings with voters organized and introduced by the Fatherland Front.

### 4. Election Process.

Proxy voting is forbidden<sup>89</sup> yet a common practice, which not only affects the result of a fair election but also impairs the right to vote, especially of women.<sup>90</sup> Ballot counting is done with witnesses but is not done in open public,<sup>91</sup> and preliminary results of election at grassroots level are not announced immediately after the ballot counting.<sup>92</sup>

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<sup>85</sup> Constitution 2013 Article 27 provides that citizen of above 21 years old can stand for election. However following the criteria of candidacy under Law No. 85/2015/QH13 dated 25/6/2015 on Election of the National Assembly and People's Councils at all levels (Article 3, which refers to the criteria of National Assembly members as provided by the Law on Organisation of the National Assembly and the criteria of People Councils as provided by the Law on Organisation of local government). These criteria, for instance, would include "good health" (which may impair the capacity for candidacy by people with disabilities), "education background and expertise", "experience" and "reputation" (which may impair youth Front and communications need to go through (state-own) media.

<sup>86</sup> This person is planned by leadership board of his/her organization under a distribution by the first round of negotiation called by Fatherland Front and adopted through a meeting among other staff/officials (Law on Election 2015, Article 42 and Article 43)

<sup>87</sup> The adoption meeting is called by Fatherland Front (Law on Election, Article 45)

<sup>88</sup> The negotiation is not between the candidate and members of the Fatherland Front. It was a negotiation among members of the Fatherland Front, called by the Standing Committees of the Fatherland Front at central and local levels for both election of deputies of National Assembly and election of deputies of People's Councils. The Fatherland Front is lead by the Communist Party and all members of the Fatherland Front are organisations under the leadership of the Communist Party. Therefore, it was technically a discussion among Party members who could be qualified as listed candidates.

<sup>89</sup> Article 69 para.2 Law on Election, Law No. 85/2015/QH13 dated 25/6/2015. However, there seemed no specific instrument to prevent proxy voting. Voters are required to show voting registration but do not have to show ID as they vote.

<sup>90</sup> A head of the household who was often a man, could cast the votes on behalf of the family. See Andrew Wells-Dang, Le Kim Thai and Nguyen Tran Lam (2015). Between Trust and Structure: Citizen Participation and Local Elections in Viet Nam. A Joint Policy Research Paper on Governance and Participation commissioned by Oxfam in Viet Nam and the United Nations Development Programme (UNDP) in Viet Nam. Ha Noi, Viet Nam: August 2015.

<sup>91</sup> Article 73 of the Law on Election provides that the ballot counting should be done at the voting stations with two witness as voters, plus election candidates, representatives of organisations nominate candidate or candidate's representatives and reporters could join the ballot counting.

<sup>92</sup> The announcement of the election results will be done by the National Council for Election 20 days after the National Assembly election, and 10 days after the People's Council election, as provided by Article 86 of the Law on Election 2015.

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### **Recommendations:**

- 1) Initiate a legal and social reform to ensure free and fair election, especially by allowing voters to directly nominate their candidates.
- 2) Ensure an independent National Electoral Council, which operates through the term of the elected bodies.
- 3) Remove the procedure of negotiations by the Fatherland Front.
- 4) Take strong measures to end proxy voting, including the requirement of scanning Identification Document in addition to voter registration.
- 5) Conduct ballot counting in public and immediately announce the preliminary result after the counting.
- 6) Facilitate election monitoring by independent organisations.

*Annex:*

**Annex 1: Non-discrimination in Vietnamese legislation**

**Anti-discrimination provisions in a number of national legislations in Vietnam.**

Source	Vietnamese	English <sup>93</sup>
<b>Constitution 2013</b>	<p>Điều 5</p> <p>2. Các dân tộc bình đẳng, đoàn kết, tôn trọng và giúp nhau cùng phát triển, nghiêm cấm mọi hành vi kỳ thị, chia rẽ dân tộc.</p> <p>Điều 16</p> <p>Mọi người đều bình đẳng trước pháp luật.</p> <p>Không ai bị phân biệt đối xử trong đời sống chính trị, dân sự, kinh tế, văn hóa, xã hội</p> <p>Điều 24</p> <p>Mọi người có quyền tự do tín ngưỡng, tôn giáo, theo hoặc không theo một tôn giáo nào. Các tôn giáo bình đẳng trước pháp luật</p> <p>Điều 26</p> <p>Công dân nam, nữ bình đẳng về mọi mặt. Nhà nước có chính sách đảm bảo quyền và cơ hội bình đẳng giới.</p> <p>3. Nghiêm cấm phân biệt đối xử về giới.</p>	<p>Article 5.</p> <p>All the ethnicities are equal and unite with, respect and assist one another for mutual development; all acts of discrimination against and division of the ethnicities are prohibited.</p> <p>Article 16</p> <p>All people are equal before law.</p> <p>No one is subjected to discriminatory treatment in political, civil, economic, cultural or social life.</p> <p>Article 24</p> <p>Everyone has the right to freedom of belief and religion, and has the right to follow any religion or to follow no religion. All religions are equal before law.</p> <p>Article 26</p> <p>Male and female citizens have equal rights in all fields. The State shall adopt policies to guarantee the right to and opportunities for gender equality.</p> <p>3. Gender discrimination is prohibited</p>
<b>Criminal Procedure Code 2015</b>	<p><b>Điều 9. Bảo đảm quyền bình đẳng trước pháp luật</b></p> <p>Tổ tụng hình sự được tiến hành theo nguyên tắc mọi người đều bình đẳng trước pháp luật, không phân biệt dân tộc, giới tính, tín ngưỡng, tôn giáo, thành phần và địa vị xã hội. Bất cứ người nào phạm tội đều bị xử lý theo pháp luật.</p>	<p><b>Article 9. Ensuring the right to equality before the law</b></p> <p>Criminal procedure is conducted on the principle that all people are equal before the law regardless of race, gender, religious belief, religion, social stratum and status. Every person committing crime is treated under the law.</p>
<b>Law on Administrative procedure 2015</b>	<p><b>Điều 17. Bình đẳng về quyền và nghĩa vụ trong tổ tụng hành chính</b></p> <p>1. Trong tổ tụng hành chính, mọi người đều bình đẳng trước pháp luật, không phân biệt dân tộc, giới tính,</p>	<p><b>Article 17. Equality in rights and obligations in administrative procedures</b></p> <p>1. In administrative procedures, everyone is equal before law, regardless of his/her nationality, gender, belief, religion, social</p>

<sup>93</sup>Translations are provided by a service company on legal documentation at [www.luatvietnam.com](http://www.luatvietnam.com). Sometimes the translation could be edited by author of this document if needed to improve its correctness.

Source	Vietnamese	English <sup>93</sup>
	tín ngưỡng, tôn giáo, thành phần xã hội, trình độ văn hoá, nghề nghiệp, địa vị xã hội.	stratum, educational level, occupation and social position.
<b>Labour Code 2012</b>	<b>Điều 8. Các hành vi bị nghiêm cấm</b> 1. Phân biệt đối xử về giới tính, dân tộc, màu da, thành phần xã hội, tình trạng hôn nhân, tín ngưỡng, tôn giáo, nhiễm HIV, khuyết tật hoặc vì lý do thành lập, gia nhập và hoạt động công đoàn.	<b>Article 8: Prohibited acts</b> Discriminatory treatments on the basis of gender, ethnicity, skin color, social stratum, marital status, religious belief, religion, HIV infection, disabilities or for establishing, joining or participating in trade union activities.
<b>Law on Gender Equality 2006</b>	<b>Điều 5: Giải thích từ ngữ</b> <i>Phân biệt đối xử về giới</i> là việc hạn chế, loại trừ, không công nhận hoặc không coi trọng vai trò, vị trí của nam và nữ, gây bất bình đẳng giữa nam và nữ trong các lĩnh vực của đời sống xã hội và gia đình. <b>Điều 6: Các nguyên tắc cơ bản về bình đẳng giới</b> Nam, nữ không bị phân biệt đối xử về giới. <b>Điều 10. Các hành vi bị nghiêm cấm</b> 2. Phân biệt đối xử về giới dưới mọi hình thức.	<b>Article 5: Interpretation of terms.</b> Gender discrimination is the restriction, exclusion, non-recognition or disregard of the roles and positions of men and women, causing inequality between men and women in various aspects of social and family life. <b>Article 6: Basic principles of gender equality</b> Men and women are not discriminated in terms of gender. <b>Article 10. Forbidden acts</b> 2. Gender discrimination in all forms.
<b>Law on prevention and combating HIV-AIDS 2006</b>	<b>Điều 2. Giải thích từ ngữ</b> Phân biệt đối xử với người nhiễm HIV là hành vi xa lánh, từ chối, tách biệt, ngược đãi, phỉ báng, có thành kiến hoặc hạn chế quyền của người khác vì biết hoặc nghi ngờ người đó nhiễm HIV hoặc vì người đó có quan hệ gần gũi với người nhiễm HIV hoặc bị nghi ngờ nhiễm HIV. <b>Điều 3 Nguyên tắc phòng chống HIV-AIDS</b> Không kỳ thị, phân biệt đối xử với người nhiễm HIV và thành viên gia đình họ; <b>Điều 8. Những hành vi bị nghiêm cấm</b> 3. Kỳ thị, phân biệt đối xử với người nhiễm HIV.	<b>Article 2. Interpretation of terms</b> Discrimination against an HIV-infected person is an act of alienation, refusal, isolation, maltreatment, disgrace, prejudice or restriction of rights towards another person because of the awareness or suspicion that such person is infected with HIV or has close relationship with an HIV-infected or suspected HIV-infected person. <b>Article 3. Principles in HIV/AIDS prevention and control</b> 4.No stigma and discrimination against HIV-infected people and their family members; <b>Article 8. Prohibited acts</b> 3. Stigmatizing and discriminating against HIV-infected people.

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### **Examples of discriminatory provisions in national laws.**

#### **Law on Access to Information 2016:**

Article 4. Entities exercising the right of access to information

Persons under 18 years old may request for the provision of information via their legal representatives, except for the cases governed by the children law and other laws.

#### **Law on Marriage and Family Law No. 52/2014/QH13**

Article 8. Conditions for getting married

A man and a woman wishing to marry each other must satisfy the following conditions:

a/ The man is full 20 years or older, the woman is full 18 years or older;

#### **Labour Code Law No. 10/2012/QH13**

Article 187. Pension age

The employee must satisfy the conditions of the social insurance payment in accordance with the law on social insurance to enjoy the pension salary when female is full 60-year-old and male is full 55 years old.

**Circular No.: 40/2011/TTLT-BLDTBXH-BYT by Ministry of Labour, Invalids and Social affairs and Ministry of Health**, provided a list of 79 occupations in which employment of female workers is forbidden.

#### **LIST OF JOBS BEING NOT USED FEMALE LABORERS**

*(issued by Joint Circular No.40/2011/TTLT-BLDTBXH-BYT dated December 28, 2011 of the Ministry of Labour, War Invalids and Social Affairs - Ministry Of Health)*

#### **APPLIED TO ALL FEMALE EMPLOYEES**

1. Direct smelling and pouring molten metal in the furnaces:
2. Arc electric furnace from 0.5 ton or more
3. Bilbo furnace (Cast iron)
4. Open-hearth furnace (steel treatment)
5. Blast Furnace.
6. Rolling hot metal (except non-ferrous metals).
7. Direct treatment ferrous metal ores (copper, lead, tin, mercury, zinc, silver).
8. Firing coke furnace.
9. Welding in closed containers, welding in the positions with the height of more than 10m compared to the floor surface.
10. Digging shaft furnace.
11. Digging furnace and the works in the pit.
12. Drilling for exploration, blasting, shooting mines.
13. Taking stone on mountain.
14. Installation of offshore drilling rigs.
15. Drilling for exploration of oil and gas wells.
16. Working in the oil rig on sea (except for medical – social service).
17. Repair of power lines in underground sewers or on the columns outdoor, high-voltage power lines, erection of high voltage power column.

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18. Maintenance and repair of power lines in underground sewers or on the columns outdoor, high-voltage power lines, erection of high voltage power column.
19. Maintenance, erection, repair of high poles across the river, column of antenna.
20. Working in the sunken tanks.
21. Directly aligning large panels during the work or major component by manual methods.
22. Directly digging wells, construction for completion of wells by manual methods.
23. Directly digging root of trees with diameter greater than 40 cm by manual methods.
24. Use of handheld machines run by pneumatic pressure with the pressure from 4 atm or more (such as drills, hammers).
25. Driving heavy construction machines with a capacity greater than 36 horsepower such as excavators, bulldozers, caterpillars (except for the hydraulic-assisted machines).
26. The jobs of painting, repair, construction, plastering, cleaning, decoration on the outside of buildings (from floor 3 or above or at a height of more than 12m compared to the working floor) without lifting machine, gantry crane or solid scaffold.
27. Cutting large trees greater than 40 cm in diameter; sawing, cutting, pruning branches at a height of more than 5 meters by manual methods.
28. Transport of large timber, perforating, loading and unloading large timber greater than 40 cm in diameter by manual methods.
29. Diving to take submerged timbers, pulling off timber in shipyard, sending wood ashore.
30. Rafting on the river with many rapids' waterfall.
31. Manual sawing of large trees.
32. Exploitation of swallow nests (except for exploitation of swallow nests in the places farming swallows), mining bat fertilizers.
33. The works on the seaships (except for the services of restaurant, room, desk, reception on the star cruises).
34. The keeping ships, looking after ships in shipyard, rock slopes.
35. Operating boiler (except for the automatic operation, operation of boiler using energy as oil and electricity).
36. Driving trains (except for trains with operating mode of high automation, the train runs through the urban areas, tourist routes).
37. Floating crane driver.
38. The sellbuilding of the ships (wooden ships, iron ships), required to carry, fit, place workpieces weight 30 kg or more.
39. Survey of river ways in the areas with high rapids, deep dangerous mountain.
40. Pouring concrete under water.
41. Divers.
42. Operating dredgers.
43. Driver of the car with a tonnage of more than 2.5 tonnes (except for the cars of under 10 tonnes with power-assisted system).
44. Other works required to carry 30 kg or more.
45. Operating the gluing machines, dyeing machines of all kinds, stretchers, polish range checkers, shrink preventing machines (except for the operation mode of automation).
46. Laminating hard and large leather piece (except for the with operation mode of automation).
47. Drivers of agricultural tractors of 50 horsepower or more.
48. Dredging underground sewers, works required to soak frequently in dirty, smelly water
49. Autopsy, burial, funeral of dead body (except for crematory), exhumation of graves.