

ADDENDUM Responses of Viet Nam to Recommendations

Viet Nam welcomes the interest taken by many countries and international organizations in its Universal Periodic Review (UPR). Viet Nam takes note of the constructive comments and recommendations made at the 5th Session of the Human Rights Council Working Group on 8th May 2009 which considered Viet Nam's report. Having studied and thoroughly considered these comments and recommendations, Viet Nam wishes to make the following additional responses and comments:

1. Viet Nam attaches importance to the UPR mechanism and took the preparation of the review seriously. Viet Nam considers it not only an obligation as a UN Member State, but also an opportunity for institutions, organizations and representatives of the people from all social strata in Viet Nam to conduct a comprehensive and inter-disciplinary review of policies, laws and practices to ensure human rights in Viet Nam. Through the dialogue at the HRC Working Group session, Viet Nam has drawn valuable lessons on how to better ensure the rights of the people. Viet Nam's country report was recognized by most participating countries as well-prepared and comprehensive, covering a wide range of issues, showing the commitment to protect human rights and promote international relations. Many praised Vietnam's open and constructive approach, which truly enhanced the credibility and persuasiveness of its report.

Viet Nam shares the widely held view that human rights are universal, inseparable, interdependent and interlinked. The promotion and protection of all human rights and freedoms are the primary responsibilities of States. Efforts in that regard must take into due account the particularities of each country and region as well as the different historical, cultural and religious backgrounds. This is affirmed in all core human rights treaties and in the 1993 Vienna Declaration and Action Plan. Viet Nam also aligns itself with the position recently reaffirmed in the Final Document of the 15th Non-Aligned Movement Summit in Cairo, Egypt (11th -16th July 2009) that human rights issues must be addressed through a constructive, dialogue-based approach, in a fair and equal manner, with objectivity, respect for national sovereignty and territorial integrity, non-interference in the internal affairs of States, impartiality, non-selectivity and transparency as the guiding principles, and should pay attention to the economic, social and cultural rights in order to meet the essential needs of the people. The international community needs to support efforts of developing countries to assure full implementation of those rights.

Along this line, Viet Nam has been consistent in its efforts to guarantee and promote human rights, considering the human being both the ultimate goal of and driving force behind all social and economic development policies. Over the past many years, Viet Nam has focused on the implementation of socio-economic programmes for growth, thus ensuring a better material and spiritual life for the people. Efforts have also been made to strengthen democracy, build a rule-of-law State and promote social equality and security. This has been done with the full support and broad involvement of the people and has brought

about positive changes in all aspects of the society. Yet, challenges remain and further efforts are needed.

2. The Working Group report on the UPR of Viet Nam adopted on 8th May 2009 includes 123 recommendations. Viet Nam has indicated its support to most of those. Viet Nam will seriously consider and implement these recommendations to the best of its ability. In particular, Viet Nam will continue to consider its accession to a number of international human rights treaties, work out roadmaps and plans to further improve the legal framework to better protect and promote human rights in Viet Nam, take measures to better ensure economic, cultural and social rights, the rights of women, children and ethnic minorities, accelerate poverty reduction programmes, healthcare, education and assistance for ethnic minorities in mountainous areas, and to continue to learn from and share experience with other countries.

3. With regards to recommendations pertaining to measures already implemented or currently being implemented by Viet Nam

(i) Recommendation: Provide people detained, including under security or propaganda laws, with fundamental legal safeguards, including representation by legal counsel of their choice throughout the proceedings and a public trial.

Basic legal protection is guaranteed for people detained for violation of Vietnamese laws. These rights are provided for in the law and exercised in practice. The Criminal Procedures Code stipulates that all detainees and accused have the right to self-defence, by themselves or a counsel of their choosing (Article 11), the right to choose and substitute attorneys (Article 57), the right to open court trials, except for special cases concerning matters of state secret, national customs and traditions or at their own legitimate request (Article 18). They have an equal right to present before the court their evidence and to request and have democratic debates before court (Article 19) and the right to ask for an alternative prosecutor (Article 43). Chapter IV of this Code elaborates the rights and responsibilities of detainees and the accused (Articles 48, 49, 50). As a matter of fact, all persons detained and accused on any charges, including those on national security, are given the above-mentioned rights.

(ii) Recommendation: Reduce the length of prison sentences for non-violent crimes

The Vietnamese law specifically categorizes various types of crime based on the nature and the level of danger that each type poses upon the society (Chapter III, Article 8). They include less serious, serious, very serious and extremely serious criminal offenses, each of which is subject to a specific range of punishments. In addition, in line with its policy of leniency, every year Viet Nam considers and grants commutation of sentence or amnesty to thousands of inmates who have good record of conduct and meet the requirements of the 2008 Law on Amnesty. One-off or multiple reductions of prison terms for inmates convicted of crimes, regardless of their violent or non-violent nature, are clearly specified in Articles 58 and 59 of the Penal Code. On the occasion of the 2009 Tet (New Lunar Year Festival) alone, more than 15,000 inmates were released, including 36 foreign nationals and 6 persons convicted of

violation of national security.

(iii) Recommendation: Adopt a whistleblower law so that those who identify corruption are protected from prosecution or harassment

Viet Nam is strongly committed to ‘the effective prevention of and resolute fight against corruption’ and ‘the entire political system and society are determined to combat corruption’ (Political Report, The 10th National Party Congress). Viet Nam has recently ratified the United Nations Convention against Corruption. Therefore, Viet Nam sees the protection of whistleblowers as an important task to guarantee the effectiveness of the fight against corruption. The Government has endeavoured to improve the legal framework to better protect corruption fighters. In addition to Article 74 of the Constitution (which strictly prohibits revenge against denouncers and petitioners) and Article 132 of the Penal Code (which stipulates the forms of punishments against infringements of the right to complaint and petition), the Law on Complaint and Denunciation stipulates the necessary measures to ensure the safety of complainants and denouncers and to penalize those who threaten, take revenge on or insult them (Articles 66, 96-100). The Government has also issued Decree No. 136/2006/ND-CP on November 14th, 2006 to provide instructions on the implementation of the Law on Complaint and Denunciation and the Law on the Amendment of certain provisions of the Law on Complaint and Denunciation, and Decree No. 53/2005/ND-CP on April 19th, 2005 to elaborate measures to address acts of threatening, harassing and taking revenge against people who denounce corruption and to punish those who violate the citizens’ right to complaint and denunciation. As a party to the UN Convention against Corruption, Viet Nam is committed to complying with the Convention’s provisions on the protection of witnesses, victims, investigators and whistleblowers.

(iv) Recommendation: Step up efforts to ensure the full respect of freedom of religion and worship, including by reviewing laws and provisions at all levels related to the freedom of religion, in order to align them with article 18 of ICCPR.

As a multi-religion country with more than 20 million followers of various religions and 80% of the population having religious belief, Viet Nam always respects freedom of religion. Viet Nam considers this a legitimate need of the people and creates favourable conditions for the lawful operation of religious organizations, which are protected by law and are equal before the law. These organizations enjoy certain preferential treatment, including the provision of land for the construction of worshipping places.

In Viet Nam, the freedom of religion, belief and worship is enshrined in the Constitution and legal documents, consistent with international law. Viet Nam also gives priority to further improving the legal framework pertaining to religion. In that endeavour, on the basis of regular reviews of the legal documents and regulations from central to local levels, the Government develops plans to amend and supplement the current laws on religion and belief. This includes recommendations to the National Assembly on the amendment of the 2004 Ordinance on Religion and Belief to make it more up-to-date

and improve its effectiveness in better ensuring the people's freedom to religious activities. The Government Committee on Religious Affairs is the key central government agency entrusted with overseeing the implementation of policies and laws on religion and belief at the local level. Violations of these rights by local authorities are promptly dealt with so as to avoid any disruption to the people's religious activities.

Also high on the agenda is the education of central and local government officials in charge of religious affairs and religious dignitaries and followers to equip them with sufficient knowledge about religion-related laws and policies. The mass media plays an important role in this regard. The Government has also organized training courses on religious affairs for local authorities. The Vietnamese people now have better access to religious information and have increasingly better understanding of their legal rights and obligations in religious activities. The robust development of religious activities in Viet Nam in the past years has been well recognised by the international community. The La Vang Annual Festival attracts tens of thousands of Christians every year. Viet Nam successfully hosted the UN Vesak Day 2008 and will be the host of the 2010 World Buddhist Summit and the Year of St. Paul (2010-2011).

(v) Recommendation: Take further measures to prevent violence and discrimination against ethnic minorities.

In Viet Nam, the 54 ethnic groups are strongly and peacefully bonded. They have stood side by side throughout the nation's history of defence and development. National solidarity has been a fundamental and consistent principle in Viet Nam's ethnic policy. The principle of equal treatment among ethnic groups is not only reflected in various laws, policies and socio-economic development programmes but also implemented in practice. Moreover, the equality of ethnic minorities in terms of political, economic, cultural and social rights and non-discrimination against ethnic minorities are well enshrined in Article 5 of the 1992 Constitution. The spirit of this constitutional provision is reflected in various laws and policies and enforced by administrative as well as judicial measures. Any violation is penalized by law. The Vietnamese Government has introduced many development schemes tailored for ethnic minorities, including Programme 135 for the extremely poor communes and ethnic minorities living in mountainous and remote areas and the policy to provide production land, housing and clean water for poor ethnic minority households...

4. With regard to recommendations that Viet Nam pledged to respond to during the review at the Human Rights Council of the WG Report on Viet Nam's UPR, including considering accession to the ILO Forced Labour Convention, continuing the process of acceding to the appropriate ILO conventions, favourably considering the ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and considering positively extending an invitation to visit the country to the Working Group on Arbitrary Detention

(i) Viet Nam accepts the recommendations on the consideration to accede to the ILO Forced Labour

Convention and continuation of the process of acceding to other appropriate ILO conventions. Viet Nam joined the ILO in 1980. As a member, Viet Nam always takes into account ILO conventions and tries to incorporate relevant provisions when drafting its domestic laws. The Vietnamese legal framework is in general compatible with ILO conventions. To date, Viet Nam has ratified 17 ILO conventions, including the 5 of the 8 core conventions (No. 29 on Forced Labour, No. 100 on Equal Remuneration, No. 111 on Discrimination in respect of Employment and Occupation, No. 138 on Minimum Age and No.182 on the Elimination of Worst Forms of Child Labour). The Government is currently considering submitting to the National Assembly for ratification Conventions No. 184, 105, 122 and 150. Particularly, Convention No. 105 will be submitted to the National Assembly for ratification in October 2010. Moreover, Viet Nam will take into account the provisions of Conventions No. 26, 131 and 95 while drafting the Law on Minimum Wage and Convention No. 159 for the drafting of the Law on People with Disabilities.

(ii) Viet Nam finds it unnecessary to accede to ILO Convention No. 169 due to the absence of indigenous people in the country. In Viet Nam, 54 ethnic groups have co-existed and assisted each other throughout the nation's history. All these groups are treated equal and receive favourable conditions to develop in all aspects. The Vietnamese Government has shown its respect for the legitimate rights of indigenous people by supporting the UN Declaration on the Rights of Indigenous Peoples.

(iii) Viet Nam will actively consider the recommendation to receive the Working Group on Arbitrary Detention. Viet Nam invited and received the Working Group in 1994. In recent years, Viet Nam has received many delegations to visit detention centers in Viet Nam, including experts from Switzerland, Australia, Norway and the EU. Arrangements for such visits need to be discussed in details in accordance with the principle of respect for national sovereignty to ensure the success of the visits and satisfy the needs of both sides.

5. Recommendations that did not enjoy the support of Viet Nam:

(i) With regard to guaranteeing freedom of speech and expression, freedom of assembly and internet freedom

It is Viet Nam's consistent policy to guarantee freedom of speech, press, expression and information for all people. Viet Nam's Constitution, Press Law, Anti-Corruption Law and Law on Complaint and Denunciation (and the upcoming Law on Information Access) etc. clearly provide for freedom of press and expression in accordance with international law and practice. The system of socio-political institutions, mass and professional organizations in Viet Nam is mechanism through which the people can express their will and aspiration and join the state in management of the society.

Viet Nam is making efforts to implement the rule of law, with which every citizen is equal before the law. In civil, criminal and other proceedings, the people are ensured access to legal assistance. In its work, courts only abide by the law. Persons working in the media also bear rights and responsibilities in conformity with the law. In their professional activities, journalists are protected by law against any threat

to their life, dignity, seizure of documents and equipment. They shall not be obstructed when conducting lawful professional activities. As in any other countries, journalists in Viet Nam have the responsibility to provide truthful information, reflect the opinions and legitimate aspiration of the people, exercise citizens' freedom of speech in the press, not to abuse the title of a journalist to violate the law and be responsible before the law and heads of press agencies for the content of their articles as well as their violations of the press law.

The Vietnamese press is a forum for social and mass organizations, and a tool to safeguard the interests of the society and freedoms of the people. The press is also an important force to monitor the implementation of policies and laws. All citizens have the right to express their aspiration, opinions and comments on all political, economic and social issues on the mass media. In practice, the press plays the role of an effective and positive channel of criticism in the society, particularly in the fight against corruption. It has indeed become relatively independent from the State.

The current Press Law stipulates that government agencies, socio-political and professional organisations can own and produce their own publications. In practice, many business entities have been given permission to own various forms of media or participate in many stages of press activities (corporations like VNPT, FPT, PetroVietnam, VTC, etc. have their own printed and electronic media and television channels).

Viet Nam encourages the use of the internet for socio-economic and cultural development, administrative reform and improving the people's quality of life. As a result, the past decade (1997-2007) has seen the level of internet development and numbers of subscribers in Viet Nam have increased rapidly, matching those many other countries in the region. Today, the internet services cover 64 out of 64 provinces and cities. The number of new internet subscribers in 2007 reached 1.18 million, a 2.4% year-on-year increase, bringing the total number of internet subscribers to over 5.2 million (6 subscribers per 100 people) by the end of 2007. The number of internet users is 18.22 million, accounting for 21.4% of the population. Viet Nam is implementing plans to expand internet connection points to rural and remote areas. According to the ITU, Viet Nam has the world's fastest internet development.

Vietnam encourages the development and use of blogs. Circular No.07 of the Ministry of Information and Communication of 18 December 2008 guiding the implementation of Decree No. 97 makes it clear that such encouragement aims at increasing interaction to share information, enrich the social and spiritual life of the people, further bonding the community. The number of people joining online social networks is rising. There are now some 1.1 million bloggers in Viet Nam.

As it facilitates internet-based business activities and internet use, the State has also put in place regulations to protect national security, ethical values, national traditions and customs, and children from the negative impacts of the internet. These regulations are aimed also at preventing breaches of the law, false and slanderous information, offences to organisations and individuals. Similar regulations are

applied in many countries.

(ii) On the establishment of an independent national human rights institution in accordance with the Paris principles.

Countries around the world have developed different mechanisms to ensure human rights to suit their own circumstances. International human rights law attaches importance to mechanisms and measures to ensure human rights but does not impose any single model. Over 60 countries have established national human rights institutions, but each has their own features in terms of nature, functions, mandates and power. As such, one cannot speak of any single perfect model.

In Viet Nam, there are many institutions monitoring the implementation of the rights in specific areas, including the Committee on Ethnic Minorities, the Government Committee for Religious Affairs, Inspectorate on Child and Gender Equality, etc. The institutions to ensure human rights are diverse and include government agencies, socio-political and professional organizations, the mass media and the people. Legal provisions are in place to ensure the efficiency and effectiveness of human rights institutions, which help guarantee the right to oversee and critique government policies, to participate in socio-economic development processes, to complaint and denunciation, etc. In recent years, Viet Nam has incessantly strengthened the check and oversight mechanism among the organs within the system of government, especially the legislative and oversight functions of the National Assembly in order to increase the effectiveness, transparency and democracy of State institutions. Viet Nam Fatherland Front, an alliance of all ethnic and population groups, plays an important role in the oversight of the operation of State authorities and elected representatives. The Front also engages in consultations on the legal documents and policies introduced by the State before their enactment. And most importantly, direct participation by the people through institutions such as election, self-nomination, question times at elected bodies, complaints and petitions, and promotion of grassroots democracy is the most effective oversight mechanism. Viet Nam is always learning from international experience to improve its human rights institutions.

(iii) On extending a standing invitation to all special procedures; and inviting specific special procedures

The Vietnamese Government values the role of and has good cooperation with UN special rapporteurs and independent experts, shown by the regular responses and provision of adequate information at their request. The Vietnamese Government has invited and received the Working Group on Arbitrary Detention in 1994 and the Special Rapporteur on Religious Freedom in 1998. In the spirit of goodwill and cooperation with the UN and UN human rights mechanisms in particular and at their request, Viet Nam has recently extended invitations to the Special Rapporteurs on the Right to Food, Education and Health, the Independent Experts on Extreme Poverty and Effects of Foreign Debt on Human Rights. Viet Nam is always willing to maintain regular cooperation with the special procedures. However, like many others,

the Vietnamese Government has not, at this stage, extended a standing invitation (in fact, only 60 countries have extended such invitations). Arrangements for special procedures' visits require discussion and agreement among the parties concerned on the basis of respect for sovereignty and non-interference into internal affairs. Viet Nam fully supports HRC Resolution 5/1 of 18th June 2007, which requires special procedures to meet the criteria on expertise, experience, independence, impartiality, personal integrity and objectivity. Like other countries, Viet Nam looks forward to working with all special procedures fulfilling these criteria.

(iv) On abolishing the death penalty, imposing a moratorium on executions, publishing information on death penalty, and on ratification of the 2nd Protocol to the ICCPR

International law and the Covenant on Civil and Political Rights do not require nations to abolish the death penalty. The application or abolishment of the death penalty depends on the specific situation in each nation. At present, to combat the increasingly complicated and dangerous crimes, the death penalty is still considered as an effective deterrence measure. Therefore, Viet Nam does not have any immediate plan to abolish or suspend the application of death penalty. When conditions so allow, Viet Nam will consider ratifying the 2nd Protocol to the ICCPR.

However, in the spirit of humanity and in accordance with international law, Viet Nam only applies the death penalty on a small number of extremely serious crimes. The 1999 Penal Code has reduced the number of offences punishable by death from 44 to 29. Death penalty can not be imposed on some groups, including juveniles, pregnant women and mothers with children under 36 months of age. The Law to amend and supplement the 1999 Penal Code recently adopted by the National Assembly and effective as of July 2009 further removed an additional 8 offences from the list of crimes subject to the death penalty. Viet Nam also takes great care to avoid any miscarriage of justice. Information on judgements on the death penalty and executions are available on the mass media.

(v) On accession to international human rights treaties

It is Viet Nam's consistent policy to accede to human rights treaties and it has to date ratified most of the UN core human rights treaties. Viet Nam is actively considering ratification of some other treaties including the UN Convention against Torture (CAT) the Convention on the Rights of Persons with Disabilities (CPD).

As it is not a party to the CAT, Viet Nam is yet to consider its ratification of the CAT's Protocol. Viet Nam is paying attention to the Rome Statute of the International Criminal Court (ICC). Due to the differences views of consulting countries and the fact that ICC remains a rather new issue, Viet Nam is now actively studying the legal aspects of the ICC and making careful material and legal internal preparations before considering its accession to the Rome Statute.