

OPENING STATEMENT
BY COL. GEN. LE QUY VUONG, DEPUTY MINISTER OF THE PUBLIC SECURITY
HEAD OF THE VIETNAMESE DELEGATION
AT THE STATE PARTY REPORT SESSION
OF THE INITIAL COUNTRY REPORT OF VIET NAM
ON THE IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE

(United Nations Committee against Torture, 14 - 15 November 2018)

Your Excellency Chair of the Committee against Torture of the United Nations,

Excellencies Members of the Committee,

Ladies and Gentlemen,

On behalf of the Vietnamese delegation, allow me to convey my most esteemed greetings to the Chair, Members of the Committee, and all present here today. It is the Vietnamese delegation's great pleasure to attend today's dialogue to consider Viet Nam's Initial Report on the implementation of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereby referred to as the Convention Against Torture)

I am Col. Gen. Le Quy Vuong, Deputy Minister of Public Security, Member of the 14th National Assembly, the Socialist Republic of Viet Nam, Head of Delegation. The Vietnamese delegation consists of 27 members, representing multi-ministries and branches responsible for implementing the Convention in Viet Nam, being the Ministries of: Public Security, Defense, Justice, Foreign Affairs, Labor – Invalid and Social Affairs, Government Inspectorate, Office of the Government, Supreme People's Court, Supreme People's Procuracy, and the Permanent Mission of the Socialist Republic of Viet Nam to the United Nations in Geneva.

Excellencies Chair and Members of the Committee,

The initial report of Viet Nam on the implementation of the Convention Against Torture has been drafted based on the guidance of the Committee with the contribution and the feedback from agencies and bodies in the State apparatus of the Socialist Republic of Viet Nam, mass organizations, professional associations, as well as all walks of Vietnamese citizens, and the assistance and support from the experts from the United Nations and other countries.

In a serious, open and candid manner of spirit, the Report has provided an outline on Viet Nam's political, economic and social situation in the period during which the Convention is implemented. It includes the efforts made and results achieved by Viet Nam in the implementation of the legislative, executive and judicial methods, as well as other measures, to prevent and punish acts related to torture and cruel, inhumane or degrading treatments. The Report also identifies shortcomings and challenges encountered during the implementation of the Convention in Viet Nam, and ways and means to better implement this Convention in the future. In particular, the Report focuses on the following points:

Firstly, reasserting the humanity and humanitarianism of Viet Nam and her strategies and policies in history and in the present pertaining to protecting and ensuring human rights in general, and the rights to not be subjected to torture, cruel and inhuman treatment in particular. Accordingly, the 2013 Constitution of the Socialist Republic of Viet Nam reserved chapter II with 36 articles to regulate on human rights and the fundamental rights and responsibilities of the citizen. Among these, the rights to not be subjected to torture and cruel, inhumane or degrading punishment are enshrined in Paragraph 1, Article 20 of the Constitution.

Secondly, in addition to those provisions of the Constitution, the right not be subjected to torture or cruel, inhumane or degrading treatment or punishment, are also provided in a wide range of legal documents in the areas of criminal, administrative and civil justice. In particular, in the year 2015, being also the first year implementing the Convention, the National Assembly of the Socialist Republic of Viet Nam made amendments and supplements of strategic proportion pertaining to criminal and civil justice, administrative and economic policies. This is expressed through the new promulgation, or comprehensive amendment and supplement of important laws and legislations. Many regulations on preventing torture in the Convention have been integrated into the Criminal Code, Criminal Procedure Code, Law on the Organization of Criminal Investigation Agencies, Law on the Execution of Temporary Custody and Detention, as well as bilateral international treaties between Viet Nam and other countries on the extradition and transfer of sentenced persons.

Though the 2015 Criminal Code has not provided a separate offense for, nor defined the term “torture”, but all acts that are torture in nature would constitute a crime, constituting the offense of “Use of corporal punishment” (Article 373) and “obtaining testimony by duress” (Article 374). In Vietnamese laws, these acts are considered to be a serious threat to society and therefore must be justly and severely punished: The minimum punishment is 6 months of imprisonment and the maximum is life imprisonment. Acts that are torture in nature may also be further criminally prosecuted according to the offenses of: Causing death while performing official duty (Article 127), Causing injuries or harms to the health of others while performing official duty (Article 137), and tormenting others (Article 140), among others. The testimonials and evidence collected by acts related to torture are altogether rendered null and void in the criminal prosecution process and cannot be used to convict a suspect.

The 2015 Criminal Procedure Code has also added provisions on (i) audio or audio-video recording during the interrogation of suspects. Audio and audio-video recording may also be used when receiving denunciations or reports pertaining to criminal acts, requesting to initiate court procedures, testimony collection, cross-examination and trial; (ii) the right of the defense to participate in the defense process from the moment the accused is prosecuted; and in cases of arrest or temporary detention, the defense may take action from the moment the arrestee is present at the Headquarters of the investigating agency or other bodies tasked with investigative works, or from the moment of a detention warrant; (iii) the right of the defense to be present during cross-examination, identification of person or voice, and to request the prosecution process to be carried out in accordance to the law. It also directly stipulates that “torture, use of corporal punishment, obtaining testimony by duress or any other treatment that violates the human body, life or health, are prohibited.”

The Law on the Organization of Criminal Investigation Agencies codifies 04 groups of behaviors that are strictly forbidden in the organization of criminal investigation related to the protection of the right of arrested persons, persons held under temporary detention or suspects, in which the following is affirmed: “Obtaining of testimonial under duress, use of corporal punishment or torture in all forms, or inhumane or degrading treatment, or any other acts that violates the lawful rights and interests of agencies, organizations or individuals are strictly forbidden.”

Vietnamese law has had in place regulations on the treatment of persons under imprisonment (including those held under temporary detention or custody before trial, or those serving their sentence after trial), which strictly prohibits torture, coercion, use of corporal punishment or any other treatment that violates the lawful rights and interest of these persons. Viet Nam has implemented imprisonment and custody divided into areas classified based on gender, age, nationality and the seriousness of offense, and others. Vulnerable convicts and detainees such as pregnant women or women nursing infants under 36 months of age, or minors, etc., are entitled to food, accommodation, work and healthcare that is more facilitating and appropriate to their gender, health and age. For persons held under temporary detention or custody, or convicts who are foreigners, Vietnamese law allows visits, consular meetings; we have also permitted a number of foreign delegations to visits prisoners serving sentences, or visit prisons within the framework of experience exchange and managerial capacity building.

To prevent acts of violation in general and acts related to torture in particular by authorized officials, Viet Nam has also established independent agencies or mechanisms to monitor the behavior of officials responsible for collecting testimonies and administering prisoners or detainees, and to supervise prisons and other detention facilities as well as the performance of prison regimens. In addition, detention facilities have also been actively discovering, preventing and eliminating behaviors that violates the life, health and dignity of prisoners/detainees. Officials in charge of administering prisoners/detainees in detention facilities are under the supervision of the following authorities: the National Assembly, Members of the National Assembly, the Viet Nam Fatherland Front, and particularly the People's Procuracy at all levels. Accordingly, the People's Procuracy supervises judicial activities at all time, from the processing of criminal reports and allegations, the request for initiating court procedures, to throughout the investigation, prosecution and trial of the criminal case, and supervision of temporary detention as well as the serving of criminal sentences.

Vietnamese law provides solid regulations on professional moral standards for officials in related fields, that are standardized in order to provide moral guidance and temperance for the officials, public servants, professional officers and non-commissioned officers, professional servicemen and defense workers. During the process of performing official duties by public servants in general and officials related to criminal procedures and execution of judgments in particular, any violations of the law or professional moral standards, including acts related to torture, shall, based on the characteristic and severity of the violation, be penalized by a wide range of punishments: disciplinary action (censure, warning, pay rate cut, demotion, removal from office or dismissal) or criminal prosecution. For investigators, procurators and judges, based on the characteristic and severity of the violation, may be removed from their post, removed from office, dismissed or subjected to criminal prosecution.

In addition to a system of measures to prevent and punish acts related to torture from public authorities, Viet Nam also pays keen attention to better guarantee of the rights of tortured victims and other related persons. In particular: the 2015 Criminal Procedure Code provide in details the rights to express testimonies and views; the rights of persons held in case of emergency, arrested persons, suspects and defendants and the legal representatives of legal persons not to provide testimony against themselves or forced to confess; ensuring the right of persons held in detention to meet, contact and be visited by family members, lawyers, the people's defense, legal assistance providers, as well as the right to consular access and notification in case of the detained being a foreign citizen. This Code also stipulated in details 14 groups of rights for the defense, including the right to meet and question the accused, the right to participate in the defense process from the moment of arrest, the right to be present in cross-examination, identification of faces and voices, the right to request lawful court procedures, and the right to debate at court etc. The supplementation and detailed provision of these rights in the law is an clear evidence of Viet Nam's determination in respecting and protecting human rights, and also one of the measures to not only prevent acts of torture but also strengthen protection for victims of torture.

The 2013 Constitution, 2015 Criminal Procedure Code, 2011 Law on Complaints, 2018 Law on Denunciations, and a wide range of other laws, all have stipulated that: "All people have the right to submit complaints and make allegations to authorized agencies, organizations or individuals on violations of the law by other agencies, organizations or individuals. Competent agencies, organizations and individuals must receive and handle these complaints and denunciations. Injured parties are entitled to compensation in material and in mental aspects, and have their honor restored in accordance with the law. Acts of revenge against persons who have submitted complaints and denunciations, or the use of the right of complaint and allegation to libel or harm others, are strictly forbidden."

Persons unlawfully arrested, held under detention or custody, or subjected to court procedures, investigation, prosecution, trial and sentence serving are entitled to compensation in material and mental aspects and have their honor restored. The criminal prosecution authority that have wrongfully convicted an innocent or caused damage must compensate such damage and restore the honor and rights/ benefits of those wrongfully convicted or injured. Those who have caused damage have an obligation to pay back to the authority in accordance with the law.

Viet Nam also implements other measures in addition to compensation in order to restore the dignity of the victim and ensure their rights to safety and health protection so as to prevent such cases being repeated, and to help the victim return to society. These include poverty reduction and literacy programs to enhance awareness and prevent the commission of crime or recidivism thereof. They take different names: Victim reception center, Self-reliant group, Hotline for supporting and protecting children and victims of trafficking in persons, and the Club for Assisting trafficked victims.

Thirdly, along with the improvement of the policy and legal framework for protecting human rights and the rights not to be subjected to torture, as well as the prevention of acts related to torture, Viet Nam also attaches special importance to the promotion of awareness for the officials and the people on human rights and countering torture through education, training, dissemination programs on the media, newspapers, radio and television channels, conferences and workshops. In addition, every Ministry and

agency, with regards to their authority and mission, has also organized a large number of conferences and workshops, training programs and guidance sessions for their own employees related to human rights and the prevention of all forms of torture, particularly for officials in criminal investigation, prosecution, trial and sentence enforcement, and officials providing healthcare for persons under detention.

Fourthly, the Report has identified the strengths and weaknesses in the implementation of the Convention in Viet Nam. The achievements that Viet Nam has attained over more than 70 years of national construction and development, particularly in protecting human rights, along with the stable political situation and the suitable economic and social development policies and orientations, are a prerequisite and advantage for Viet Nam in the implementation and performance of the Convention. Along with these advantages, Viet Nam still has a number of weaknesses to be overcome in order to effectively implement the Convention in the future: the legal document system in human rights has yet to be fully standardized and requires further studies and work; resources for sustainable development goals and narrowing gaps between regions and areas remain limited; the law and professional capacity of public servants are not quite even; the economic life and awareness of the people in a number of localities remain low, and their law awareness is still limited.

The Report also lists a number of incidents related to torture, forced confession and use of inhumane treatment in paragraphs 199, 200 and Appendix 11. These are cases having been investigated, prosecuted and tried recently. The outcomes of these cases reflect the sternness of the law in both punishing those guilty of torture and deterring and preventing other public servants from violating the law against torture while performing official duties,

Excellences' Chair and Members of the Committee,

To reaffirm the determination to effectively implement the Convention, in addition to promoting economic and social development, raising the people's awareness and ensuring social security matters for the people, I would like to provide an overview of Viet Nam's efforts in policy and law improvement and Convention implementation, since the submission of the Report, as follows:

Improving the institutions and laws: Between 2017 and 2018, the National Assembly of Viet Nam has adopted three new laws: the 2017 (Amended) Law on Legal Aid, the 2017 (Amended) Law on State Compensation Liability, and the 2018 Law on Denunciations.

In the area of execution of temporary detention or custody, Viet Nam has issued 15 legal documents detailing and providing guidelines for implementing the Law on Temporary Detention and Custody. These include: two decrees of the Government, two inter-ministry circulars, ten circulars of the Ministry of Public Security, and one regulation of the Supreme People's Procuracy.

In criminal investigation, ten legal documents have also been issued, including two decrees, four inter-ministry circulars, and four circulars of the Ministry of Public Security. These rules all stress the principles of countering torture and prohibiting the use of corporal punishment and obtaining testimony by duress in the investigation process.

The Supreme Court of Viet Nam has also implemented the Regulation for handling persons holding judicial office in the People's Court, the Code of Ethics and Conduct for Judges, and the

Regulation for organizing courts, with the aim of minimizing violations by public servants and best ensuring the lawful rights and interests of persons involved in court procedures.

The Vietnamese government has issued the Project for disseminating the content of the Convention and Vietnamese laws against torture to the officials, public servants and the people. The goal is to raise the awareness and understanding of the officials, public servants and the people on the content of the Convention and relevant Vietnamese law against torture, and to educate and heighten the respect for and observance to the Convention Against Torture and Vietnamese laws against torture for the officials, public servants and the people.

Viet Nam has implemented many dissemination projects undertaken by Ministries, agencies and localities in this period in order to meet the need for promulgation on human rights, thus contributing to raise the awareness of different groups of individuals on this matter. A notable example is the Project for strengthen legal dissemination and education for persons serving prison sentences, persons under judicial measures or administrative penalties, persons recently released from prison to rehabilitate into society, and minors and young persons who violate the law or who are homeless.

On practical activities: At present, the Vietnamese Ministry of Public Security has piloted the implementation of audio or audio-video recording in criminal procedure at 45 facilities. Recorded audio and video data are considered as a part of the criminal case file. We have boosted the education and training of professional ethics and moral standards for officials acting in official capacity, investigators and investigative agents, wardens and administrators of prisons and detention centers, officials providing legal assistance, procurators and judges. We have justly and seriously punished all violations, especially the violation of criminal law pertaining to torture. Most recently, on 13 September 2018, the People's Court of Ninh Thuan province brought to trial five defendants who were formerly police officers on charges of use of inhumane punishment; the highest punishment was seven years of imprisonment.

Vietnamese authorities have brought the clause of refusal of criminal legal assistance, extradition or transfer of sentenced person requests if there is reasonable ground that the subject person has been, or may be tortured, into bilateral international treaties that Viet Nam is proposing for conclusion with other countries such as Kazakhstan and Mongolia. We have made the clause of “the assurance not to use torture or other cruel or inhumane treatment or punishment” in requests for extradition or for transfer of sentence persons which sent to Viet Nam from a foreign country, or from Viet Nam to other countries, a mandatory principle.

For International cooperation: Viet Nam has continued to actively cooperate with foreign partners in preventing and countering acts of torture, through: exchanging information and experience in the organization and implementation of the Convention as well as practical measures and tools, and in the effective use of equipment to counter acts of torture; and participating in and organizing international conferences and workshops relating to countering torture, thus strengthen the capacity of Vietnamese officials, particularly the Public Security forces in the implementation of the Convention Against Torture.

Excellencies Chair and Members of the Committee,

To conclude my presentation, allow me to reiterate the strong commitment of the State of Viet

Nam in the respect for and protection of human rights and its implementation of quality and steadfast steps to prevent and punish all behavior related to torture, thus contributing to the effective implementation of the Convention Against Torture in accordance with the present available condition and situation in Viet Nam.

On behalf of the Vietnamese delegation, I would like to express my sincere gratitude to Mr. President and all members of the Commission. However, we are well aware that there remain many challenges to be overcome and work to be done ahead. It is our hope to receive your understanding and sharing from Mr. President and members of the Commission against torture, as well as a constructive exchange, during this dialogue session.

Thank you for your kind attention./.