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**ALTERNATIVE REPORT
FOR THE REVIEW OF ICCPR REPORT OF THE SOCIALIST
REPUBLIC OF VIETNAM**

**SUBMITTED BY THE CENTER FOR RE-INTEGRATION OF EX-PRISONERS
INTO SOCIETY**

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I. INTRODUCTION

1. The Center for re-integration of ex-prisoners into society (CRES) is an NGO in Vietnam working in the field of providing legal aid and other supporting services to those who have completed their prison sentences, so that they can soon stabilize their lives, find jobs, re-integrate into the community and become useful citizens in the society. The Center's services include: free legal advice, free support for searching job and vocational training.

2. This alternative report tries to address some issues raised in the list of issues in relation to the fourth periodic report of Viet Nam adopted by the Human Rights Committee at its 140th session, namely:

- a) The right to life (death sentence).
- b) Elimination of slavery, servitude and trafficking in persons (arts. 2, 7, 8 and 26).
- c) Access to justice, independence of the judiciary and fair trial (arts. 2, 9 and 14).
 - The right to legal aid
 - The right to a lawyer of choice
 - Presumption of innocence
 - Protection of children.

II. REPORT ON SPECIFIC ISSUES

The right to life (Articles 6 and 14)

Legal provisions on Death penalty

3. Vietnam currently still applies the death penalty for some extremely serious crimes in the context that the country is still facing complex crime situation with the increasingly number of extremely serious offenses. According to Article 40 of the 2015 Penal Code (amended and supplemented in 2017), the death penalty is applicable to 18 types of crimes related to national security, human life, drugs, corruption and several other particularly serious offenses. However, Article 40 excludes some people from being imposed/executed with the death penalty, including: offenders under 18 years old at the time of the crime, pregnant women, women nursing children under 36 months old or offenders aged 75 or older at the time of the crime or trial.

4. Compared to the previous versions of the Penal Code, the 2015 Penal Code has made a big improvement in gradually reducing the number of capital offenses to align with the global trends and to meet the local specific context in each period. Specifically, the 1985 Penal Code prescribed the death penalty for 44 crimes; the 1999 Penal Code reduced this to 29 crimes; the 2009 Penal Code lowered it to 22 crimes; and the 2015 Penal Code further reduced the list to 18 crimes. And in practice this number is even lower, as the courts normally do not impose death penalty to all these 18 types of crimes, but only to some very dangerous ones such as murder and drug-related offenses. For some other crimes, such as “Activities aimed

at overthrowing the people's government,” “Sabotage of material and technical foundations of the Socialist Republic of Vietnam” (Article 114), “Destruction of peace, initiation of invasion war” (Article 421 of the Penal Code) and “Producing and trading fake medicines for treatment and prevention” (Article 194 of the Penal Code), since 2018 the courts have not delivered any death sentence. Therefore, in practice, the number of crimes resulting in death sentences is much lower than the law permitted number of 18.

5. It can be seen that in the recent years, Vietnam has made significant progress in minimizing the application of the death penalty. However, the Penal Code has been in effect for eight years, during which period the country has undergone significant changes in many aspects, leading to some provisions of the Penal Code, including the provisions of death penalty no longer meeting the practical situation. Specifically:

- Some crimes, based on their nature and level of social danger, no longer need to carry the death penalty.
- The current list of 18 capital crimes seems still relatively high and should be gradually reduced to align with global trends and Vietnam’s current context.

The execution of death penalty

6. Reports from relevant agencies indicate that the regime for individuals sentenced to death - including provisions for food, clothing, allowing daily activities, medical care, receipt of gifts, arrangements for visits by relatives, legal counsel and consular access - has been implemented in accordance with legal regulations. The management and detention of these individuals in detention centers have generally ensured safety and security. The execution of death penalty and the procedures for handing over the bodies or ashes to their families have been conducted in accordance with the law and have ensured public order and safety.

Recommendations:

- We recommend that the Vietnamese Government amend the Penal Code to further reduce the number of offenses punishable by death, ensuring alignment with global trends and the current practical context of Vietnam.

Elimination of slavery, servitude and trafficking in persons (Article 2, 7, 8 and 26)

Trafficking in person

7. We note that the Government of Vietnam has been implementing various measures to enhance access to support services for victims of human trafficking crimes, including both Vietnamese citizens and foreigners trafficked within Vietnam’s territory.

8. The Government is also committed to developing a strong legal framework for combating human trafficking by adoption of a newly amended Law on Prevention and Combat of Human Trafficking in November 2024, which is effective from July 1, 2025. This newly amended law aims to address shortcomings of the 2011 law and to align with international commitments, including the ICCPR and the Palermo Protocol. The new law contains many progressive provisions:

- Expanding the scope of protected persons to include: victims, individuals in the process of being identified as victims, accompanying persons under 18 years old; relatives of victims, individuals participating in anti-human trafficking activities or in supporting victims. The protection applies not only to Vietnamese citizens but also to stateless persons residing permanently in Vietnam and foreigners trafficked within Vietnam¹.
- Strengthening support mechanisms for victims², especially children, women and persons with disabilities³.
- Providing clearer regulations on the establishment, operation and supervision of reception centers, supporting facilities and shelters for victims.
- Adding responsibilities for local authorities, social organizations and businesses in supporting victims to re-integrate into the community⁴.

9. A network of reception and support facilities for victims of human trafficking has been established at both central and local levels, along with dozens of provincial social protection centers and safe houses/shelters in the community operated jointly by social organizations and non-governmental organizations (such as the Women's Union, Blue Dragon, Hagar International). Reception and support centers for foreign and stateless victims of trafficking have also been set up with interpretation and legal assistance services.

10. Despite the above-mentioned progress, Vietnam still faces several challenges:

- The number of shelters (temporary shelters, community safe houses) is still limited and does not cover all regions;
- Financial resources and specialized human resources are insufficient, especially specialists in psychological support and long-term rehabilitation of victims; there is a lack of interpreters and staff trained in providing psychological and legal assistance to foreign victims;
- There is a lack of unified coordination mechanism between local authorities and social organizations in receiving and monitoring victims after they leave reception and support centers;
- There is no long-term mechanism to support foreign victims, particularly regarding their residence, safe repatriation or smoothly living in Vietnam if they cannot return to their home countries.

Recommendations:

11. We recommend the Government of Vietnam to:

¹ Article 34, 37 of the 2024 Law on Anti-Human Trafficking.

² The 2024 Law on Anti-Human Trafficking supplements provisions on the rescue, reception, and verification of victims located abroad (Article 29); supplements provisions on the reception, verification, and repatriation of foreign victims of trafficking in Vietnam (Article 31); and supplements and enhances the support regime (Article 37).

³ Clause 5 Article 7, Article 37-44, 46 of the 2024 Law on Anti-Human Trafficking.

⁴ Clause 1 Article 46, 47 of the 2024 Law on Anti-Human Trafficking.

- Provide sufficient funding for victim support facilities, incorporating it into national target programs on gender equality, poverty reduction and social welfare;
- Train and strengthen the capacity of staff working at victim support centers, especially the capacity to assist foreign victims;
- Encourage social organizations to participate in victim support (NGOs, religious organizations, communities) by helping them operate the shelters with high standards;
- Strengthen international cooperation to ensure cross-border access to supporting services, especially with countries that have many victims or unsafe migration flows.

Access to justice, independence of the judiciary and fair trial (Article 2, 9 and 14)

The right to a lawyer of choice

12. Currently, Vietnamese law fully guarantees the right of every citizen to have a lawyer of his or her own choice. Both the 2013 Constitution and the 2015 Criminal Procedure Code, as well as the 2015 Civil Procedure Code, contain provisions on the right to legal representation in civil and criminal cases⁵. The Criminal Procedure Code and the Law on Lawyers also set out a full list of lawyers' rights to ensure that lawyers can effectively protect the lawful rights and interests of their clients⁶. In addition, the Law on Lawyers strictly prohibits any agencies, organizations or individuals from obstructing the professional activities of lawyers⁷.

13. The Vietnamese law guarantees not only citizens' right to have a lawyer, but also their right to freely choose a lawyer. Article 75 of the 2015 Criminal Procedure Code states: "The defense counsel shall be chosen by the accused, their representative or their relatives." This means that the law upholds the principle of voluntariness and consent of the accused in inviting and selecting a lawyer. Lawyers are invited through an agreement between the accused or their representatives or relatives and the law firm or law company. Investigative agencies, the Procuracy and the Courts have no right to obstruct the accused from inviting or choosing a lawyer for reasons not permitted by the law.

14. Since the enactment of the Law on Lawyers in 2006, with the facilitation and support of the Vietnamese Government (through the issuance of strategies, projects on lawyer development and financial support), the number of lawyers in Vietnam has increased significantly. According to the summary report of the Vietnam Bar Federation, the number of

⁵ Clause 4, Article 31 of the 2013 Constitution provides: "Persons who are arrested, detained, held in custody, prosecuted, investigated, indicted, or tried have the right to defend themselves, to request a lawyer, or to have someone else defend them; Articles 60 and 61 of the Criminal Procedure Code provide that the accused and defendants have the right to "defend themselves or to have someone defend them."; Clause 1, Article 9 of the 2015 Civil Procedure Code stipulates: "Parties have the right to self-defense or to request a lawyer or another person who meets the conditions prescribed by this Code to protect their lawful rights and interests."

⁶ Article 73 of the Criminal Procedure Code: "Rights and obligations of the defender"; Article 21 of the Law on Lawyers: "Rights and obligations of lawyers".

⁷ Clause 2, Article 9 of the Law on Lawyers.

practicing lawyers rose from 4,161 in 2007 to 18,749 as of July 2024. On average, nearly 1,000 new lawyers are admitted each year⁸.

15. However, despite the rapid development of the number of lawyers, the average ratio of lawyers to the population in Vietnam remains quite modest, at only 1 lawyer per 5,675 people. In contrast, this ratio is much higher in some other countries such as Japan and South Korea, which allows people to have greater access to lawyers and more options to choose them. Moreover, for various reasons, some people in Vietnam still do not have the habit to consult lawyers when facing legal issues.

Recommendations:

We recommend that the Government of Vietnam:

- Implement appropriate measures to develop the number of lawyers to meet the actual demand, thereby enhancing people's access to legal services.
- Implement necessary awareness raising activities so that more people know the benefits of having lawyers' services in protecting their legitimate rights and interests.

The right to legal aid

16. To ensure that all citizens have equal opportunities to access legal services, regardless of their financial ability to hire a lawyer, since 1997, based on Decision No. 734/TTg of the Prime Minister on the establishment of legal aid organizations for the poor and people enjoying preferential policy, the Government of Vietnam has developed a legal aid system from the central to local levels. Accordingly, at the central level, there is the Legal Aid Agency under the Ministry of Justice and at the provincial/city level, there are Legal Aid Centers under the Provincial Department of Justice. Eligible beneficiaries of legal aid include the poor, people enjoying preferential policy (such as those who contributed great services to the revolution, ethnic minorities, people who are eligible for court fee exemption) and some other groups.

17. Since then, the National Assembly has enacted the Legal Aid Law twice (the 2006 Law replacing Decision 734/TTg and the 2017 Law replacing the 2006 Law). Accordingly, the legal aid system as well as the scope of those entitled to free legal aid has gradually expanded over time. The legal aid system has expanded to include not only State Legal Aid Centers (managed by Ministry of Justice and Provincial Departments of Justice), but also non-governmental legal aid centers set up by law universities and social organizations. The number of groups eligible for free legal aid also increased from 2 groups in 1997 to 6 groups in 2006 and 14 groups in 2017.

18. Since the implementation of the 2017 Legal Aid Law, approximately 33,000 poor people, 60,700 ethnic minorities residing in economically and socially difficult areas, 24,500 revolution contributors, 24,000 children and 12,800 disabled people facing financial

⁸ <https://daibieunhandan.vn/luat-su-tham-gia-to-tung-gop-phan-giam-oan-sai-post356058.html>

difficulties have received free legal aid⁹. Among them, many successful cases have been noted, for e.g. legal aid beneficiaries received lighter sentences or their charges have been changed or beneficiaries received higher compensation...

19. The above results have confirmed the important role of legal aid lawyers in helping vulnerable people access justice, contributing significantly to establishing the objective truth of cases and protecting the legitimate rights and interests of the poor and other vulnerable groups in society. Through this, legal aid helps ensure human rights and citizens' rights.

20. However, alongside the achievements, there remain some limitations in guaranteeing the right to legal aid:

- Although the categories of beneficiaries entitled to legal aid were significantly expanded under the 2017 Legal Aid Law, there are still some groups who are unable either to afford paid legal services or to qualify for free legal aid. For example, households near poverty line, agricultural, forestry, salt production and fishery households with average living standards, as well as many other people with genuine legal aid needs, but are not yet covered under the legal aid eligibility criteria.
- The number of legal aid cases, especially the number of litigation cases, remains low compared to the total number of eligible beneficiaries and the total number of adjudicated cases nationwide¹⁰. The main reason for this is that some people are still unaware of or uninterested in their right to legal aid. Additionally, people living in remote, mountainous, or hard-to-reach areas often cannot access Legal Aid Centers, which are usually located near provincial centers.

Recommendations:

21. We recommend that the Government of Vietnam:

- Amend the Legal Aid Law to further expand the scope of beneficiaries entitled to legal aid.
- Implement appropriate media measures to raise public awareness of the right to free legal aid.
- Establish additional legal aid branches in remote and isolated areas to facilitate easier access for people living in remote area.

Presumption of innocence

22. In recent years, Vietnam has made significant efforts to improve the legal framework and implementation practice to ensure the right to a fair trial in accordance with Article 14 of the ICCPR. The presumption of innocence - a fundamental pillar of fair trial - has been clearly

⁹ <https://qcn.hcma.vn/content/hoan-thien-phap-luat-ve-quyen-duoc-tro-giup-phap-ly-cua-nguoi-dan-theo-yeu-cau-nghi-quyet-cua-dang-ve-tiep-tuc-xay-dung-va-hoan-thien-nha-nuoc-phap-quyen-trong-giai-doan-moi-361611>

¹⁰ <https://qcn.hcma.vn/content/hoan-thien-phap-luat-ve-quyen-duoc-tro-giup-phap-ly-cua-nguoi-dan-theo-yeu-cau-nghi-quyet-cua-dang-ve-tiep-tuc-xay-dung-va-hoan-thien-nha-nuoc-phap-quyen-trong-giai-doan-moi-361611>

affirmed in Article 31 of the 2013 Constitution and further detailed in Article 13 of the 2015 Criminal Procedure Code. Accordingly, anyone accused is considered innocent until proven guilty by a lawful procedure and until a final and binding court verdict is issued. The current 2016 Press Law also stipulates the responsibility of press agencies for not saying things to affect the honor and dignity of individuals before there is a final conviction, thereby contributing to respect of presumption of innocence principle in media activities¹¹.

23. However, despite the progress made, there still remain certain challenges in ensuring the presumption of innocence in practice, namely:

- Some news reports and articles in mass media sometimes still present speculative information or use the language implying guilt of individuals who are still under investigation process and have not yet been tried before the court. This is not in line with the presumption of innocence principle and as a result may affect the reputation of those individuals and create public prejudice.
- Some statements in reports or at public events sometimes use non-neutral phrases to describe the accused, which may lead to driving away from the spirit of the presumption of innocence.
- The rapid development of social media and new communication platforms also poses challenges for the presumption of innocence principle to be fully respected.

Recommendations:

24. We recommend that the Government of Vietnam implement the following specific measures to continue ensuring the effective application of the presumption of innocence principle in practice:

- Promoting in-depth training for investigators, prosecutors, judges, journalists and media officers on how to respect for the presumption of innocence principle, including skills in using neutral and non-prejudicial language before and during legal proceedings and reporting.
- Enhance supervision and strictly handle cases where the press or officials violate the presumption of innocence principle, including requiring public corrections or imposing disciplinary actions when necessary.
- Organize community awareness campaigns on the presumption of innocence and the right to a fair trial, involving schools, the press and social organizations.

Protection of children

25. To address shortcomings in the protection of the rights of children aged 16-17, Vietnam enacted the Juvenile Justice Law on November 30, 2024. The law defines juveniles as persons aged from 14 to under 18, thereby eliminating inconsistencies in definitions across existing

¹¹ Clause 8, Article 9 of the 2016 Press Law.

legal documents (such as the Law on Children, the Penal Code, the Civil Code, etc.). Accordingly, although children aged 16-17 no longer fall under the category of “children” as defined by the 2016 Law on Children, they are still entitled to special policies and judicial procedures, such as trial at the Family and Juvenile Court, application of diversionary measures and special protection during legal proceedings, which is consistent with the principles set out in Article 40 of the UN Convention on the Rights of the Child (CRC) and General Comment No. 10 of the UN Committee on the Rights of the Child in 2007 regarding children’s rights within the criminal justice system.

26. The Juvenile Justice Law also stipulates 12 diversionary measures, including 7 new measures compared to the 2015 Penal Code, aiming at minimizing the number of juveniles brought to trial or subjected to harsh punishments. In addition, preventive and coercive measures can only be applied when truly necessary, with priority given to alternatives to detention and frequent review of detention status. Juvenile prisoners are guaranteed access to education and vocational training, including via online learning.

27. Despite the above achievements, Vietnam is still facing several challenges in implementing the Juvenile Justice Law:

- Regarding the judicial system organization: so far only 41 Family and Juvenile Courts have been established nationwide¹². In the context of the current renovation of administrative units, where district level is abolished, access to child-friendly justice, especially in remote and mountainous areas, may encounter difficulties. Facilities for child-friendly justice are not fully adequate; regional courts face the risk of being overloaded.
- Regarding specialized personnel: The number of investigators, prosecutors and judges who have received specialized training on working with juveniles is still modest. The role of psychologists and social workers in supporting judicial proceedings is still limited.

Recommendations

28. While acknowledging Vietnam’s progress in protection of children we also recommend that the Government of Vietnam:

- Design a child-friendly justice system appropriate to the current administrative system reform, including:
 - ✓ Expanding the system of Family and Juvenile Courts at the provincial/regional level;
 - ✓ Establishing separate units specializing in working with children within courts, procuracies and investigation agencies;
 - ✓ Maintaining child-friendly facilities and an intersectoral support network.

¹² <https://congly.vn/tandtc-tra-loi-dbqh-viec-thuc-hien-quy-dinh-phap-luat-ve-tu-phap-nguoi-chua-thanh-nien-437441.html>

- Develop specialized human resources, specifically:
 - ✓ Building a team of specialized judicial officers (judges, prosecutors, investigators) with professional certification in juvenile justice;
 - ✓ Organizing specialized training courses and workshops on juvenile justice
 - ✓ Encouraging the involvement of social worker and psychologists in the juvenile justice system.