

INFORMATION PAPER

NEW DEVELOPMENTS IN NATIONAL LEGISLATION ON HUMAN RIGHTS AND UPDATES ON THE IMPLEMENTATION OF 2ND UPR CYCLE RECOMMENDATIONS ACCEPTED BY VIET NAM

I. Progress in judicial reform and notable points in the newly adopted Codes and laws related to human rights:

1. Progress in judicial reform in Viet Nam

- Guided by the consistent policy of respecting, protecting and promoting human rights, the State of Viet Nam has made every effort in socio-economic development in order to raise the living standards of its people, build a rule-of-law State, promote social justice and further ensure fundamental freedoms and democracy of the people.

- Over the past years, Viet Nam has accelerated the development and improvement of its legislation to establish a solid legal basis for the respect, protection and promotion of all human rights. The principle of equality and non-discrimination is the foundation of Viet Nam's legal documents, creating an important premise for ensuring and promoting the human rights of people in each specific legal field. Vietnamese legal documents, especially the 2013 Constitution, firmly enshrine all civil, political, economic, social and cultural rights provided for in the Universal Declaration of Human Rights of 1948 and international treaties on human rights to which Viet Nam is party. The 2013 Constitution recognizes all three State's obligations under international human rights law, which include respecting, protecting and ensuring human rights. The 2013 Constitution also provides for, for the first time, principles on possible restriction of rights, whereby fundamental human rights and citizens' rights can only be restricted by law in cases of necessity by reasons of national defense, national security, public order, social safety, social morality and public health.

- Currently, one of Viet Nam's high priorities is to amend, supplement existing laws or adopt new legal documents to bring them into line with the new provisions of the 2013 Constitution. In the 2014-2016 period, 66 laws and 3 ordinances have been supplemented, amended or promulgated. Priority has been given to the drafting or amending organizational laws of State apparatus and institutions of the politic system and legal documents related to human rights and obligations of citizens.

- The drafting and promulgation of legislative documents have been conducted in conformity with the competence, order and procedures prescribed by the Law on the Promulgation of Legal Normative Documents. Concerned agencies, organizations and individuals shall be consulted on the draft text of legal normative documents which are made publicly available on the website of related ministries and ministerial-level agencies for comments. All feedbacks, comments and proposals from media, organizations and individuals on the

content of legal normative documents have been duly considered by legislators with the view to finding ways to amend any unconstitutional, inappropriate provisions to the soonest. By doing so, the quality of the detailing regulations has been significantly improved, ensuring the constitutionality, legality, uniformity and feasibility of all legislative documents, especially those related to human rights, citizens' rights and democracy.

- During its two sessions in November 2015 and April 2016, the National Assembly adopted a number of important laws related to human rights such as amended Civil Code, amended Civil Procedure Code, Press Law and Law on Access to Information, Law on Referendum. Some other important laws, such as Criminal Code, amended Criminal Procedure Code, Law on the implementation of custody and temporary detention were adopted but their entry into force has been postponed for correction of technical errors. Whilst waiting for the adoption of technical modifications of these three legislative documents, which shall be submitted to the National Assembly for consideration at its 3rd session in May 2017, new rules benefiting offenders, will be applied and the People's Supreme Court has issued specific guidance on this.

- At its last session in November 2016, the National Assembly adopted Law on Belief and Religion. In 2017, the National Assembly is expected to consider amended Law on State Liability, amended Labor Code, amended Law on denunciations, and Law on provisional measures before trial.

- The process of controlling and evaluating legitimacy of legal documents has been reformed to ensure their consistency, eliminate inappropriate and unnecessary regulations.

2. Viet Nam's Criminal Code of 2015:

On November 27th 2015, the Criminal Code was adopted by the 13th National Assembly at its 10th session to replace Criminal Code of 1999 (as amended in 2009) with important amendments to further protect and promote human rights. One of the major contents of this revision is the improvement of the criminal policy towards an enhanced preventiveness and educativeness in the handling of offenders and better respect for and protection of human rights. The entry into force of Criminal Code is currently postponed to correct a number of technical errors, in order to ensure the best possible human rights, rights of citizens, including the rights of the offenders.

i. Specific amendments to further ensure human rights and citizens' rights:

Firstly, restricting the application of imprisonment penalty and increasing the application of non-custodial penalties:

- Broadening the scope of application of fines as major penalty for less serious offenses and some serious crimes. For crimes infringing upon the economic and environmental management order, including very serious crimes,

fine is principal penalty. In comparison with 1999 Criminal Code (amended in 2009), there is an increase of over 30 provisions providing for fine penalties in 2015 Criminal Code;

- Imprisonment penalty is not applied to offenders who committed less serious offenses for the first-time (Article 38.2);

Secondly, a separate chapter (Chapter IV) was added with 07 articles on defenses, in which four defenses were maintained and concretized: unexpected events, legitimate self-defense, legitimate act in a situation of necessity and incapacity and at the same time, there are three additional defenses: causing damage while arresting offenders; hazard in research, experimentation, application of scientific, technical and technological advances and executing orders of the commander or of the superior (Articles 24, 25, 26).

Thirdly, cases of conditional release before the expiration of imprisonment term has been added: accordingly, prisoners may be exempted from serving the rest of imprisonment term when the following conditions are met: commission of a criminal offense for the first time, good progress and good sense of correction; having a permanent residence; having completed the execution of additional penalties such as fines, court fees and civil liability; and having served half of imprisonment term or 15 years in case of life imprisonment with a fixed term (Article 64).

Fourthly, amending and supplementing provisions on crimes infringing upon the freedom of the people, the freedom and democracy of citizens, including:

- Acts of infringing upon the right to vote of citizens when the State organizes referendum; distorting the results of referendum (Articles 160 and 161) and acts of obstructing citizens from exercising freedom of speech, freedom of press, access to information and the right to protest of citizens (Article 167).

- Increasing punishment for 06 offenses in following groups: intrusion into private residence; violating the confidentiality or safety of other's correspondence, telephones, telegrams or other forms of communication; unlawfully forcing public officials to resign, illegal dismissal; violating the right of assembly and association of citizens; infringing upon the freedom of belief and religion of others and infringing the right to complaints and denunciations (Articles 158-164).

- Criminalizing the act of forced labor (Article 297).

ii. Measures to ensure the rights of vulnerable groups

Firstly, amending and supplementing provisions on the rights of vulnerable groups: Article 36 on non-custodial corrections provides for non-application of community labor measures against women who are pregnant or nursing children less than 6 months of age, elder persons, and persons with

serious illness, persons with severe disabilities or particularly severe disabilities. Article 51 on extenuating circumstances includes offenders who are severely or extremely disabled (in addition to the two previously defined categories - pregnant women and persons from the age of 70).

Secondly, additional criminalization of acts against person belonging to vulnerable groups, for example: paragraph 2 of Article 168 on robbery adds additional aggravating circumstances "committing offenses against persons under 16 year old, women who are known to be pregnant, elder or defenseless persons" with imprisonment penalty up to 15 years.

Thirdly, amending and supplementing regulations on treatment of juvenile offenders to ensure the conformity with the Convention on the Rights of the Child and international standards on juvenile justice, specifically:

- Recognizing the principle that "in the treatment of offenders under the age of 18, the best interests of the persons under the age of 18 must be ensured. The main purpose of such treatment is to educate and help them to correct their mistakes, develop healthy and become useful citizens of the society";

- Adding the principle of prioritizing the application of alternative remedies over penal liability against juvenile offenders.

- Affirming the principle that penalties, especially imprisonment penalty, should only be sentenced on children after considering the possibility of applying other judicial measures in light of the humanitarian spirit of Article 37 of the Convention on the rights of the child right (the arrest, detention or imprisonment of children shall be used only as a last resort and for the shortest possible period of time).

- Criminalizing child pornography.

iii. On provisions related to national security in the Criminal Code

- The contents of the provisions on national security infringement of the Criminal Code are not contrary to the relevant international conventions on human rights.

In the 1948 Universal Declaration of Human Rights, Article 29 sets out cases where the exercise of rights and freedoms may be subject to limitations as determined by law for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. The International Covenant on Civil and Political Rights provides for restrictions for the protection of national security or of public order, public health or morality.

In application of the above-mentioned international standards, paragraph 2 of Article 14 of the 2013 Constitution stipulates that "human rights and citizens' rights shall not be limited unless prescribed by a law solely in case of necessity for reasons of national defense, national security, social order and safety, social morality and community well-being".

The new Criminal Code criminalizes acts of establishing of, participating in or financing terrorist organizations and acts of forcing, inciting, recruiting, training terrorists, fabricating and supplying weapons for terrorists. These acts constitute crime of terrorism against the people's administration (paragraph 3 of Article 113). The Criminal Code decriminalizes blasphemy; revises the crime of propaganda against the Socialist Republic of Viet Nam to become the crime of making, storing, disseminating information, document and materials against the Socialist Republic of Viet Nam and defines more specifically the elements of this crime (Article 117).

List of provisions related to national security in the new Criminal Code:

- Article 78 (High treason) becomes Article 108;
- Article 79 (Offenses aiming to overthrow people's administration) is changed into Article 109;
- Article 87 (Undermining the unity policy) becomes Article 116;
- Article 88 (Conducting propaganda against the State of the Socialist Republic of Viet Nam) becomes Article 117 (Making, storing, disseminating information, documents, materials against the Socialist Republic of Viet Nam);
- Article 258 (Abusing democratic freedoms to infringe upon the interests of the State and the legitimate rights and interests of organizations and/or citizens becomes Article 330.

3. The Criminal Procedure Code of 2015

New points in the Criminal Procedure Code of 2015 which replaces the Criminal Procedure Code of 2003:

i. Refining the basic principles of criminal procedure (Chapter II)

In order to concretize the provisions of the 2013 Constitution and to meet the requirements of judicial reform, the Criminal Procedure Code has been amended to revise and add some basic principles of criminal procedures such as presumption of innocence, *ne bis in idem* and adversarial process during trial as follows:

Article 13 on presumption of innocence:

A person charged with a criminal offense shall be presumed innocent until proven guilty according to a legally established procedure and a legally binding judgement of the court.

When there is not enough evidence and it deems impossible to clarify the grounds for prosecution and conviction according to the order and procedures prescribed by this Code, procedure-conducting agencies or persons must conclude that the arrested, detained persons, the accused, defendants are not guilty.

Article 14 on the principle of ne bis in idem:

No person who has been convicted or acquitted by a final legally binding judgment may be prosecuted again for the same offence. However, that person may be prosecuted for having committed other criminal acts under the Criminal Code.

Article 26 on the adversarial process during trials:

In the process of initiating, investigating, prosecuting and adjudicating criminal cases, investigators, procurators, other persons charged with conducting criminal procedure, arrested persons, detainees, accused, defendants, defense counsels and other persons participating in criminal procedure are all equal in presenting evidence, assessing evidence, making requests to clarify the objective truth of the cases

The documents and evidence in the file of criminal case submitted by the Procuracy to the court for trial must be complete and lawful. All concerned persons must be fully present in criminal hearings in accordance with the provisions of this Code, unless the absence is justified in cases of force majeure or special circumstances

The court shall facilitate the participation of procurators, defendants, defense counsels and other persons in the criminal proceedings to fulfill their rights and obligations and to conduct adversarial process before the court. All evidences in favor or against the accused, aggravating circumstances, circumstances extenuating criminal liability, the application of specific provisions of the Criminal Code to determine the offense, fine, the amount of compensation against the accused, the handling of material evidences and other meaningful details for the resolution of the case must all be presented, debated and clarified at the trial.

Court judgments and decisions must be based on the results of examination of evidences and an adversarial process at trial hearings.

ii. Specifying the functions and powers of each procedure-conducting bodies and facilitating the fulfillment the statutory functions of procedure-conducting bodies (Articles 141, 155, 156, 157, 159, 165, 185, 186, 187 197, 198, 200, 224, 247, 318, 322, 384, Chapters XI-XV)

In order to promote the responsibility of procedure-conducting bodies and ensure the conditions for procedure-conducting bodies to fulfill their statutory functions, the Criminal Procedure Code stipulates following new provisions:

- For investigating bodies: (1) specify cases falling under the competence of the central-level investigating bodies. Central Investigation Agency (CIA) investigates cases of serious offenses which have been referred to the CIA after being cancelled by the Judges' Council of the Supreme People's Court; criminal cases involving crimes of particularly serious or complicated nature involving

many provinces and central cities; criminal cases of particularly serious and complicated crimes involving many countries; (2) add more investigation measures (such as: voice recognition, asset evaluation); (3) specify the order and procedures for carrying out each investigation measure; and (4) provide for all cases of suspension of investigations in order to solve problems in practice.

- For the Procuracies: the Criminal Procedure Code enhances the obligations of the Procuracies in providing for following aspects: (1) initiate the prosecution from the moment when the investigation body in charge of handling denunciations, claims and reports of criminal acts proposes to initiate criminal proceedings; (2) specify the obligation of handling of denunciation and report of criminal acts, requests for prosecutions, conducting a number of investigation activities and transferring the cases when the case does not fall under its competence, and (3) Compulsory presence of a procurator when the investigation body conducts activities such as site screening, autopsy, cross-examination, identification, voice recognition, simulation, etc.

- For the courts: in order to ensure the good exercise of their judicial powers, the Code specifically stipulates competences of courts in: (1) considering and concluding on the legality of acts and decisions of investigators, procurators, defense counsels; (2) considering and concluding on the legality of evidence and documents collected and supplied by the procedure-conducting organs and persons; (3) prescribing the circumstances and ways in which the Court collects and supplement evidence; (4) specifying the obligations of courts in ensuring adversarial process during trials; and (5) the Supervisory Instance Council is empowered to amend the judgment or decision which has been effective for cases where evidence is clear and it is not necessary to annul the judgment for re-trial.

iii. Delineating the administrative management authority and the judicial authority; assigning more rights and duties to investigators, prosecutors and judges (Articles 36, 37, 41, 42, 44, 45, 100, 247, 274, 343)

With a view to ensuring proper delineating of competences among authorities during criminal procedures, the Criminal Procedure Code provides that: (1) In the fields assigned to them, the deputies head of investigation bodies conduct not only procedural proceedings but also administration; (2) The competences of heads of presiding authorities and persons directly conducting legal proceedings are delineated as follows: The heads of investigation agencies and chief prosecutors make decisions on the "opening and closing" of a procedural stage and decisions concerning the limitation of human and citizen rights; the investigators and prosecutors make decisions on the measures needed to detect or reveal the truth of the case; the presiding judges' competences are increased substantially with the right to order or request the change of the defense counsel and the right to request additional documents and evidences during the trial preparation phase.

iv. Specifying the procedures and formalities in each stage of proceedings to address shortcomings in implementation of the Code (Articles 165, 166, 202, 204, 206, 207, 208, 237, 264, and 270)

With a view to addressing identified shortcomings in investigation, prosecution and adjudication, the Criminal Procedure Code: (1) specifies the order and procedures in each stage to avoid long waiting time for issuing guiding documents; (2) makes reasonable adjustment regarding the jurisdiction to handle cases involving foreign elements; (3) specifies the basis, authority, procedures and formalities for joining, splitting and transferring cases; (4) solves most problems concerning expert examinations by categorizing of expert examination issues, setting time limit for each category, providing for the validity of examination result and resolving the conflict between examination results.

v. Amending provisions on attestation and evidence (Articles 75, 76, 77, 86, 88, 90, 94, 95, 126)

With a view to facilitating the investigation, prosecution and adjudication process and to adapt to the development of modern science and technology as well as to international integration requirements, the Criminal Procedure Code: (1) amends the provision on evidence, which extends the right to collect and use evidence to more people; (2) provides for the obligations of the presiding authorities in receiving and evaluating evidence(s) supplied by participant(s) in legal proceedings; (3) supplements the sources of evidence, including: electronic data, results of property valuation, results of judicial delegation; (4) specifies procedures for electronic data collection to ensure objectivity, veracity and verifiability of this type of evidence.

vi. Restricting application of measures limiting human and citizen rights (Chapters VI, XVI, Article 169)

With a view to concretizing the relevant provisions of the Constitution of 2013 and to establishing a basis for strict control of the application of measures restricting human and citizen rights, the Criminal Procedure Code: (1) stipulates that all measures restricting human and citizen rights during the course of settling a case must be provided for in the Criminal Procedure Code (on such basis, some additional measures such as suspension of exit and account freezing, etc. may be allowed); (2) strictly regulates the basis for detention, by detailing the grounds for determining obstacles to investigation, prosecution and trial in order to avoid abuse, and at the same time specifies the cases for non-application of this measure to restrict the using of it in practice; (3) provides that the heads of the procedures-conducting bodies and the trial panel are the only authorities to decide temporary detention; (4) shortens the time limit for temporary detention and adds the time limit for residential confinement, bail, surety; (5) put all provisions on preventive measures and coercive measures in one chapter in order to ensure the systematic, strict and consistent manner in the application of

these measures; each measure must be decided upon consideration of the following five factors: basis for application, decision authority, procedure, formalities and time limit.

vii. Ensuring the right to defense of the arrestees, detainees, accused and defendants (Articles 8, 57, 58, 59, 60, 67, 118, 121, 256, 276, 322, Chapter VII)

In concretizing the relevant provisions of the Constitution of 2013 and with a view to facilitating the exercise of the right to defense, the Criminal Procedure Code: (1) stipulates that in addition to the three existing subjects who have the right to defense, the arrested person is also guaranteed the right to defense and full recognition of his rights and obligations; (2) replaces requirement on the defense counsel certificate with the defense counsel registration in order to avoid inaccurate interpretation which may affect the participation of the defense counsel in legal proceedings; (3) expands the scope of defense counsels to include legal aid providers to provide free legal aid to beneficiaries; (4) adds more circumstances where the procedures-conducting bodies must invite the defense counsels; (5) prescribes an earlier stage for the defense counsel to take part in the proceedings, commencing from the time the investigating bodies receive the arrestees; (6) provides that accused and defendants have the right to read and copy the digitized documents related to the conviction, acquittal or other documents related to the defense after the termination of investigation when they need to exercise the right to self-defense as prescribed by the Constitution; (7) adds a new chapter (Chapter VII) on defense in order to ensure that the defense counsel has quick access to the process of solving the case; (8) On the right to silence of the detainees/accused/defendants: Articles 58, 59, 60 and 61 stipulate that the detainees/accused/defendants have the right to present statements, opinions and are not compelled to testify against themselves or to plead guilty.

viii. Guaranteeing adversarial process in adjudication (Articles 26, 57, 58, 59, 60, 77, 95, 119, 126, 256, 275, 303, 322)

The Criminal Procedure Code: (1) stipulates that besides the procedures-conducting bodies, the accused and the defense counsel(s) also have the right to collect and present evidence; (2) provides that the defense counsel has the right to examine the evidence collected by the procedures-conducting agency; (3) adds the obligations of and procedures for the court to deal with the requests of the participants in the proceedings before the opening of the court session; (4) amends the questioning process, which allows the defendant to directly ask other defendant(s), victim(s) and witness(es) if the presiding judge agrees, instead of just asking the presiding judge; (5) confirms the principle that the Court's judgment or decision is based solely on the results of interrogation, the adversarial process and the evidences examined at the trial.

ix. Time limit for legal proceedings (Articles 103, 108, 109, 110, 143, 145, 165, 170, 193, 201, 203, 204, 209, 211, 216, 221, 235, 282, 363, 454, 459, 461)

In accordance with the relevant provision of the Constitution of 2013: "The accused must be tried by the court in a timely manner within the statutory time", and with a view to creating the legal basis to accelerate the resolution of criminal cases, avoiding arbitral trial and abuse, the Criminal Procedures Code regulates the time limit for legal proceedings: (1) additional provisions are in place to ensure that all procedural activities are subject to time constraints and are carried out only in that timeframe; (2) some of the qualitative time limits in the previous Code are replaced by specific deadlines in the present Code; (3) certain time limits are extended in order to ensure feasibility and avoid exerting pressure on the procedures-conducting bodies, such as: time limit for verifying denunciation, reporting on the crime, proposing prosecution, time limit for the delivery of procedural decisions in cases involving a large number of accused.

x. Measures to prevent extortion, corporal punishment and to strengthen inspection, supervision over criminal proceedings (Articles 33, 124, 157, 158, 162, 163, 179, 180, 182, 183, 184, 232, 240, 263, 276, and 322)

In the spirit of the Constitution of 2013 on delegating, coordinating and controlling of powers, the Criminal Procedures Code: (1) stipulates that suspect interrogation at a detention facility or the office of investigation authorities or units assigned to investigate must be recorded by sound or sound-and-visual means; (2) provides that procedures-conducting bodies are required to inform the defense counsel(s) in advance on the date and venue of proceedings for them to attend; (3) supplements some provisions to ensure that the procuracies can well perform their function of supervising the judiciary activities; requires procurators to interrogate when the accused claims innocence or when detecting that the investigation activities are in serious breach of laws; (4) provides that the higher-level procedure-conducting agency must inspect the procedural activities of its subordinate body; (5) provides for the mutual control mechanism between the procedures-conducting bodies to ensure control during stages of the proceedings, in which the later stage of proceedings checks the results of the previous stage and excludes evidences previously collected by illegal means.

xi. Special methods of investigation and proceedings (Chapter XVI)

In concretizing the relevant provision of the Constitution of 2013 that "Human rights and citizen rights can only be restricted by laws," and in order to comply with international treaties to which Viet Nam is a party, the Criminal Procedures Code adds a new chapter on special methods of investigation and proceedings, which: (1) provides for strict conditions on the application of special methods of investigation; (2) stipulates that special method(s) of investigation can only be applied upon decision by head(s) of investigating bodies at provincial or higher level which must be approved by the procuracy of

the same level before implementation; (3) provides for the obligations of heads of investigating bodies and heads of procuracies in inspecting and supervising the application process; (4) strictly regulates the time limit for application of special method(s) of investigation; (5) provides that information collected from the application of special methods of investigation is accepted as evidence only if the process is in strict compliance with the law and is only used to the necessity of fighting against crime and without infringing upon the privacy of individuals.

xii. Procedures for criminal prosecution of legal persons (Chapter XXIX)

In order to ensure consistency with the Criminal Code, the Criminal Procedure Code adds a new chapter regulating the procedures for criminal prosecution of legal persons. In particular, the Code (1) specifies the representatives of legal persons participating in the proceedings as well as their rights and obligations; (2) provides for coercive measures applicable to legal persons, including property attachment, account freeze, temporary suspension of operation associated with the offense of legal persons, pecuniary guarantee of compliance enforcement; (3) specifies the legal proceedings applicable to legal persons under criminal prosecution.

4. Law on Temporary Custody and Detention

- Law on Temporary Custody and Detention provides that the persons in custody and detainees are entitled to enjoy the protection of their lives, bodies and assets, and the respect for honor and dignity, to be informed about their rights and obligations, the regulations of the detention facility, to exercise the right to vote in accordance with the Law on the Election of Deputies to the National Assembly and the People's Council, the right to vote for referendum in accordance with the Law on Referendum. Persons temporarily kept in custody or detainees shall be provided with adequate food, accommodation, clothing, personal belongings, medical care, spiritual services. They can send and receive gifts, correspondences, meet with relatives, defense counsels, and have consular visits. In addition, the competent authority has to explain and guarantee their right to defend, to seek counsel and legal aid.

- The Law also prohibits torture, extortion, corporal punishment or other forms of inhuman or degrading treatment or punishment, or any other forms of infringement of rights and legitimate interests of the person in custody or the detainee. Other prohibited acts include illegal detention, unlawful release of persons temporarily held in custody or detainees, preventing persons in custody or detainees from exercising their right to meet with their relatives, defense counsels, consular visits, etc. These provisions together with many other ones on detention management and on the right to make complaints and denunciations, etc. are to ensure the right of detainees and persons held in custody.

- The Law puts temporary detention facilities under the management of the General Department of Criminal Judgment Enforcement and Judicial Support to ensure the independence of the management and enforcement of temporary custody and detention from investigation.

5. Deferred entry into force of the Criminal Code, the Criminal Procedures Code and the Law on Temporary Custody and Detention

- During the implementation of the Resolution No 109/2015/QH13 on the implementation of these laws, relevant agencies have detected and reported some technical errors, some infeasible or unreasonable provisions of the Code.

- In that context, the XIII National Assembly promulgated Resolution No. 144/2016/QH13 on deferring the entry into force of the Criminal Code of 2015, together with three other relevant laws (the Criminal Procedures Code of 2015, the Law on Temporary Custody and Detention, the Law on Organization of Criminal Investigation Agency) with a view to correcting technical errors as well as to amend other infeasible or unreasonable provisions of the Criminal Code 2015 to ensure the integrity, consistency and logic in the provisions of the Criminal Code, contributing to the consistent application of the Code and the guarantee of the rights and legitimate interests of every person, including the rights and legitimate interests of the offenders.

- These technical errors during drafting process do not affect the views and policies of the Government of Viet Nam in promoting and protecting human rights. In the spirit of Resolution 144/2016/QH13, those provisions of the Criminal Code of 2015 which are in favour of the offenders have been applied since 1 July 2016 and the Supreme People's Court has the responsibility to provide relevant guidance.

- Regarding temporary custody and detention, the Government will continue to apply Decree No. 09/2011/ND-CP on temporary custody and detention until the Law on temporary custody and detention comes into effect.

II. Implementation of 2nd UPR cycle recommendations accepted by Viet Nam

In the 2nd UPR cycle, Viet Nam has accepted 182 recommendations. On 11 November 2015, the Prime Minister adopted the Scheme for the implementation and governmental agencies. The list of accepted recommendations and agencies responsible for realizing each recommendation is published on the official websites of the Ministry of Foreign Affairs and responsible agencies. On the basis of information provided by relevant agencies, the Ministry of Foreign Affairs prepares an annual report on the realization of UPR recommendations to submit to the Prime Minister.

Over the past years, governmental agencies and local authorities, individually or concertedly, have actively implemented the Scheme for the

realization of 2nd UPR cycle recommendations. In every step of this process, Viet Nam undertakes to ensure and facilitate the participation of all relevant stakeholders, especially representative socio-political, social and professional organizations with substantial contributions to the promotion and protection of human rights in Viet Nam.

By February 2017, 129 out of 182 recommendations have been realized, notably the ratification of the Convention on the Rights of Persons with Disabilities and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the review of legislations, institutions and policies on human rights under the Constitution of 2013, public awareness raising on civil, political, socio-economic and cultural aspects of human rights as well as gender equality, encouraging and facilitating the development and contributions of socio-political, social and professional organizations in the promotion and protection of human rights. Viet Nam endeavors to further the promotion and protection of human rights and to realize the rest of recommendations in the coming years.

Brief information on the participation of Vietnamese people's and non-governmental organization in the UPR process:

1. Providing the OHCHR with information on the realization of human rights in Viet Nam

- The summary of stakeholders' information to the universal periodic review, prepared by the OHCHR, is one of UPR Viet Nam's documents.

- Since the end of 2012, following the OHCHR's Guidelines for preparation of UPR national reports, some Vietnamese people's organizations, led by the Governance and Public Administration Reform (GPAR), Gender and Community Development Network (GENCOMNET) and Civil Society Inclusion in Food Security and Poverty Elimination Network (CIFPEN), have carried out a series of training courses and seminars aimed at elaborating Stakeholders' report on the implementation of UPR recommendations to be submitted to the OHCHR. By June 2013 (deadline for submission), 59 people's organizations and non-governmental organizations have provided inputs therein.

- Some other socio-political or professional organizations have also provided inputs to the Summary of the OHCHR.

2. Providing inputs to the National Report prepared by the Government

- 39 organizations have sent emails to provide inputs to and comments on the draft Report posted on the website.

- 14 organizations participated in the discussion during a consultation meeting organized by the Ministry of Foreign Affairs in August 2013.

- Most of the provided inputs and comments were reflected in the Report.

3. Participating and raising the voice in the adoption of UPR report on Viet Nam

- In February 2014, Vietnamese individuals and organizations attended the meeting of the Working Group on the Report on Viet Nam as observers.

- During the HRC's adoption of UPR report on Viet Nam on June 2014, 12 non-governmental organizations have taken the floor. Three of them are Vietnamese people's organizations.

4. Participation of Vietnamese people's organizations (VPOs) in the implementation of UPR recommendations.

- VPOs inform the community about UPR recommendations accepted by Viet Nam and about the Government's implementation roadmap, especially in the organization's respective field of activities, such as women, children, aged people, persons with disabilities, education, health, social security etc.

- VPOs participate in the government's activities to implement UPR recommendations, including by providing information, making comments and suggestions, participating in consultation meetings.

- VPOs closely and actively follow the process of implementation of UPR recommendations by government agencies, in accordance with the Scheme for the implementation of UPR recommendations, made public by the Government. *m*