



BỘ TƯ PHÁP

Government of Viet Nam - United Nations Development Programme  
*“Strengthening Access to Justice and Protection of Rights in Viet Nam”*



Empowered lives.  
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**RESEARCH REPORT**  
LEGAL REVIEW OF THE  
INTERNATIONAL COVENANT ON CIVIL  
AND POLITICAL RIGHTS

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**Hanoi, 12/2013**

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**Implementation unit:  
Department of International Law**

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In this report, we have used materials and the results of colleagues’ researches relating to the improvement of the legal system of Vietnam on civil and political rights. Sincerely thank you!

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## **INTRODUCTION**

In more than a century, human rights has gradually emerged as a problem attracting the attention of public interests and increasingly effected to international relations. Currently, human rights is a concern and objective of many intergovernmental organizations, especially the United Nations as well as government of nations. The United Nations has issued a series of international treaties on human rights as well as established international mechanisms to supervise the assurance and promotion of human rights, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of all forms of Racial Discrimination, mechanism of dialogue and periodic review on the implementation of human rights (UPR)...

Vietnam not only confirms the respect and protection of human rights but also do with best effort to ensure the implementation of human rights and in fact, through the development and continuous improvement of the legal system and implementation of specific measures aimed at economic, cultural and social development, so that people might have more abundant material and spiritual lives; build an equal, democratic, civilized society to ensure the implementation and promotion of human rights in Vietnam. To concretize the objectives mentioned above, Vietnam has participated in important international conventions on human rights as mentioned above, as well as participate in the UPR mechanism.

To contribute to improvement of the legal system of civil and political rights (one of the most important and fundamental rights of human beings) to ensure better human rights as well as the suitability and compatibility with international conventions related to human rights to which Vietnam is a member, on the basis of the support of the project “Strengthening Access to Justice and Protection of Rights in Viet Nam”, the research team includes domestic experts which were hosted by the Department of International Law conducted research, synthesized results of reviewing the Vietnamese law on

civil and political rights in 2011 and 2012. Objective of the activity is to synthesize and analyze review results in 2011 and 2012 of the Ministry of Justice, other Ministries, branches and Provincial People's Committees. The activity was conducted with the aim of supporting the Department of International law - Ministry of Justice to carry out the synthesis and completion of the general report regarding the review results to identifying drawbacks and overlapping of the legal system related to civil and political rights in comparison with the contents of the ICCPR and in turn, proposing amendments and supplements to the relevant legislation in order to increasing the consistency and unification of the legal system related to civil and political rights.

The research includes 3 main parts as follows:

- Part I - Overview of review activities.
- Part II - Review results in 2012.
- Part III - Summary of review results in 2011 and 2012.

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# **REPORT ON REVIEWING VIETNAM'S LAW ON CIVIL AND POLITICAL RIGHTS**

## **PART I. OVERVIEW OF REVIEW ACTIVITIES**

### **1.1. The need to conduct review**

The international treaties on human rights are an important international legal basis which contributes to the establishment of common and minimum standards of human rights. On the basis of the principle of dedication, willingness to implement the international commitments (*pacta sunt servanda*), countries is obliged to comply with and implement the standards recognized in international treaties to which they are members. Currently, Vietnam has ratified and joined several international treaties on human rights, including the International Covenant on Civil and Political Rights 1966 (ICCPR).

Ensuring compatibility between the provisions of the law of Vietnam to international treaties on human rights to which Vietnam is a contracting party to shows respect international commitments of Vietnam, while facilitating interests in the process of ensuring the implementation of human rights in practice. Comparing the human rights provisions in the legal system of Vietnam with the provisions of the international legal instruments on human rights is necessary to meet the practical objective requirements and allow to assess the advantages and disadvantages as well as shortcomings from which suggests orientation to improve the provisions of law.

### **1.2. The objects of review activities**

Clarifying legal basis of civil and political rights, pointing out the need and necessity to specify the provisions of law relating to these rights

- Assess the level of concretization of these rights in the current law of Vietnam.

- Propose concrete measures to institutionalize these rights in the law relating to the scope, methods and mechanisms for implementation.

### **1.3. Contents of activities**

- Describe and analyze of the law of Vietnam on human rights under study, evaluation and review.

- Describe the international law concerning human rights under research, evaluation and review.

- Evaluate the consistency and uniformity of the law of Vietnam on human rights and the mechanism to enforce rights, the level of compatibility, inadequacies and shortcomings of Vietnam's law in compared with the international conventions on human rights.

- Propose, recommend amendments and supplements to the relevant legal documents turned towards internalizing, specifying the basic rights of citizens under the provisions of the international treaties which Vietnam has signed or joined, in accordance with the characteristics of the political, economic, cultural, social situations of our country, that ensure the sovereignty of the people.

### **1.4. Summarizing the result of reviewing**

The synthesis and completion of researching report includes analysis, synthesis and classification of the in-depth review of the Ministry of Justice, Ministries, branches and People's Committees of provinces and cities under central authority in each group of rights has done in 2012. At the same time, summarizing the results of reviewing 6 groups of rights reviewed in 2011 (freedom of speech, freedom of press, information and religious beliefs; Rights to be protected by law (compensation for honor damage), right to a nationality, freedom of movement and residence of citizens, right to equality before the law, right to vote, stand for election, to participate in building, protecting and managing the country).

## **PART II. REVIEW RESULTS IN 2012**

### **2.1. Right to life**

#### **a. Provisions of international law**

The right to life is stipulated in Article 3 of the UDHR in 1948, Article 6 of the ICCPR in 1966, the Article 3, 4, 5, and 7 of CPPCG in 1948 and Article 1 of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity in 1968.

Under the provisions of Article 6 of the ICCPR, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. The content of article 6 notes the following points:

- In countries where the death penalty has not been eliminated, it is only allowed to apply the death penalty for extremely serious crimes, based on existing law at the time the crime was carried out.

- The person sentenced to death has the right to seek or apply for commutation of the sentence changes. The pardon, commutation and conversions of the death penalty can be applied to all cases.

- Do not allow a death sentence for offenders less than 18 years of age and not enforce the death penalty for women who are pregnant.

Thus, the recognition of the right to life does not mean that it will abolish the death penalty. International human rights law clearly stated a limitation that is, in countries where the death penalty has not been removed, only allowed applying this penalty to the most serious crimes.

#### **b. Provisions of the law of Vietnam**

As stipulated in Articles 35 and 69 of the Penal Code, the death penalty is considered special punishment only applies to the particularly serious crime (for example, crime causes particularly serious harm to society with the maximum penalty for such crimes is over fifteen years of



imprisonment, life imprisonment or the death penalty). It shall not apply the death penalty for juvenile offenders, for pregnant women or women who are raising children under 36 months of age during trial. It shall not enforce the death penalty for women who are pregnant, women who are raising children under 36 months of age. In this case the death penalty converted to life imprisonment. In the case of persons sentenced to death are commuted, the death penalty converted to life imprisonment.

The part of the crimes in the Penal Code is dedicated 2 chapters to prescribe the criminal provisions directly harming human life in particular and humanity in general. Chapter XII of the Criminal Code provides for offenses against life, health, dignity and honor of the people including 10 crimes directly or indirectly related to unintentional or intentional deprive lives of others illegally. They are: 1) Murder (Article 93) ; Murdering one's new-born (Article 94); Murdering people under provocation (Article 95); Murder beyond the limit of legitimate defense (Article 96); Causing death to people in the performance of official duties (Article 97); Accidentally causing human death (Article 98); Accidentally causing human death due to breach of professional or administrative regulations (Article 99); Forced suicide (Article 100); Inciting or assisting other persons to commit suicide (Article 101), Refusal to rescue people from life-threatening situation (Article 102). Chapter XXIV of the Criminal Code provides 04 crimes relating to undermining peace, against humanity and war crimes. They are: Undermining peace, provoking aggressive wars (Article 341); crimes against humanity (Article 342); war crimes (Article 343) and Recruiting mercenaries or working as mercenaries (Article 344). In addition, to ensure thorough handling of undermining peace, against humanity and war crimes, Article 24 of the Penal Code does not apply statutory limitations to for the offense specified in Chapter XXIV of this Code, namely undermining peace, war crimes and crimes against humanity.

In the trend of increasingly ensuring adequate and better human rights, particularly the right to life, the research and the completion of law in the humanitarian orientation is essential and one of the main orientations, according to the research team, is to continue the study to narrow as much as possible the scope of applying death penalty. In conditions of maintaining the death penalty, this penalty should only be applied to a number of particularly serious crimes have violent, barbaric, brutal, inhuman behaviors deliberately deprive others lives illegally (such as murder, murder and robbery, rape and murder victim,...) or a serious threat to the survival of the State, of regime or undermining peace, against humanity and war crimes.

## **2.2. The right to inviolability of the person, honor, dignity**

### **a. Provisions of international law**

Article 1 of the UDHR declares that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. Article 3 of the UDHR states: “Everyone has the right to life, liberty and security of person”. Subsequently, Article 5 of UDHR claims that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. This spirit was further confirmed in Articles 7 and 17 of the ICCPR, which nobody illegally infringed upon his honor and reputation. Everyone has the right to legal protection against such infringements. No one shall be subjected to torture, treatment or punishment cruelly, inhuman or demeaning dignity. In particular, no one may be used for medical experiments or science without the voluntary consent of that person.

### **b. Provisions of the law of Vietnam**

In the Criminal Code, the section of offenses was devoted Chapter XII to provide offenses against life, health, dignity and honor of the people, including 17 offenses relating to direct or indirect behavior accidentally or

deliberately infringe health, honor and dignity of others illegally. Specifically:

- There are 07 offenses of health infringement. They are: Intentionally inflicting injury on or causing harm to the health of other persons (Article 104); Intentionally inflicting injury on or causing harm to the health of other persons due to strong provocation (Article 105); Intentionally inflicting injury on or causing harm to the health of, other persons due to an excess of legitimate defense limit (Article 106 ); Inflicting injury on or causing harm to the health of other persons while performing official duty (Article 107); Unintentionally inflicting injury on or causing harm to the health of other persons (Article 108); Unintentionally inflicting injury on or causing harm to the health of other persons due to breach of professional or administrative regulations (Article 109); Ill-treating other persons (Article 110).

- There are 06 sexual abuse offenses to others, especially children. They are: rape (Article 111); rape against children (Article 112); Forcible sexual intercourse (Article 113); Forcible sexual intercourse with children (Article 114); having sexual intercourse with children (Article 115); Obscenity against children (Article 116).

- There are 04 offenses infringe honor and dignity of human beings. They are: human trafficking (Article 119); Trading in, fraudulently exchanging or appropriating children (Article 120); humiliating other person (Article 121) Slander (Article 122).

Besides, the Penal Code stipulates a number of provisions for other crimes but are related to abuse health, honor and dignity of human beings, such as terrorist (Article 84, 230A); the robbery, Property robbery by snatching (Articles 133, 136); kidnapping in order to appropriate property (Article 134); ill-treating or persecuting grandparents, parents, spouses, children, grandchildren and fosterers (Article 151), Organizing the illegal use of narcotics (Article 197), Forcing, inducing other persons into illegal use of narcotics (Article 200), Breaching regulations on operating road

vehicles, aircrafts, ships (Articles 202-221); Sexual intercourse with juveniles (Article 256), Applying corporal punishment (Article 298); Forcing evidence or testimony (Article 299).

In addition, the Criminal Procedure Code also has provisions relating to the inalienable right to health, honor and dignity. According to the provisions of Article 7 of the CPC, citizens have the right to legal protection of health, honor and dignity. Any infringement to health, honor, and dignity is dealt with according to law. The victims, witnesses and other people involved in the proceedings as well as their relatives were life-threatening, the competent authority conducting the proceedings to adopt the necessary measures to protect under prescribed by law. This principle was specified in one more step with a witness, according to it, the witness may request the convening authority to protect the life, health, honor, dignity, and property rights of their lawful participation in the proceedings (Article 55).

*Assessments, proposals:* Basically, the provisions of the law of Vietnam has expressed clearly ideas protecting the inviolability of health, honor and dignity of the human being which is recorded in the Articles 1 and 5 of the UDHR and Article 7, 10 and 17 of the ICCPR. However, to ensure a more fully compatible with the international standards of human rights relating to the protection of health, honor and dignity of human beings, we believe that it should continue to study and complete provisions of the Penal Code related to offenses damaging health, honor and dignity of the people, notably including the internalization of Article 7 of the ICCPR, “no one shall be subjected without his free consent to medical or scientific experimentation”.

### **2.3. Right to not be subjected to torture, corporal punishment**

*Consistency and coordination between the legal documents of Vietnam on the right not to be subjected to torture*

Reviewing the legal documents of Vietnam showed that the adjusted text issues right not to be tortured prescribed a uniform and comprehensive way of legal documents from the highest value document, the Constitution 1992 (as amended and supplemented in 2001) to legal documents specified the provisions of the Constitution. Specifically, Article 71 of the Constitution stipulates: “It is strictly forbidden to use all forms of harassment and coercion, torture, violation of his honor and dignity, against a citizen”. The laws and bylaws which are specified under the provisions of the Constitution as the Civil Code, the Penal Code, Criminal Procedure Code, Law on Criminal Judgment Enforcement... This is the legal foundation to prevent and punish activities of torture, cruel treatment or punishment, inhuman or humiliating behaviors. Thus, as we can see, the provisions of the law of Vietnam were unified and synchronized on rights to not be subjected to torture.

General assessment of the current law of Vietnam on the right not to be subjected to torture and provisions of the International Covenant on Civil and Political Rights

The right not to be tortured defined in Article 7 of the International Covenant on civil and political rights, according to which no one shall be subjected to torture, treatment or punishment cruel, inhuman or lower dignity. In particular, no one may be used for medical experiments or science without the voluntary consent of that person.

Reviewing results show that the legal system of Vietnam has fully recognized the right to not be tortured by the Constitution, the Civil Code, the Penal Code, the Criminal Procedure Code, and the Law on Criminal Judgment Enforcement... In general, the legal documents of Vietnam are in accordance with the provisions of Article 7 of the International Covenant on civil and political rights.

The feasibility of the legal provisions on the right to not be subjected to torture

Review shows basically, provisions on right to not be subjected to torture have come to life and feasibility. However, a number of provisions are in principle, generic and not having specific enforcement mechanisms (see detailed analysis in the next section).

Comparing the compatibility of the legal documents of Vietnam on the right not to be subjected to torture

Through the review, we can see that the legal system on the rights to humane treatment, no arbitrary detention, torture, corporal punishment was essentially complete and unified. The principal provisions of protecting the rights to be treated humanely, without arbitrary detention, torture, corporal punishment is the constitutional principles (Article 71, Article 72) as well as provisions in important law such as the Penal Code and the criminal Procedure Code, the Civil Code, the Law on Criminal Judgment Enforcement... the bylaw documents (decree of the Government, the resolution of the Council of Judges of the Supreme People 's Court, the circular of the ministries) has guided, specified the provisions of the Constitution and the Penal Code, the Criminal Procedure Code as well as the procedures prescribed administrative procedures proceedings for enforcement of these rights. Besides, the Law on State Compensation also provides rules for state compensation in case of injustice in the proceedings, enforcement of judgment... Specifically:

\* There are provisions to ensure that no one shall be subjected to torture, treatment or punishment cruel, inhuman or corporal punishment. In particular, no one may be used for medical experiments or science without the voluntary consent of that person.

Article 71 of the Constitution 1992 provides: “It is strictly forbidden to use all forms of harassment and coercion, torture, violation of his honor and dignity, against a citizen”. The provisions in the Constitution aim to prevent the violation of human rights, the right to inviolability of the person and the right to protect the dignity and honor of citizens.

Institutionalizing the above provisions of the Constitution, Article 32 and Article 37 of the Civil Code 2005 provides the right to ensure the safety on life, health, body, and the right to protection of honor, dignity and reputation of the human individual. This content is reaffirmed in Article 6 of the Criminal Procedure Code: “It is strictly forbidden to take any form of coercion, corporal punishment”. In Chapter XXII of the Criminal Code on offense of violating judicial activities, the crime of corporal punishment (Article 298) and Forcing evidence or testimony (Article 299) have direct significance in ensuring the right not to be tortured and corporal punishment in the proceedings. The law stipulates strict criminal liability for the corporal punishment and forcing evidence or testimony in the proceedings. The highest penalty imposed for corporal punishment is 12 years of imprisonment, for forcing testimony is 10 years. A number of other provisions in the Criminal Code also contain regulations prohibiting the use of corporal punishment as Article 319 - Insulting or assaulting commanders or superiors, 320 - Humiliating or corporal punishment for subordinates, 340 - ill-treating prisoners of war or enemy deserters...

Regarding medical experiments or science related to people, Vietnam has the Law on donation, removal and transplantation of human tissues and organs and donation and recovery of cadavers in 2006 regulating on donation, removal and transplantation of tissues and human organs and donation and recovery of cadavers; organization and operation of tissue banks and the national coordination center for organ transplant people. All activities must comply with the principles of (i) voluntary for the donation and transplant of the donors and recipients, (ii) for the purposes of humanity, healing, teaching or scientific research, (iii) no commercial purpose and (iv) the confidentiality of information relating to donors, transplant recipients otherwise it is agreed by the parties or other legal provisions (Article 4). Also in this law, our state regulates prohibited activity in which prohibits

coercing others to the tissues, organs or taking tissue from parts of the body not voluntary donation (Article 11).

\* There are provisions to ensure that persons subjected to imprisonment sentences are treated humanely and with respect for human dignity and inherit freedom of human being.

Vietnam has policy to protect human rights, while strictly punishing violations of the law to ensure a healthy environment for the whole society for the interests of every citizen. Therefore, the provisions of the Penal Code stipulate the system of punishments for offenders includes the penalties and additional penalties. The purpose of punishment is not only to punish the offender, but also educate them to become useful citizens of the society, consciously abide by the law and the rules of life, preventing them from committing new crimes. An important aim of the prison sentence is not out of the general purpose of the above penalties, which is to educate the offenders so that they become useful and early reintegration into society. The right to humane treatment, respect and dignity are reflected in the aim of punishment through imprisonment system. The prisoner is protected by law with their basic rights, the right to bodily autonomy, the right to life, recreation, leisure, not to be subjected to torture... These rights are specified in the Law on Criminal Judgment Enforcement in 2010.

One of the principles of criminal enforcement set out in the Law is “respect for human dignity, rights and lawful interests of judgment debtors” (Paragraph 3, Article 4). In addition, the need to “combine punishment and re-education in the enforcement of the judgment, imposing re-education measures must be based on the nature and extent of crime, age, gender, education level and other personal characteristics of debtors” (Paragraph 4, Article 4). Law on Criminal Judgment Enforcement also prohibits “infringement of rights and legitimate interests of debtors” (Clause 9, Article 9).



Law on Criminal Judgment Enforcement criminal devotes a chapter providing enforcement of imprisonment and management system, detention, prisoner education (Chapter III, from Article 21 to Article 53). In the spirit of respect for human dignity and freedom of human, Law on Criminal Judgment Enforcement has very specific rules for subdivision detention of prisoners, prisoners specified below are arranged private detention: female prisoners, prisoners are juveniles, prisoners are foreigners , prisoners who have especially dangerous infectious diseases; prisoners with signs of mental illness or other disabling diseases caused out of awareness or the ability to control his behavior, pending the decision of the Court; prisoners often violate the rules, regulations of detention (Article 27). The relevant practical system of prisoners such as diet, clothing, housing, care activities, health, education, vocational training, employment, see, contact, receive the gift of the family are provided... in the provisions of this Law.

\* There are provisions specified for detained persons in custody, the accused or defendants, who were separated from the carried-out judgment debtor and treated in appropriate mode in accordance with the regulations for detainees.

This issue is regulated in Decree No. 89/1998/ND-CP dated 07/11/1998 promulgating regulations for temporary custody or detention. Then this document is amended and supplemented by Decree No. 98/2002/ND-CP dated 11/27/2002 and Decree No. 09/2011/ND-CP dated 25/01/2011 of the Government. In particular, the law stipulates not only private detained persons in custody, the accused or defendants, who were separated from the carried-out judgment debtor, but also treated in private mode in accordance with the regulations for detainees. The relevant practical mode of detainees, detention, such as diet, housing, health care, and medical care... is also specified.

\* There are specific regulations for juveniles to ensure the detention separate from adults and shall be treated in accordance to their age

Derived from the lofty spirit of humanity which is to educate and help juvenile offenders to repair mistakes, develop healthily and become useful citizens for society as stipulated in the law as the Penal Code and the Criminal Procedure Code dedicated a chapter to regulate the proceedings for juveniles (Chapter XXXII, from Article 301 to Article 310). In particular, the Criminal Procedure Code specifies investigators, prosecutors; judges who conduct proceedings for juvenile offenders must have the necessary knowledge about psychology, educational science as well as activities on prevention of and fight against crime by juveniles. In conducting the investigation, prosecution and judgment, it should identify factors such as age, level of physical development and mental awareness level on the offense of juvenile; living and educational conditions, whether or not there is a person inciting juvenile, causes and conditions of committing a crime.

In the system of juvenile detention, Vietnam has laws to meet the requirements of the Convention, under which the detention area is arranged in separate classifications for women, juveniles, foreigners, and people with dangerous infectious diseases.... (Decree No. 89/1998/ND-CP dated 07/11/1998 on promulgating regulations for temporary custody or detention)

However, besides the humane provisions exclusively for juvenile offenders are prescribed in the Penal Code as: A juvenile committed crime can be exempted from criminal liability, if his crime is less serious crime or felony, caused no major damage, there are extenuating circumstances and the family or agency or organization receiving supervision, education, the criminal prosecution in the juvenile crime and punishment applied to them is done only in case of necessity, and must be based on the nature of the offense, on the personal characteristics and requirements of the prevention of crime, when considering treatment, if that is not necessary to impose any penalty for juvenile offenders, the court shall apply a judicial measures... the law of Vietnam is not really focused on ensuring that the juvenile offenders are judged as quickly as possible. The problem of detention period to

investigate is provided in the general rules for the object, depending on the severity of each offense, regardless of adults or juveniles. Therefore, this issue should be further studied, improved to better meet the requirements of the Convention.

For the regime of detention for juvenile offenders, Article 308 of the Criminal Procedure Code provides: A minor offenders serving a prison term under the private detention regime, absolutely not allowed to detaining juveniles with adults. Juveniles who have been convicted shall be taught in vocational school or educated while serving a prison term.

Not only being detained privately, Law on Criminal Judgment Enforcement has dedicated a section to provide better conditions for juveniles than adult offenders (Section 3 of Chapter III). Such as diet, clothing, cultural activities, arts and entertainment, education, cultural education, vocational training, labor... Offenders who are juveniles guaranteed eating quotas as adults and can be added to meat, fish but no more than 20% in compared to quantitative; offenders who are juveniles laboring in the private sector and in accordance with age, do not have to work hard, or dangerous exposure to toxic substances....

Besides, Law on Criminal Judgment Enforcement also specifies the responsibilities of detentions are educating juveniles about culture, law and vocational training in accordance with the age, educational level, gender and health, preparing conditions for their integration into the community after having served prison sentence (paragraph 2 of Article 51).

\* It provides for exemption or reduction of penalty.

Under the Criminal Code, in cases stipulated by law, the convicts are considered exempt from serving punishment (Article 57) or reduce the penalty that the court has declared to them (Article 58, 59, 76). Specifically:

- The sentenced persons are exempt from serving the penalty in the following cases:

+ For persons sentenced to non-custodial reform, termed imprisonment, who have not executed their judgments but have recorded great achievements or suffered from dangerous disease and if such persons are no longer dangerous to the society, then may be exempted from the execution of the entire penalty.

+ Sentenced persons shall be exempt from penalty execution when they are granted a special parole or general amnesty. Derived from the clemency and humanity of the State of Vietnam, the major events, and national holidays or in special cases, the State considers to decide early release for imprisonment, life imprisonment sentenced persons met the requirements of the Law on Amnesty.

+ For persons sentenced to imprisonment for less serious crimes who have been entitled to a reprieve, if during the period of reprieve they have recorded great achievements, may be exempt from penalty execution.

+ For persons sentenced for less serious crimes who have been entitled to a temporary suspension, if during the period of temporary suspension they have recorded great achievements, may be exempt from the execution of the remainder of their penalties.

+ For persons who are penalized with a ban on residence or probation, if they have served half of their penalties term and re-habilitated themselves, may be exempt from the execution of the remaining half of their penalties.

- The sentenced persons are reduced the sentence in the following cases:

+ For persons sentenced to non-custodial reform, if having served the penalty for one-third of the given period and made progress, the court may decide to reduce the penalty term. A person may be entitled to many reductions but have to execute half of the declared penalty.

+ For persons sentenced to life imprisonment, if having served 12 years, may be considered to reduce the penalty term to 30 years, they can be

reduced several times but also have to execute actual term of punishment is 20 years.

+ For convicted persons who deserve additional leniency for reasons such as recording achievements, being too old and weak or suffering from dangerous diseases, the courts may consider the reduction at an earlier time or with higher levels compared with the time and levels prescribed in regulations.

+ If juvenile offenders, who are subject to non-custodial reform or imprisonment, have made good progress and already served one-quarter of their term, they shall be considered by the court for penalty reduction; particularly for imprisonment, their penalty can be reduced each time by four years but only if they have already served two-fifths of the declared penalty term.

The provisions on the right to not be subjected to torture have been promptly issued by the people's committee in some provinces (Phu Tho, Can Tho...) in accordance with the actual situation of the locality, while ensuring the state management agency's regulations.

Thus, it is possible to see that the right to not be subjected to torture is respected and protected by the State of Vietnam. Currently, the legislation is relatively complete in each level, such as the Constitution, laws, ordinances, decrees and directives...

Comparison between the legal documents of Vietnam and the provisions of the International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights provides for the right not to be subjected to torture in Article 7:

“No one shall be subjected to torture, treatment or punishment cruel, inhuman or demeaning. In particular, no one may be used for medical experiments or science without the voluntary consent of that person”.

The International Covenant on Civil and Political Rights 1966 set out the political obligation for the member states, namely:

- First, the countries need to recognize and have provisions to ensure that no one shall be subjected to torture, treatment or punishment cruel, inhuman and corporal punishment. In particular, no one may be used for medical experiments or science without the voluntary consent of that person.

- Second, the person deprived of liberty shall be treated with humanity and respect for human dignity and inherit freedom of human.

- Third, except from special circumstances, persons in custody, the accused should be detained separately, isolated from those sentenced and must be treated in accordance with the particular mode for detainees;

- Fourthly, the country should have the legal status reserved for juveniles to ensure the separate detention from adults and shall be treated in accordance with their age and should be given trial as quickly as possible.

It can be seen that these are the standards set forth by the Convention for the Member States to protect the right to not be tortured, treated humanely, not be arbitrary detention, torture and corporal punishment. The member countries of the Convention, based on the principles of this platform and depending on economic, social, cultural conditions and situation, can make its own rules but not contrary to the basic principles stipulated in the Convention.

The review shows that the aforementioned obligation for a member joining the International Covenant on Civil Political Rights has been fully implemented by Vietnam through the recognition of the rights and specified obligations of the state in enforcing the right not to be tortured. The law of Vietnam has met the requirements of Article 7 of the International Covenant on Civil and Political Rights provided for the right to not be subjected to torture of individuals.

The contradictions, overlapping, inconsistency in legal system provides for the right not to be tortured

The results show that legislation to protect the right to humane treatment, no arbitrary detention, torture and corporal punishment of human being has been prescribed in many legal documents with high validity from the Constitution to the Codes, laws and bylaws, in which the most important is the Criminal Code and the Criminal Procedure Code.... and finds no contradiction between these legal documents.

Evaluation of enforcement mechanisms and protection on the rights' group when the rights' group has been violated

The mechanism of enforcement of the criminal law and criminal procedure law for the right to be treated humanely, without arbitrary detention, torture and corporal punishment can be seen here is one of statutory law built from real life and therefore has really come to life and has been recognized by people and society, strictly enforced by the competent authorities.

#### Proposals and recommendations

Through reviewing the system of law relating to the right to be treated humanely, without arbitrary detention, torture and corporal punishment, reconciliation comparing with international standards prescribed in Articles 7, 10 of the International Covenant on civil and political rights, it can be concluded Vietnam's law on the right's group is a progressive legal system that meets international standards and is increasingly improved. To improve law in this area, the reviewing group proposes the following matters:

*First*, supplement legislation on medical experiments, science related to human.

+ Currently, Vietnam has Law on donation, removal and transplanted of human tissues and organs and donation and recovery of cadavers in 2006 which regulates the donation, removal and transplanted

of tissues, organs and the donation and recovery of cadavers, organization and activities of tissue banks and the national coordination center for organ transplant people. However, the review team found that the concept of medical experiments or science related to human needs broader concepts than as defined in this Law. Therefore, to more fully meet the requirements of the Convention in this regard, it is proposed to research, complete and supplement legislation in this field.

+ Improve the provisions of the Criminal Code relating to crimes damage to health, with special attention to behavioral experiments or science using human beings without their consent, especially the persons sentenced to detention or imprisonment, for internalizing the provisions of Article 7 of the Convention.

*Second*, study, supplement regulations to require greater attention to put juvenile offenders to trial as quickly as possible if it may bring better benefits for them.

As analyzed above, besides the humane provisions exclusively for juvenile offenders are prescribed in the Penal Code and other related legal documents, the issue of detention period to investigate is general provided for the objects, depending on the severity of each crime, regardless of juvenile or adult. Therefore, if bringing to trial soon may give better benefits for juveniles, it should be studied; supplemented provisions relating to juveniles brought criminal trial as quickly as possible to better meet the requirements of the Convention.

Third, further research, supplement provisions to ensure the observance of the persons sentenced to prison must be treated with humanity and respect for human dignity and freedom of human.

Besides promoting humanitarian values of the detention conditions of offender as defined in the legislation, the review team found that it should continue to study, improve regulation of mechanism to ensure



implementation of the legitimate rights in practice, such as: enhancing surveillance systems in prisons, increasing accountability of prison custodians in order to avoid loss of life, health, spirit of detainees during their imprisonment term. Supplement to the Criminal Code provisions on torture, inhuman treatment of persons detained or imprisoned.

*Fourth*, the field of detention, seizure currently comply with Regulation on detention, custody issued together with the decree of the Government so its affectivity and legal validity is still limited. This is sensitive work areas, direct impact on limiting the freedom of citizens, easily infringe upon the lawful freedoms of citizens. Therefore, it is proposed to construct, enact Law on detention, custody with the specific provisions to facilitate the practical implementation.

The Joint Circulars in the field of detention, custody as the Joint Circular No. 02 TTLN dated 06.09.1989; joint circular No. 07/2004/TTLT-BCA-VKSNDTC dated 29/4/2004 and Joint Circular no. 02/2006/TTLN-BCA-BQP-BYT-TANDTC-VKSNDTC dated 18.05.2006 had been issued before the Law on Criminal Judgment Enforcement in 2010 enacted. So many of the provisions of this Circular were no longer in accordance with the provisions of the Law on Criminal Judgment Enforcement. It is proposed that the line ministries, branches study, research on amendment and supplement.

*Fifth*, Law on Criminal Judgment Enforcement in 2010 takes into force on 01/7/2010, but so far guiding the implementation of this law has been slow, affecting the implementation in practice, for example the guidance on reduction of sentence duration, guiding the implementation of the provisions of the postponement, temporary suspension of the imprisonment sentence for offenders and guide the decision to implement the death penalty, while guiding the effects effective enforcement, eliminating criminal records... Therefore, it should issue a joint circular guiding the execute reduction for the persons sentenced to prison, the

postponement, temporary suspension of the imprisonment sentence for offenders and guide the decision to implement the death penalty; guiding the implementation of the statutory limitation of execution, erase criminal records...

*Sixth*, improving the Criminal Procedure Code in 2003 under the orientation of recognizing rights to not be unlawful arrested, detention as a principle; shorten detention periods; specific guidance on the application of preventive measures alternate the detention measures (like leaving money and property value assurance, prohibition of leaving the residence, guarantee); research, award to competent courts consider legality of the arrest, detention, decision to approve or not approve a decision to arrest, detain a person; cancel a unfounded and unlawful decision of detention.

## **2.4. The right not to be arbitrarily detained and right to be treated humanely**

### a. Provisions of international law

The right to be protected from arrest, arbitrary and unlawful detention is a fundamental right and a core of freedom and personal safety, has been recognized by all mankind. To ensure this right, the member states, on the one hand, perform their obligations to protect and prevent violations of the right to bodily liberty, on the other hand , must ensure that, in the case for the purpose of maintaining social order, protect the interests of the state, community, rights and interests of individuals, the arrest, detention and custody of a person must be conducted according to certain rules, in certain cases by the competent person and decided to comply with the order and procedures prescribed by law.

The right to bodily liberty, not arrest, arbitrary and unlawful detention is one of the most fundamental rights of human beings, has recognized by the mankind in the UDHR in 1948: “No one shall be arrested, detained or

arbitrary exiled” (Article 9). This regulation is specific and detailed in Article 9 of the ICCPR in 1966:

“1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

To further explain the provisions of Article 9 of the ICCPR, The General Comment No. 8 emphasizes the following points:

First, paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.

Second, the time limit for temporary custody or detention under the provisions of paragraph 3 of Article 9 depends on the member states, however, in the view of the Human Rights Committee, delays must not exceed a few days, the time limit of detention should ensure two principles, one is, the defendant must be to trial within a reasonable time or to release, and second is, Pre-trial detention should be an exception and as short as possible.

Third, if so-called preventive detention is used, it must be controlled by these same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law, information of the reasons must be given and court control of the detention must be available as well as compensation in the case of a breach. And if, in addition, criminal charges are brought in such cases, the full protection of the procedure law must also be granted.

Allowing the arrest, detention only in those cases, conditions, statutory procedures and application of sanctions for depriving the freedom of offenders is necessary to ensure affectivity of preventing crime, maintaining social order, protecting social benefits, rights and interests of individuals and enhancing awareness of offenders. However, the Member States must also ensure there is no distinction between the offense and person failed to fulfill the obligations arising in the field of civil, labor, commercial matters... In order to limit the arbitrary arrest and detention, and in the case of necessity, the Convention requires States Parties shall ensure that no person shall be imprisoned only because of inability to fulfill services under the contract (Article 11). It is clear that the breach of contract should be considered for processing in accordance with relevant provisions of law which does not handle criminal liability.

Additionally, the set of principles to protect all detainees or imprisoned in any form by the General Assembly of the United Nations adopted in 1988 under the Resolution 43/173 which also provides a range of

guidelines for ensuring the right to not be arrested and detained illegally. Specifically as follows:

Principle no. 4 provides that any form of detention, imprisonment and all measures affecting the human rights of a person imprisoned in any form must be ordered by or managed under the effective control of judicial authorities or other competent authorities.

Also according to this collection, any person arrested shall be informed immediately when arrested on the reasons for the arrest and shall be promptly notified of any charges to them (Principle no. 10).

Under the principle no. 11, a person shall not be detained if having not been created yet adequate opportunity to be trailed immediately by a judicial body or other competent authority. At the same time, detainees have the right to defend him or ask attorney for help according to law, detainees and their attorneys must be provided full and timely information about any command together with the reasons for detention. The information includes: reason of arrest, detention time, the identification of the law enforcement officials concerned, accurate information about the detained place.

Basically the law of Vietnam in accordance with the international standards relating to freedom of the body, is ensured not arrested or detained without cause, not deprived of liberty except in cases where the deprivation that freedom is the right reason and in accordance with the procedures prescribed by law and requirements to ensure that any person arrested should be informed at the time of arrest and to be informed without delay of the force offenses against them.

Under the provisions of paragraph 2 of Article 20 of the draft amendment of the Constitution 1992, “No one can be arrested without a decision of the People's Court, decision or approval of the People's Procuracy, except for cases where offenders are caught red-handed. Arrest and detention of people must comply with the provisions of law”. Indeed,

the majority of this provisions is taken from Article 71 of the current Constitution (was deleted in the second Draft). The rules can regain a positive sense because it reinforces the constitutional protection of human rights in criminal proceedings.

b. Provisions of the law of Vietnam

With nature of substantive law on crimes and penalties, the Penal Code has a series of provisions on crimes related to the infringement of the freedom of the human body, as follows:

- Article 123 of the Penal Code regulates illegal arrest, custody or detention of people to handle any person who arrests, detains in incompetent or incorrect procedures with quite severe penalty, possibly up to two years in prison; in aggravating circumstances, the penalty can be up to ten years in prison. In addition, offenders may also be banned from holding certain positions for one to five years.

- Article 295 of the Penal Code provides on Handing down illegal judgments with a particular subjects, such as judges, juries, in the trial has participated illegal judgments, decisions which may lead to the convicted person detained illegally. The penalty for this offense can be up to fifteen years in prison.

- Article 296 of the Penal Code provides on Making illegal decisions to deal with the activities authorized in the investigation, prosecution, adjudication and enforcement of competent persons know that the decision is illegal, for example, unfounded decisions of arrest, custody and detention,... causing damage to the legitimate rights and interests of citizens, punishment for this offense can be up to ten years in prison.

- Article 303 of the Penal Code provides on charges of Abusing positions and powers to detain persons in contravention of law to deal with persons with positions and powers in the release of detainees but did not issue a decision when there are sufficient grounds to release or not to abide

by the decision to release people detained under the provisions of law. The penalty for this offense is quite strict and can be up to ten years.

In addition, in accordance with the provisions of Articles 295, 296 and 303 of the Penal Code, the offender may be subject to additional penalties are banned from holding certain positions for one to five years.

With the nature as a procedural law, the Civil Procedure Code provides the order and procedures for conducting the proceedings in the criminal field, in which arrest, detain people is the preventive measures to be taken to ensure that the agency legal proceeding well in its implemented functions, their duties in the combat and prevent crime, ensure law and order of legislation. The preventive measures protect human rights, the rights and legitimate interests of citizens but they are also very easy to apply them to create negative effects to human rights, the rights and legitimate interests of the population. Because some procedural activities directly affecting the freedom, the right to inviolability of the body... of persons arrested, detained or kept. Therefore, in order to avoid infringement of the liberty and not arrested, detained illegally, the Criminal Procedure Code spends many provisions on the application of these measures.

In the principles of criminal activity related to the right to not be arbitrary and illegal detained

We can say that the criminal procedure activities are related closely to the implementation of human rights. The criminal procedure code affirms basic principles and core operating procedure to ensure “respect and protect the fundamental rights of citizens” (Article 4). In particular, Article 6 of the CPC emphasizes the principle of the right to inviolability of the body of citizens: “No one can be arrested without a court decision, the decision or approval of the People’s Procuracy except for cases where offenders are caught red-handed. Arrest and detention of people must comply with the provisions of this Code”.

Individuals authorized to conduct criminal activities in the scope of their responsibility have to respect and protect the rights and legitimate interests of citizens, regularly check the legality and the necessity of the measures adopted and promptly cancel or change such measures as it deems in violation of law or no longer needed. (Article 4 of the Criminal Procedure Code)

In the proceedings, the procedure-conducting bodies, the procedure-conducting persons must strictly implement the provisions of the law and must be responsible for their acts, their decisions. The illegal acts in the arrest, detention, prosecution, investigation, prosecution, trial, judgment execution, depending on the nature and seriousness of their violations, shall be disciplined or examined for penal liability criminal (Article 12 CPC).

#### Conditions, competence and procedures of arrest

The Criminal Procedure Code specifies the conditions, competence, order and procedures for arrest correspond to the 04 circumstances of arrest as follows: (i) Arresting the accused or defendants for temporary detention (arrest when having the decision of prosecution), (ii) Arresting persons in urgent cases, (iii) Arresting offenders red-handed or wanted offenders, (iv) Arrest of defendants for temporary detention after the pronouncement of judgments. Specifically:

\* Arresting the accused or defendants for temporary detention: - Paragraph 1 of Article 80 of the Criminal Procedure Code provides jurisdiction under which arresting the accused or defendants for temporary detention must be decided by the competent bodies, competent persons in the activity of criminal arrest, including: Chairmen and vice- chairmen of people's procuracies and military procuracies at all levels; Presidents, vice-presidents of people's courts and military courts at all levels; Judges holding the post of president or vice-president of the Court of Appeal of the Supreme People's Court; trial panels; Heads, deputy heads of investigating bodies at all levels. In this case, arrest warrants must be approved by the procuracies



of the same level before they are executed. In this case, an arrest warrant had been approved by the chairman of people's procuracy at the same level before execution.

- According to the provisions of Clause 2, Article 80 of the Criminal Procedure Code on the order and procedures, an arrest warrant must be clearly inscribed with the date, full name and post of the warrant issuers, the full name, address of the arrestee and the reason for the arrest. Arrest warrants must be signed by the issuers and stamped. The executors of arrest warrants must read the warrants, explain the warrants, rights and obligations of the arrestees, and make minutes of the arrests. When arresting persons at their residences, representatives of the commune, ward or township administrations and the neighbors of the arrestees must be present as witnesses. When arresting persons at their working places, representatives of the agencies or organizations where such persons work must be present as witnesses. When arresting persons at other places, representatives of the commune, ward or township administrations of the places where the arrests are made must be present as witnesses. (Paragraph 2 of Article 80 of the Criminal Procedure Code)

\* Getting people in emergencies

- Paragraph 1 of Article 81 of the Criminal Procedure Code specifies 03 cases of arresting persons in urgent cases:

Firstly, when there are grounds to believe that the person is prepared to make very serious crimes or particularly serious crime;

Secondly if the victims or the persons who present at the place of the crime, firsthand see and confirm that is the right man who committed the offense which deem that it is necessary to immediately prevent such persons from escaping;

Thirdly, once seeing the trace of the crime at person or at the domicile of the persons who is suspected of committing offenses and deem that it is

necessary to immediately prevent such persons from escaping or destroying the evidence.

- Clause 2 Article 81 of the Criminal Procedures Code provides the following persons shall have the right to order the arrest of persons in urgent cases, including: Heads, deputy heads of investigating bodies at all levels; Commanders of independent military units of the regiment or equivalent level; commanders of border posts in islands or border areas; Commanders of aircraft, sea-going ships which have left airports or seaports.

- Clause 3, 4 Article 81 of the Criminal Procedures Code provides the sequences and procedures of arresting persons in urgent cases, whereby, in all cases, the urgent arrests must be immediately notified in writing to the Procuracies of the same level, enclosed with documents related to the urgent arrests, for consideration and approval. In case of necessity, the Procuracies must meet and question the arrestees in person before considering and deciding to approve or not to approve the arrests.

Within 12 hours after receiving the requests for approval of, and documents related to, the urgent arrests, the Procuracies must issue decisions to approve or not to approve such arrests. If the Procuracies decide not to approve the arrests, the issuers of arrest warrants must immediately release the arrestees.

\* Arresting offenders red-handed or wanted offenders

The arrest offenders red-handed or wanted offenders must comply with regulations of the Criminal Procedures Code about object, sequences, procedures (Article 82, 83 Criminal Procedures Code). Immediately after arresting persons in urgent cases or offenders red-handed or receiving such arrestees, the investigating bodies must take their statements and must, within 24 hours, issue decisions to keep the arrestee in custody or release them.

\* Arrest minutes

Accordance with the Article 84 in the Criminal Procedures Code, the arresting must make minutes. The persons executing arrest warrants must make minutes in all cases. A minute must clearly state the date, hour and place of arrest, minute-making place; actions already taken, the developments when the arrest warrant is being executed, objects and documents seized and complaints of the arrestee. The minutes must be read to the arrestee and witnesses. The arrestee, the executor of the arrest warrant and witnesses must all sign the minutes, if any of them holds opinions different from or disagrees with the minutes' contents, he/she shall have the right to write such in the minutes and sign. The seizure of articles and documents of the arrestees must comply with the provisions of this Code.

\* Notices on arrests

The arrest warrant issuers and the arrestee-receiving investigating bodies must immediately notify the arrests to the arrestees' families, the administrations of the communes, wards or townships where the arrestees reside or the agencies or organizations where they work. If such notification can impede the investigation, after the impediment no longer exists, the arrest warrant issuers or the arrestee-receiving investigating bodies must immediately effect such notification.

\* Arrest of defendants for temporary detention after the pronouncement of judgments The arrest of defendants for temporary detention after the pronouncement of judgments is regulated under the provision of Article 228 in the Criminal Procedures Code, whereby, for defendants who are being temporarily detained and sentenced to imprisonment but their temporary detention time limits expire on the date the court sessions end, the Trial panels shall issue decisions to hold the defendants in temporary detention in order to secure the judgment execution. In case of the defendants who are not held in temporary detention are sentenced to imprisonment, they shall only be arrested for temporary detention in order to serve the penalties when the judgments become legally

valid. The Trial panels may issue decisions to immediately arrest the defendants for temporary detention if they have grounds to believe that the defendants may escape or continue to commit other offenses.

The time limit for temporary detention of defendants in this case is forty five days as from the date of pronouncement of the judgments. For defendants punished by capital punishment, the trial panels shall decide in the judgments on the continued temporary detention of the defendants to secure the execution of the judgments.

#### Competences, sequences, procedures, custody time limits

Article 86 of the Criminal Procedures Code clearly provides the case which custody may apply as well as competence and sequences of custody, namely that:

Firstly, custody may apply to persons arrested in urgent cases, offenders caught red-handed, offenders who confessed or surrendered themselves or persons arrested under pursuit warrants. (Clause 1 of Article 86 of the Criminal Procedures Code)

Secondly, the persons with the right to issue custody decisions include: (i) the persons with the right to issue urgent arrest warrants (Heads, deputy heads of investigating bodies at all levels; Commanders of independent military units of the regiment or equivalent level; commanders of border posts in islands or border areas; Commanders of aircraft, sea-going ships which have left airports or seaports); (ii) regional coast guard commanders shall have the right to issue custody decisions (Clause 2 Article 86 Criminal Procedures Code).

Thirdly, about the custody procedure, clause 2 Article 86 of the Criminal Procedures Code provides that within 12 hours after their issuance, the custody decisions must be sent to the Procuracies of the same level. If deeming that the custody is ungrounded or unnecessary, the Procuracies shall issue decisions to cancel the custody decisions and the custody decision

issuers must immediately release the persons kept in custody. Custody decisions must clearly state the custody reasons and the custody expiry dates, and one copy must be handed to the persons kept in custody.

Article 87 of Criminal Procedures Code clearly provides about the custody time limits, whereby, the custody time limit must not exceed three days, counting from the time the investigating bodies receive the arrestees. In case of necessity, the custody decision issuers may extend the custody time limit but for no more than three days. In special cases, the custody decision issuers may extend the custody time limit for the second time but for no more than three days. All cases of extension of the custody time limit must be approved by the Procuracies of the same level; within 12 hours after receiving the extension requests and documents related to the custody time limit extension, the Procuracies must issue decisions to approve or disapprove such requests.

In the custody period, if there are insufficient grounds to initiate criminal proceedings against the accused, the persons kept in custody must be released immediately. A custody day shall be counted as one temporary detention day.

Conditions, competence, sequences, procedures and time limits of temporary detention

Accordance with the provisions of the Criminal Procedures Code, temporary detention is one of the strict deterrent measures applied by the proceedings conducting bodies to the accused or defendants when there have evidences proof that the accused or defendants may cause difficulties to the investigation, prosecution, adjudication or continue committing offenses, as well as when it is necessary to ensure the enforcement of judgments.

The Criminal Procedures Code specifically provides the case which temporary detention may apply as well as competence, procedure, namely that:

According to the clause 1 Article 88 of Criminal Procedures Code, temporary detention may generally apply to the accused or defendants in following 02 cases: the first is, the accused or defendants have committed especially serious offenses or very serious offenses; the second is, the accused or defendants have committed serious or less serious offenses punishable under the Penal Code by imprisonment for over two years and there are grounds to believe that they may escape or obstruct the investigation, prosecution or trial or may continue committing offenses.

Clause 2 Article 88 Criminal Procedures Code confirms that in principle, do not apply the temporary detention to The accused or defendants being women who are pregnant or nursing children aged under thirty six months, being old and feeble people, or suffering from serious diseases and having clear residences, which are applied other deterrent measures, except for the 03 following cases: 1) The accused or defendants who escaped but then were arrested under pursuit warrants; 2) The accused or defendants who were subject to other deterrent measures but then continue committing offenses or intentionally seriously obstruct the investigation, prosecution or adjudication; The accused or defendants who committed offenses of infringing upon national security and there are sufficient grounds to believe that if they are not detained, they shall be detrimental to national security.

Accordance with clause 3 Article 88 of Criminal Procedures Code, the persons with competence to issue arrest warrants shall have the right to issue temporary detention warrants. Temporary detention warrants issued by the Heads, deputy heads of investigating bodies at all levels must be approved by the Procuracies of the same level before being executed. Within three days after receiving the temporary detention warrants, requests for consideration and approval, files and documents related to the temporary detention, the Procuracies must issue decisions to approve or disapprove the temporary detention.

The bodies which have issued the temporary detention warrants must examine the detainees' identity cards and immediately notify such to their families and the administrations of the communes, wards or townships where such persons reside or agencies or organizations where they work (clause 4 Article 88 Criminal Procedures Code).

Criminal Procedures Code (Article 242 and 243) also provides the temporary detention in appellate trial, whereby, The provincial-level people's courts and the military zone-level military courts must open appellate court sessions within sixty days; the Court of Appeal of the Supreme People's Court or the Central Military Court have the right to apply temporary detention to: (i) defendants to wait for appellate trial; (ii) defendants being under temporary detention whose detention periods end on the date of opening the appellate court sessions, if deeming it necessary to continue their temporary detention in order to complete the trial; (iii) defendants being under temporary detention and sentenced to imprisonment and whose temporary detention periods end on the date of completion of the court sessions, the trial panels shall issue decisions to keep them in temporary detention in order to secure the execution of their judgments (except for the cases the defendants are entitled to suspended judgments or the imprisonment term is equal to or shorter than the period during which the defendants have been temporarily detained); (iv) r defendants who are not held in temporary detention but punished by imprisonment, the trial panels may issue decisions to arrest them immediately for temporary detention after pronouncing their judgments, except for the cases of postponement of execution of judgments.

Time limits of temporary detention to each person depend on each specific case, serious nature of the offense and of the proceedings that decide the difference in time limits of temporary detention. Specifically as follows:

Firstly, accordance with the Article 120 of Criminal Procedures Code, The time limit of temporary detention of the accused for investigation shall

not exceed two months for less serious offenses, not exceed three months for serious offenses, not exceed four months for very serious offenses and especially serious offenses.

In case of the cases involving many complicated circumstances, the investigating bodies must send written requests to the Procuracies to extend such temporary detention time limit. For less serious offenses, the temporary detention time limit may be extended once for no more than one month; For serious offenses, the temporary detention time limit may be extended twice, for no more than two months for the first time and no more than one month for the second time; For very serious offenses, the temporary detention time limit may be extended twice, for no more than three months for the first time and no more than two months for the second time; For especially serious offenses, the temporary detention time limit may be extended three times, for no more than four months each.

For especially serious offenses, in cases where the second-time extended temporary detention time limits have expired and the cases involve many very complicated circumstances while there emerges no ground to change or cancel the temporary detention measure, the Chairman of the Supreme People's Procuracy may extend the temporary detention time limits for the third time. In case of necessity for offenses of infringing upon national security, the Chairman of the Supreme People's Procuracy may extend the temporary detention time limits once more for no more than four months.

Secondly, Article 166 of Criminal Procedures Code provides that the temporary detention time limit in the prosecution period is within twenty days for less serious offenses and serious offenses, within thirty days for very serious offenses and especially serious offenses. In case of necessity, the Procuracies chairmen may extend the time limits but for no more than ten days for less serious offenses and serious offenses, no more than fifteen



days for very serious offenses, and no more than thirty days for especially serious offenses. (Article 166 Criminal Procedures Code)

Thirdly, accordance with Article 176, 177 of Criminal Procedures Code, the temporary detention time limits in the trial preparation is within thirty days for less serious offenses, forty five days for serious offenses, two months for very serious offenses and three months for especially serious offenses. For complicated cases, the presidents of courts may decide to prolong the trial preparation time limits for no more than fifteen days for less serious offenses and serious offenses, and for no more than thirty days for very serious offenses and especially serious offenses. (Article 176, 177 of Criminal Procedures Code)

Besides, Criminal Procedures Code (Article 242, 243) also specially provides temporary detention time limits in appellate trial period, namely that: (i) no more than sixty days (for the provincial-level people's courts and the military zone-level military courts) or ninety days (for the Court of Appeal of the Supreme People's Court or the Central Military Court) after receiving the case files; (ii) For defendants being under temporary detention whose detention periods end on the date of opening the appellate court sessions, if deeming it necessary to continue their temporary detention in order to complete the trial, the courts shall issue orders to keep them in temporary detention until the end of the court sessions; (iii) For defendants being under temporary detention and sentenced to imprisonment and whose temporary detention periods end on the date of completion of the court sessions or the case of arrest them immediately for temporary detention after appeal pronouncing, is forty five days, since the pronouncing.

In the process of criminal proceedings, to ensure the rights of person in custody, temporary detention, temporary detention has many rather close regulations, namely that:

- About notices on arrests: provided in Article 85 of Criminal Procedures Code as follow: The arrest warrant issuers and the arrestee-

receiving investigating bodies must immediately notify the arrests to the arrestees' families, the administrations of the communes, wards or townships where the arrestees reside or the agencies or organizations where they work. If such notification can impede the investigation, after the impediment no longer exists, the arrest warrant issuers or the arrestee-receiving investigating bodies must immediately effect such notification.

- The rights of persons held in custody are provided in Criminal Procedures Code includes: to be informed of the reasons for their custody; To be explained on their rights and obligations; to present their statements; to defend by themselves or ask other persons to defend them; to present documents, objects as well as claims; to complain about their custody, procedural decisions or acts of the bodies and/or persons with procedure-conducting competence.

- About the regime of custody and temporary detention: The regime of custody and temporary detention is different from the regime applicable to persons serving imprisonment penalties. The temporary detention and custody places, the regimes of daily life, receipt of gifts, contact with families and other regimes shall comply with the regulations of the Government. (Article 89 of the Criminal Procedures Code)

Accordance with Article 1 and Article 2 of the Regulation of custody and temporary detention (issued with Decree No.89/1998/ND-CP November 7th, 1998 of the Government and was amended, supplemented several articles by Decree No.98/2002/ND-CP November 27th,2002) then temporary custody and detention are deterrent measures defined in the Criminal Procedures Code, applied by the investigation bodies, the Procuracies or the courts to persons in custody, accused, defendant, or those who are condemned to imprisonment or death sentences, in order to isolate them from society for a certain period of time to prevent any acts of committing crimes or acts of obstructing the investigation, prosecution and trial or to ensure the enforcement of imprisonment or death sentences.

Article 5 of the Regulation of custody and temporary detention clearly provides that Temporary custody and detention houses shall undertake to detain and hold in custody only persons subject to custody, detention or hunting orders and also confirm that temporary custody and detention must comply with law. All acts of infringing on the life, health, property, honor and dignity of those temporarily custody or detained are prohibited.

According to Article 15 of this Regulation, detention and keeping in custody shall be sector and classified depends on each characteristic of each group, such as: women; minors; foreigners; persons contracted dangerous contagious diseases; ferocious thugs, murderers, robbers of properties and dangerous recidivists;

Regulation of custody and temporary detention also have 01 chapter (Chapter IV) with 09 articles (from Article 26 to Article 34) to regulate the regimes for persons in temporary custody and detainees, related to food, clothing, accommodation, subsistence, health care, send and receive mail, visitation, gifts receiving, complaints and denunciations, ....these are the general regime apply to persons in custody or temporary detention.

- About the care of relatives and preservation of properties of persons in custody or temporary detention, Article 90 of Criminal Procedures Code provides that when the persons in custody or temporary detention have children aged under 14 years or relatives being disabled, old and feeble without anyone to look after, the bodies which have issued the custody decisions or temporary detention warrants shall assign such persons to their relatives for care. In cases where the persons in custody or temporary detention have houses or other properties guarded or preserved by nobody, the bodies which have issued the custody decisions or temporary detention warrants shall apply appropriate guard or preservation measures. The bodies which have issued the custody decisions or temporary detention warrants shall notify the persons in custody or temporary detention of the applied measures.

- The right to complain, denounce, restoration of honor and dignity, compensation in illegal custody and temporary detention

Criminal procedure law guarantees for citizens to have the right to complain, denounce illegal acts in criminal proceedings committed by bodies or persons competent to conduct the criminal procedure or by any individuals of such bodies. Competent bodies must receive, consider and settle in a timely and lawful manner complaints and denunciations, then send notices on the settlement results to the complainants and denouncers for knowledge and taking remedial measures. (Article 31 of the Criminal Procedure Code) Complaints related to the application of arrest, custody and temporary detention measures must be immediately considered and settled by the Procuracies. If it takes time to conduct further verification, the complaints must be settled within three days after the date of receipt thereof. If disagreeing with the settlement results, the complainants shall have the right to lodge further complaints with the immediate superior Procuracies. Within seven days after receiving the complaints, the immediate superior Procuracies must consider and settle them. The immediate superior Procuracies shall have the competence to make final settlement. (Article 333 of the Criminal Procedure Code) In addition to concretize the provisions of the Criminal Procedure Code on complaints and denunciations, interdisciplinary Ministry of Justice, the Supreme People's Court, Supreme People's Procuracy high, the Ministry of Public Security, the Ministry of Defense has also issued the joint Circular No.02/2005/TTLT-VKSTC-TATC-BCA-BQP-BTP guiding the implementation of the Criminal Procedure Code on complaints and denunciations.

Criminal Procedure Code also confirms a basic principle in Criminal procedure is to guarantee of the right to damage compensation and restoration of honor and interests of unjustly handled persons. Persons who have been unjustly handled by competent persons in criminal proceedings shall have the right to damage compensation and restoration of their honor

and interests. The competent bodies which have handled persons unjustly in criminal proceedings shall have to pay damage compensation to, and restore the honor and interests of, the unjustly punished persons; persons who have caused damage shall have to reimburse the compensated amounts to the competent bodies according to law. (Article 29 Criminal Procedures Code)

Apply, cancel, replace the deterrent measures

Beside the deterrent measures of custody, temporary detention above, Criminal Procedures law of Vietnam (Article 91, 92 and Article 94 Criminal Procedures Code) also provides the alternative deterrent measures to replace the temporary detention such as: ban from travel outside one's residence place, guarantee, depositing money or valuable property as bail. Depending on the criminal acts' nature and extent of danger to the society, the personal details, property status of the accused or defendants of when they have clearly residence places, then depending on each case, the investigating bodies, Procuracies or courts may decide to apply one of these deterrent measures to ensure the presence of the accused or the defendant when summoned.

Criminal Procedures law provides that when the cases are ceased, all applied deterrent measures shall be canceled or investigating bodies, Procuracies and Courts shall cancel deterrent measures when they are deemed no longer needed or may be replaced by another one. (Article 94 of the Criminal Procedure Code)

Assessment and recommendations: Basically Vietnam's law is in accordance with international standards relating to freedom of the body, is guaranteed not arrested or detained without reason, not deprived of liberty except in cases where the deprivation of liberty have reason and in accordance with the procedures prescribed by law and requirements to ensure that any person detained should be informed at the time of arrested and to be informed without delay about the accused against them.

According to the Constitution of Vietnam, everybody is protected by the State in the right of liberty and protected from arbitrarily arrest, keep, detention as a fundamental basic right. Only in some cases where the law permits, the arrest, keep, detain a person can be carried out by the authorities, competent individuals and comply with the strict process, procedures of law.

Vietnamese Penal Code has very severe sanctions for infringements of the freedom of the human body. Any subject who commit acts of illegal arrest, keep, detain can be handled with the highest penalty framework from three to ten years of imprisonment. The special subject as Jurors, Judges when participating in the trial had unlawful judgments, decision that may violate the right to liberty of the convicted person shall be criminal prosecuted basing on each specific case and the sentence can be up to fifteen years of imprisonment. The competent officers in investigative activities, prosecution, adjudication and judgment enforcement had unlawful aware decision which can cause damage to the rights and interests of citizens must also subject to criminal responsibility. Especially, the Penal Code also prohibits abusing positions and powers to unlawful detain, keep persons through acts of making no decisions or not abide by the release decision to the released persons prescribed by law, with level of penalties may be up to ten years of imprisonment.

In order to avoid criminalization the relations of civil, economics, labor...Vietnamese law does not allow imprison a person just because they do not complete their obligations under the contract. The breach of the obligations under the contract, depending in each case, may subject to be responsible for the relevant law.

In order to guarantee inviolable rights of the human body, of citizens, Criminal Procedures Code regulates quite strictly about the circumstances of arrest, the conditions, competent, sequences, procedures and time limits of temporary custody or detention in criminal proceedings to ensure the right to

not being illegally arrested, kept, detained of citizens, especially when they haven't been criminals yet. With the nature of State's coercion measures which are implemented in procedural process, the arrest, keep and detain an individual certain permitted only when complying with the conditions, sequences, procedures, time limits under provisions of the criminal procedure law.

However, through the above legal analysis, it can be seen that, in some aspects, on the basis of the provisions of the International Conventions and guidelines of the Human Rights Committee of the United Nations, Vietnamese law, especially Criminal procedures law, there are some points that are not compatible and consistent.

The ICCPR requires States Parties must guarantee that any person arrested or detained because of a criminal offense must be brought to trial soon in a court or arbitration body which has competent to perform judicial functions, and must be tried within a reasonable time limit or be released. The detention of a person within trial time limits is not be put into a general trial rule, but their release is accompanied by conditions to ensure they will be present in court for trial at any time and subject to judgment execution if found guilty. According to the Human Rights Commission, custody time limit is no more than a few days and the detention is just an exception with the time is as short as possible. However, according to the above analysis, we can see some of the limitations and inadequacies between the laws of Vietnam compared to international standards, detail as follows:

Firstly, although the Criminal Procedures Code has recorded a number of principles relating to the arrest, detention, but has no principle regulation about the right in illegally arrest, detention and arbitrarily.

Secondly, custody time limit prescribed by the Criminal Procedure Code is no more than 3 days; however, this time limit may be extended up to 09 days in exceptional cases. It can be seen that the time limits of 09 days is too long to the detention of a person.

The detention time is regulated in Criminal Procedures Code depending on the severity, complexity of the case and each stage of procedural process. Based on this time limit, the proceedings conducting bodies will determine temporary detention time limits for each specific case. However, in general, a temporary detention time limit is relatively long. Namely that:

- The maximum period of detention for investigation (including extension) is 03 months (for less serious crimes), 06 months (for serious offenses), 09 months (for very serious crimes), 16 months (for particularly serious crimes), and 20 months (for offenses against national security).

- The maximum detention period to consider and decide on the prosecution (including extension) is 30 days (for less serious offenses and serious crime); 45 days (for very serious crimes) and 60 months (for particularly serious crimes).

- The maximum detention period to prepare instance trial (including extension) is 45 days (for less serious offenses) and 60 days (for serious crimes); 03 months (for crime very serious), 04 months (for particularly serious crimes).

- Maximum detention time for the appellate hearing is 60 days.

- In the case of temporarily detain defendants after sentencing, temporary detention time limits is 45 days. For persons who sentenced to death, the time limit of detention is until execution of judgments.

Thirdly, Criminal Procedures Code provides the cases I which can be detention is quite broad, including: (i) the cases accused, defendant guilty of very serious or particularly serious offense, (ii) the cases accused or defendants of less serious crime or serious offense which Penal Code regulates the two-year of imprisonment penalty and have grounds to believe that the person may absconded or obstruct the investigation, prosecution, trial, or be able to continue the offenses. This provision has not achieved the



requirements of the Convention which consider temporary detention is just an exception yet, it directly affect the freedom of the human body and can lead to situations that in many cases, the offender is not necessarily detained but the proceedings conducting bodies still conduct temporarily detain.

Fourth, the Criminal Procedure Code of Vietnam has also regulates several other deterrent measures such as ban from travel outside residence places, depositing money or valuable property as bail and guarantee, however, in fact, the proceedings conducting bodies rarely use these measures to guarantee the presence of the accused or defendants in the process of resolving the case. Moreover, these regulations are just stop at the most general principles but have not specified the conditions applied, sequences and procedures yet ... This makes a lot of difficulties for the proceedings conducting bodies in the process of applying deterrent measures to replace temporary detention measures.

Fifth, according to the ICCPR, any arrested or detained person has the right to request to be tried in court for the purpose to which the court may prescribe without delay the legality of the detention and ordered to pay back their freedom if the detention is illegal. However, under the Vietnamese Criminal Procedures Code, the jurisdiction to review and decide the application of deterrent measures, arrest, temporary detention is not only handed to the Court but the Procuracies and Investigation bodies.

In order to ensure the compatibility with the international law to guarantee not to be illegal arbitrarily arrested and detained, Vietnamese laws, especially the Criminal Procedures Code needs to be studied, amended and supplemented by the following orientations:

Firstly, it is necessary to recognize the rights not to be illegally arrested, temporarily detained as a principle of the Criminal Procedures Code.

Secondly, it is necessary to consider shortening time limits of custody or temporary detention under the provisions of the Criminal Procedure Code of Vietnam to ensure the compatibility and compliance with the international standards.

Thirdly, for the application of deterrent measures, the temporary detention, custody should be more clearly and specific defined the sequences, procedures to apply such measures. Especially, there should have specific guidance on the scope of temporary detention measure, while criminal procedure law has many other deterrent measures and allow the conducting proceedings bodies, competent individuals apply the deterrent measures replace temporary detention, it should consider applying the temporary detention only in the case of extreme necessity.

Fourth, for deterrent measures such as ban from travel outside one's residence place, guarantee, depositing money or valuable property as bail to replace measures to the detention prescribed in the Criminal Procedure Code should quickly be guided by the documents Sub-Law document specifies the cases, conditions, sequences, applicable procedures... for the conducting proceedings bodies have basis to consistent and synchronously apply.

Fifth, for the long run, together with the research of Vietnamese criminal procedure model transformation, it is necessary to consider giving the Court the power to review the legality of the arresting, detaining an individual, decision of approving, not approving the arresting or cancel a decision of baseless and unlawful arrest, detention and only the court has this kind of power in order to guarantee the right of not to be unlawful custody and temporary detained as well as to ensure the compatibility with international standards

## **2.5. The right to marry and found family**

### **a. Provisions of International law**

In fact, in many countries around the world, woman's right in selecting his mate is still limited. Equality in marriage of a woman is not respected due to customs and the traditions of many countries. Status forcible marriage or remarriage still happen. Therefore, the equality of women in matters relate to marriage and family relations was recorded in Article 16 of CEDAW, by which, States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage, family, and especially base on the equality between men and women; must guarantee the equal rights in marriage as well as the right to freedom in selecting mate and just get married when both are free and voluntary...

Recommendation 21 is also clearly shown that, at present, polygamist is still happening in some countries of States Parties. Polygamist marriage prevents women's equality to men and can cause serious emotion and finance consequences for the women and the people who depend on them, so that it is not only necessary to not encourage but also prohibit polygamist marriage. Some States Parties have Constitution which guarantee equality rights but still allow polygamist marriage under customary law or law on individuals. Polygamist marriage violates the constitutional rights of women and violates the provisions stated in Article 5 (a) of CEDAW. Therefore, the States Parties should issue and enforce necessary law to comply with the Convention, especially to comply with Articles 9, 15 and 16 of CEDAW.

b. Provisions of Vietnamese law

Penal Code has a specific Chapter (Chapter XV) to regulate criminal liability for crimes of infringing upon the regime of marriage and family, including two provisions for criminal liability for acts of duress forcible marriage or prevention of voluntary and progressive marriage and acts of breaching one wife - one husband regime.

Article 146 Penal Code regulate the crime of forcible marriage or prevention of voluntary and progressive marriage, whereby, Those who

force other persons into marriage against their will or prevent other persons from entering into marriage or maintaining voluntary and progressive marriage bonds through persecution, ill-treatment, mental intimidation, property claim or other means, and who have already been administratively sanctioned for such acts but repeat their violations, shall be subject to warning, non-custodial reform for up to three years or a prison term of between three months and three years. This article directly protects a basic principle of the marriage and family regime, which is voluntary and progressive marriage principle. Man and woman have the right to decide the marriage by their will, no one have the right to force, but must satisfy the marriage conditions and not in the circumstances of the prohibited marriage.

Article 147 of Penal Code provides the infringing upon one wife – one husband regime in order to handle with the case any married person who marries or lives with another person like husband or wife or any unmarried person who marries or lives with another person who he/she knows to be a married person. This article protects the one wife – one husband principle.

As well as the right to protect against women trafficking and exploitation of prostitution or infringing upon physical, mental, women's rights in matters relating to marriage and family relations which do not have separate directly protecting provisions in criminal procedure law. The protection of these women rights is also through the effective implementation of the proceedings.

Assessment and recommendations: Rights of women in matters relating to marriage and family relations have been recorded and guarantee in the Penal Code, in accordance with the provisions of CEDAW.

The Penal Code protected women in implementing the right to freedom of marriage. The woman has the right to freedom of marriage on the basis of voluntary, progressive marriage, to protect the regime of one wife - one husband marriage, simultaneously, through which, the equality of women was also recorded and protected.

## **2.6. Right on labor, employment, the right to get equal and favorable working conditions**

### a. Provisions of international law

According to the provisions in Article 7 of the ICESCR, the States Parties recognize the right of everyone to get the equal and favorable working conditions, especially with the following guarantee:

Firstly, regarding to the payment of wages to the workers, there must be at least:

- Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

- A decent living for themselves and their families in accordance with the provisions of the present Covenant (ICESCR);

Secondly, have safe and healthy working conditions and have no damage to health.

Thirdly, equal opportunity for everyone to be promoted base on seniority and competence;

Fourth, have the right to rest, leisure; being set a reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Besides, while regulating labor and employment issues, ICESCR is also very concern about and protect children in particular and youth classes in general. The employment or exploitation children and youth their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development is prohibited. Clause 3 Article 10 of ICESCR provides that: “States must issue special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social

exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law”

b. Provisions of Vietnamese law

The Penal Code 1999 has a series of provisions on crimes relate to labor, employment, property rights. Namely that:

Firstly, crimes of infringing upon labor, employment rights including:

- Crime of illegally forcing laborers, public employees to leave their jobs (Article 128), whereby, Those who, for their own benefits or other personal motivation, illegally force laborers, public employees to leave their jobs, causing serious consequences shall be subject to warning, non-custodial reform for up to one year or a prison term of between three months and one year.

- Crime of breaching regulations on labor safety, labor hygiene, safety in crowded places (Article 227) with the maximum penalty may be up to twelve years of imprisonment.

- Crime of breaching regulations on employment of child labor (Article 228) whereby, Those who employ children to perform jobs which are heavy, dangerous or in contact with hazardous substances on the lists prescribed by the State, causing serious consequences, or who have already been administratively sanctioned for this act but continue to commit it, shall be subject to a fine of between five million dong and fifty million dong, non-custodial reform for up to two years or a prison term of between three months and two years. Committing the crime more than once, against more than one children or causing very serious or particularly serious consequences shall be sentenced to between two and seven years of imprisonment. Besides, the offenders may also be subject to a fine of between two million dong and twenty million dong.

- Crime of breaching regulations on construction, causing serious consequences (Article 229) with the maximum penalty may be up to twenty years of imprisonment.

Secondly, Penal Code has a specific Chapter (Chapter XIV) with 13 Articles (from Article 133 to Article 145) to regulate the crime of infringing upon ownership rights under two kind: the first is, appropriation of property crimes (such as: plundering property, Property robbery by snatching, stealing property, appropriating property through swindling...); the second is, illegally using or damaging to property crimes (destroying or deliberately damaging property, wasteful...).

Assessment and recommendations: From the above analysis, we can see that, basically, the provisions of the Penal Code and Criminal Procedure Code of Vietnam are compatible with international standards for guaranteeing rights on economic, cultural, social and labor. However, there are some drawbacks remain, which have not fully, comprehensive responded the practical requirements as well as the international requirements about these rights on economic, cultural, social and labor, shown in that:

Firstly, in recent times, the violations of law in the field of social insurance are increasingly complex. These violations are increasing and becoming the concern and urgent of public opinion and become one of the causes of these complex, prolonged strike, increasing the risk of social unrest. Only since the year 2009 to March 2010, there have been 124 enterprises did not pay social insurance for employees from 3 months or more, the amount of social security funds misappropriated up to 42.4 billion, which affect the interests of 2,898 employees; 40 corporate have debt from 6 months with nearly 18 billion of 8734 employees<sup>1</sup>. Total social, health and

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<sup>1</sup> According to Circumstance No. 21/1999/TT-BLĐTBXH date September 11th,1999 of Ministry of Labor-Invalids and Social Affairs, then child labor under 15 years old just have to do the job and work as: Actor (dance, theater, circus, theater, cinema), gifted athletes in the field of physical culture and sports (gymnastics, swimming, track and field business (except hammer throw), table tennis, badminton, basketball, handball, billiards, football, martial arts, rock bridge, suspension bridge, chess, chess ...

unemployment insurance debt in the country by the end of June 2010 reached to 4,365 billion.

There is an alarming fact that many companies do not pay social insurance for workers. In Ho Chi Minh City, only 33 thousand / 137 thousand enterprises operating in the area have social insurance for workers...<sup>2</sup>

In fact, this type of the violation is only subject to administrative sanctions with the penalties is too light, not enough to deter violators. Therefore, the criminalization of acts of evasion social insurance contribution for workers are essential not only in accordance with international standards referred to in Article 9 of ICESCR but also consistent with the policy of the Party and State is always concern and protects workers. Therefore, it is necessary to supplement the Penal Code offenses – crime of evasion insurance contribution for workers to meet the requirements of the fight against crime.

Secondly, crime of illegally forcing laborers, public employees to leave their jobs (Article 128 Penal Code) it just regulates about the basic constitute of crime in order to handle in conventional cases. However, the cases of commit crime satisfy aggravating have not mentioned in this Article yet. Therefore, there is no clear distinction in the policy dealing with

Thirdly, at present, the State of Vietnam has built a basic legal foundation to eliminate child labor. In 2000, Vietnam government approved the ILO Convention 182 on the Elimination of all forms of the worst child labor and in 2003 approved the Convention 138 stipulates a minimum working age. This approval shows the commitment and determination of Vietnam in the implementation of emergency measures to eliminate the worst child labor forms. Besides, Vietnamese Labor Code regulates that employment of less than 15 years old employers is prohibited (1). However,

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<sup>2</sup> <http://www.cand.com.vn/vi-VN/xahoi/2010/8/134797.cand>



in fact, the management and use of child labor in Vietnam is now loose, there are many cases children are exploited and seriously abused. The behavior of exploitation child labor tends to increase. Currently, according to the Department of Child Care and Protection, there are about 27,000 child labor, accounted for 6 -7% in total of children.

According to research of the International Labor Organization (ILO) on the status of child labor in eight provinces and cities in Vietnam (9/2009), "Child labor status has existed quite popular, at various ages. Especially, about 50% of child labor which is observed in this study group is working in the environmental factors that have adversely affect to the physical development and child psychology, such as humidity, light, dust, toxic chemicals, noise ... On the other hand, they are also under pressure of such as: being paid low salaries, delayed payment salaries, being separated from family, being reviled, being beaten ... Due to lack of study time, due to tiredness, many young workers often leave school at a very early age. Child labor also cause negatively affect to physical development, children are often stunted, unbalanced body development or have occupational diseases caused by inappropriate work, working environment does not secure, much harmful and dangerous. In addition, children also faced to the risk of deviant personality development"<sup>3</sup>. Many cases of ill-treatment, they are still endured because of the fear of losing their jobs. Understanding this psychology, many employers have exploited the children badly, even brutally beat.<sup>4</sup>

The current Penal Code (Article 228) is just provides "the crime of Breaching regulations on employment of child labor" in order to handle of the case of using children to do heavy, dangerous work or exposure to toxic

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<sup>3</sup> [http://tintuc.xalo.vn/002114050528/gian\\_nan\\_qua\\_trinh\\_giam\\_thieu\\_lao\\_dong\\_tre\\_em.html](http://tintuc.xalo.vn/002114050528/gian_nan_qua_trinh_giam_thieu_lao_dong_tre_em.html) ngày 2/6/2010

<sup>4</sup> See "Vụ em trai 14 tuổi bị hành hạ dã man ở Cà Mau: Chủ trại tôm quá độc ác!" on website <http://phapluattp.vn/20100517040348415p1027c1098/mong-hao-anh-se-vuot-qua-tat-ca-de-song-tot.htm>

substances, which have not criminalized the acts of "exploit the child labor" - a negative phenomenon which is a real "sore" in Vietnam. Current law does not have enough substantial remedies to prevent this behavior.

In order to further improve and fully, thoroughly respond the requirements of international standards, it is necessary to continue amending and supplementing the Penal Code toward the direction of:

The first is, necessary to study supplement the crime of evasion of insurance contribution for employees.

The second is, for the crime of illegally forcing laborers, public employees to leave their jobs (Article 128 Penal Code), it is necessary to supplement some appropriate aggravating circumstances to strictly handle with the cases of serious offenses, major consequences, such as in the case of organized crime, commit crime a lot of times, for offenses with many people or cause serious consequences....

Thirdly, in order to eliminate child labor and other forms of the worst child labor, as well as to protect them better, it should consider supplementing the current Criminal Code the crime of exploitation child labor under 15 years old. Such provisions are not only in accordance with Clause 3 Article 10 in ICESCR but also in accordance with the guidelines and policies of the Vietnamese Communist Party and the State in protection of children.

## **2.7. The right to inviolability of accommodation and confidential correspondences**

The International Covenant on Civil and Political Rights provides the rights of privacy in Article 17:

“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks". Article 17 International Covenant on Civil and Political Rights gives raise the national obligations in regulating protection measures of these rights of privacy in the law.

The provisions of Vietnamese law not only recognizes and expresses the respect for rights on confidential correspondence, personal privacy, the right to protection of honor, prestige and inviolable rights of accommodation as presented above, but also set out measures to protect these rights. The administrative violations sanctioning measures, even the criminal penalties, have been put to protect the above rights from the infringement. (The Penal Code of 1999, amended and supplemented in 2009, Article 124) Infringement upon citizens places of residence, Article 125. Infringement upon other persons privacy or safety of letters, telephone and/or telegraph, Article 224. Creating and spreading, scattering electronic virus programs, Article 225. Breaching regulations on operating, exploiting and using computer networks, Article 226. Illegally giving or using computer networks information, telecommunication networks, Internet, Article 226a. Illegally accessing computer networks information, telecommunication networks, Internet and digital devices of the others, Article 226b. Using computer networks, telecommunication networks, the Internet or digital devices to perform appropriates property. The decrees on sanctioning of administrative violations such as Decree No. 51/2002/ND-CP dated 26/04/2002 details the implementation of Law.

The Press Law, Law on Supplement and Amendment of some provisions of Press Law (Article 4, 5); Decree 19/2012/ND-CP dated 16/03/2012 on the punishment of administrative violations in the field of protecting consumers 'rights (Article 5, subparagraph a paragraph 1 Article 23) Decree 02/2011/ND-CP dated 06/01/2011 on the punishment of administrative violations in the field of journalism and publishing (paragraph 3 Article 10, subparagraph a paragraph 2 Article 18) Decree 83/2011/ND-

CP dated 20/9/2011 on punishment of administrative violations in the field of telecommunication (subparagraph 1,2 Article 40); Decree 73/2010/ND-CP dated 12/07/2010 on punishment of administrative violations in the field of security and public order and safety (Article 7) contain detailed provisions on the fine rate and supplementing administrative punishments against infringement of the abovementioned rights which are not enough severe to be penalized. Of course, the administrative punishments do not exclude the liability to compensate according to civil law when damages occur.

Laws of Vietnam also estimate and provide for strict scope, grounds and procedure to do actions which probably affect these rights. The examination of body, accommodation, workplace, sites or seizure of correspondence, telegrams, parcels are only carried out in the cases provided by law and must be in line with the legal provisions on jurisdiction and procedure. E.g.: Law on Medical Examination and Treatment Article 59 states that:

“4. The head of a medical examination and treatment establishment shall permit the use of case history dossiers in the following cases:

a/ Trainee students, researchers and practitioners of medical examination and treatment establishments borrowing case history dossiers for on-the-spot reading or for copying for research or professional purposes;

b/ Representatives of health state management agencies that directly manage medical examination and treatment establishments, investigative agencies, procurers, courts, health inspectors, insurance agencies, forensic and mental forensic examination organizations and lawyers borrowing case history dossiers for on-the-spot-reading or for copying for performance of their assigned tasks according to their vested powers:

c/ Patients or their representatives receiving brief summaries of case history dossiers under Clause 1 Article 11 of this Law.

5. When using information of case history dossiers, the users specified in Clause 4 of this Article shall keep it confidential and may use it only for the purposes reported to heads of medical examination and treatment establishments.”

Law on Punishment of administrative violations Chapter II Jurisdiction and Procedure of implementing measures to secure and coerce punishment of administrative violations such as administrative examination of body, transport vehicles, possession, examination of the place where to hide proof of violations or transport vehicles supporting violations.... According to this law, the examination has to be conducted by the competent authority with witnesses and be recorded in a report. Particularly, the measure of examination of the place where to hide proof is only carried out when there is a written warrants of competent authority, except in the case that there is reasonable grounds for prompt examination in order to prevent dispersal or destruction of the proof. Some people on duty prescribed in the law are allowed to examine without warrants but they must submit to the higher rank and they have to be responsible to their decisions.

The examination of accommodation, examination and seizure of correspondence, telegrams or parcels in the merits of criminal procedure must follow the provisions of Criminal Procedure Code 2003. The Code contains one single Chapter XII on examination, attainment and seizure, attachment properties. Examination must be granted by a warrant which the Procuracy approve, in the situation that cannot be delayed, examination can be done immediately with a notice sent to the Procuracy Office within 24 hours. About procedure, the person on duty has to announce the warrant for the people in case and explain that warrant for them to do it themselves, the person on duty just enforces when people mentioned in the warrant are not willing to do, under circumstance of no warrant there must be reasonable grounds for examination the place where to hide the proof; examination of accommodation and workplace must be undertaken with witnesses; seizure

of correspondence and parcels must be witnessed by the postal agency and the owners of the correspondence or parcels have to be noticed about this examination. All examinations have to be recorded. Correspondences, parcels and properties have to be maintained unharmed.

When doing measures to secure and coerce civil judgment enforcement such as seizure of involved parties' assets or houses must be implemented in accordance with the procedure prescribed in the law based on judgments or rulings of the court which taking legal effect.( Law on Civil Judgment Enforcement 2008).In case distrained assets being leased houses or stores are auctioned when the lease or permitted dwelling duration remains valid, lessees is noticed and may continue to lease or dwell in these houses under the Civil Code.( Article 95) The laws relating to proceedings such as ( Civil procedure Code 2004 paragraph 3 Article 13, paragraph 2 Article 15, paragraph 3 Article 66, paragraph 2 and 3 Article 97, paragraph 2 Article 227) (Criminal Procedure Code 2003 Articles 8 and 18) ( Law on Administrative Procedure 2010 paragraph 3 Article 15, Article 17, Article 56, paragraph 2 and 3 Article 90, paragraph 2 Article 153) provide that open trial, publication of all documents and proofs or supply of the affidavit cannot be conducted to protect the right of personal privacy. However, to harmonize the interests of involved parties and society, the closed trial also consists of public judgment pronouncement. Even in the case of competition, witnesses have the right to deny when the information relating to their privacy (Law on Competition 2004 Subparagraph đ paragraph 2 Article 68).

Thus, laws of Vietnam in general satisfy the ICCPR requirements. Some provisions use terms with broader scope than the term used in the ICCPR (“dignity” in Article 71 of Constitution and “reputation” in ICCPR)

- Contradiction and overlapping, incompatibility in the legal systems on the right of privacy

At present, provisions on these rights are just general principles, not in details. Therefore, there is nearly no contrast and overlap but gaps and loopholes which need to be fulfilled.

- Assessment of mechanism for enforcement and protection of these rights when they are violated

Mechanism for enforcement and protection of these rights is prescribed in laws. Because these are rights of individual to be protected against the violation from the others, the mechanism to enforce and mechanism to protect can be considered the same. The victim can claim for compensation or require the authority punish the offender for their administrative or criminal violations.

In general, provisions on the abovementioned mechanism have protected the people's rights quite well. However, the provisions are not enough comprehensive and detailed which leads to difficulties in practice.

The laws have not specified necessary situations like: the case in which examination of accommodation and seizure of correspondence without approval of the procuracy office in criminal procedure so that the investigation agency can implement the provision arbitrarily.

Recommendation: Based on the result of review, recommendations are made to supplement, amend, revoke or issue relating normative legal documents to ensure the compatibility between Vietnam legal system and the ICCPR.

About Constitution, Firstly, the Constitution should not consider the human right and right of citizen are the same because the natures of these rights are so different. The human rights are recognized automatically, the people who are not Vietnamese also enjoy these rights while the rights of citizen need to be recognized by the State and only Vietnamese citizen have these rights. Therefore, Article 50 of the Constitution should be amended. Even though many laws state that the scope of provisions on human rights

covers foreigners but it should be pronounced in the Constitution that the State of Vietnam respects and protects human rights in general.

Secondly, the right to be free from interference of individual body is provided in Article 71 of the 1992 Constitution. This provision has some problems as follows:

- The Constitution provides that “Citizen has the right of physical inviolability, to have their life, health, honor and dignity protected by law” in the same provision is not really reasonable. The Constitution should clearly distinguish two different rights: the right to have life and health protected by law and the right to have honor and dignity protected by law.

- The term “citizen” is not used precisely. These rights are human rights so a person is entitled to these rights no matter if he /she is Vietnamese citizen or not. So, in the context of international integration and globalization in Vietnam, this provision is not suitable. Moreover, this provision is inconsistent with other legal documents on foreigners and stateless people.

- Article 71 does not mention the right to have reputation – a fundamental right of any individual. Vietnam law has recognized this right in Article 37 Civil Code.

It is suggested that Article 71 should be amended and separated into 2 Articles: the right to have life and health protected and the right to have honor and dignity protected. The term citizen should be replaced by “individual”; supplement the right to have reputation protected. Thus, Article 71 should be as follows:

The right of physical inviolability

“Individuals are entitled to physical inviolability, to have life and health protected by law.”

Arrest and imprisonment shall be legitimate.



Torture and corporal punishment against individuals are prohibited strictly.

The right to have honor, dignity and reputation protected

“Individuals are entitled to have honor, dignity and reputation protected by law.

Violation of honor, dignity and reputation of individual is prohibited strictly.

Thirdly, the provision of inviolation of accommodation and correspondence Article 73 Constitution 1992 has some drawbacks; Similar to Article 71, the way to provide these rights into an article is illogical. There are two different rights; thus, the laws must be separately stipulated.

- It is inappropriate to use the term “citizen” in provision because such is the basic natural right of every individuals, it is not only stipulated as the right of Vietnamese citizen.

- The provision “mail, telephone, telegram of citizens are guaranteed safe and confidential” is enumerative, inappropriate to the divers and abundant development of forms that contain information in the condition of information technology boom. Such provision is not compatible with foreign constitution.

Article 73 is proposed to amend to separate into two article that stipulated separately on the right to inviolability of the accommodation and the right to inviolability of personal privacy; amend from “citizen” into “individual”; modify from the phrase “mail, telephone, telegram” into “privacy”. Article 73 shall be amended as hereinafter:

*The right to inviolability of the accommodation*

“Individual has the right to inviolability of the accommodation.

No one shall be entered the domicile of another person without his allowance,

*The right to inviolability of personal privacy*

**“The right to inviolability of personal privacy is legally respected and protected**

**The right to checkup accommodation, collection or disclosure of personal privacy must be conducted by competent persons in accordance with provision. ”**

Legislation of specialized law: Currently, regulations are mainly just at the level of principles and scattered in various different legal documents.

- The Criminal Code only stipulates on infringement confidential or security of mail, telephone, telegram of others but not defines the infringement of private life, family, dwelling. Article 121 of the Criminal Code only stipulates insult the honor and dignity in seriousness. The Criminal Code should be further supplemented and completed.

The Criminal Procedure Code stipulates the right to inviolability of accommodation, safe and confidential of mail, telephone, telegram of citizens but not stipulate on the right to freedom from interference in private life and family. The Code should also clarify "shall not be delayed" in the circumstance of checkup to accommodation without the approval of the Procures. Provisions of The Criminal Procedure Code that relate to the implementation of the order to checkup accommodation, or confiscate mail, telegram, post parcel and parcels at the post office should be specified in documents as the basis for the unite application of organ and competent person.

- Law on civil judgment enforcement should clarify the distraint procedure in civil enforcement as well as the time distraint notice to the residence; require the residence to relocate...

- Press Law and the relevant documents should be revised and supplemented to ensure better human rights, guaranteed not to be held personally intervened, an invasion of his privacy, mail, not being offensive

to the honor and prestige; amended, provides for additional corrections in newspapers, on the information that was not in the press...

- The other major laws :

+ For further improvement of regulations on telecommunication subscriber management as well as specific sanctions to ensure the safety of personal information when users subscribe to the service , not to leak information to the companies distribute spam messages to prevent illegal intervention into private lives of individuals.

+ Promulgate legal documents on the privacy of citizens, clearly defining acts interfere or infringe any legitimate way for private life, family, home or correspondence of the people clearly identifying the cases, the right to exploit all possible information about the privacy and confidentiality of correspondence of others, the scope of mining, information use, the entity is obliged to provide supply such information. Normative documents may be in reference to the existing text to create a unified link.

+ Also, the right to protection of the prestigious honor to be protected at a higher level, required documents on protection of these rights in electronic information environment as the current development.

## **2.8. Rights and obligations of foreigners in Vietnam**

### **a. Provisions of the international laws**

**The right to freedom of movement and residence is one of the ... for personal development, as well as is considered as the precedent for social development. Article 13 of Universal Declaration of Human Rights 1948 stated that “*Everyone has the right to freedom of movement and residence within the borders of each State*”. Such provision is reaffirmed and stipulated in Article 12 and 13 of ICCPPR, according to which “*Everyone shall be free to leave any country, including his own (...). No one shall be arbitrarily deprived of the right to enter his own country*”.**

The said provision is reaffirmed and specified in Article 12<sup>5</sup> and Article 13<sup>6</sup> of International Covenant on Civil and Political Rights 1966 (ICCPR) and in the General Comments of Human Rights Committee.

Article 12 of ICCPR mentioned three rights: (i) liberty of movement within the territory of a State; (ii) freedom to leave any country, including his own, and to return to his country and (iii) freedom to choose his residence within the territory of a State, specifying several of the following main contents:

- It is understood that the right of liberty of movement is crucial to develop a personal freedom. Such right has the effect on other rights recognized in ICCPR and has a close connection with Article 13.

- Such right is applied not only its citizens but also the foreigners currently having the legitimate residence or presence in other State. The permission of entry and legal status of a foreigner within the territory of the State shall be subject to its national laws and in compliance with its international obligations. However, it is regarded that the foreigner entry shall be legal within the territory of the State member in case his entry is permitted by such State.

- The liberty of movement is applied in the entire territory of a

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<sup>5</sup> Article 12 of ICCPR is stated that: (1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence; (2) Everyone shall be free to leave any country, including his own; (3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant; (4) No one shall be arbitrarily deprived of the right to enter his own country.

<sup>6</sup> Article 13 of ICCPR is provided that: An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

country, including all parts of federal States.

- The guarantee of right to liberty of movement and freedom to choose his residence within the territory of a State shall not be subject to any purposes or reasons of such movement or choice of his residence. Any restriction of the aforementioned rights is in accordance with Article 12.3

- The right to freedom of residence also consists of the protection without moving to other residence in territory; and not prohibition to moving or living in a particular residence in territory, unless circumstance provided in Article 12.3.

- The provisions regarding the right to freedom of leaving any country, including his own will be applied without depending on the country of destination and its purpose, term that resident intend to. Therefore, this right includes the right to traveling to foreign countries with the aim of working, visiting and living in a long term. Such right is applied for foreign individual who live duly in a territory of other country, as a result, a foreign individual when he was legally deported will choose another country, on condition that such country agreed to.

- The country of residence and the country of nationality have the responsibility for guaranteeing the right to freedom of leaving any country provided in Article 12.2. Due to the fact that the travelling among of countries is required the travel permits such as passport..., the right to freedom of leaving any countries is included the right to obtain such necessary travel permits. The disapproval of issuance or extension of passport will be prevented a person from the right to leave the country of residence, including the right to return his own country.

- The right to return his own country is not only referred as the right to coming back after leaving country but also as the such right of individual who come back at the first time to and has nationality of a country where is not their place of birth. It contains the right of an individual staying

in their country and prohibition of exodus compulsory and/or to be enforced to go to another country.

- It is allowable for the countries to specify the limitations applicable to the right to freedom of movement; however, such limitations are without prejudice to rule of freedom of movement, based on Article 12.3 and in accordance with other rights recognized by ICCPR.

- The limitations provided in Article 12.3 only applied for purpose of protection of national security, public order (order public) or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant, also stipulated in the law. In case of setting such limitations in the laws, the Member State is required to comply Article 5 of ICCPR, according to which the specified limitations are without prejudice to the nature of rights; are required to be compatible between such limitations and the related rights as well as regulations and exclusion. Moreover, such limitations are also appropriate to protected interests. This rule shall be strictly complied by the legislature, judicial and administrative agencies.

**A number of limitations is not regarded as the inadequacy including: (i) a person will not be permitted to exit due to know “state secret”; (ii) preventing a person from ... due to lack of the specified permits (paragraph 16); (iii) the person is required to apply for and obtain the approval of the competent agencies for changing his residence; (iv) the special requirements for being granted a passport; (v) the requirement of the guarantee of other family members for his exit; (vi) the requirement of the accurate description of the travel route; (vii) Delay in the issuance of travel permits; (viii) compelling restrictions on visits of members of family; (ix) given the request of commitments or round trip ticket, of invitation from the visiting country or from relative who living in this country; (x) annoying to applicant for departure, for example the threat of physical harm, arrested, unemployed, or**

disallowance for their children to study at secondary school or university; (xi) refusing to issue passport to applicants because it is considered the applicant cause harmfulness to the national honor.

- It is reasonable for application of the restrictions, including: (i) restrictions on army area entrance due to national security; (ii) restrictions on freedom of residence at area of which the minority or the native live...

However, it is noted that in case the restrictions applied are considered to be appreciate, another site must be complied, the restrictions must be appreciate to other rights governing at ICCPR, and with the fundamental principles of equality and discrimination, therefore, it is considered to violate the Convention if departure restrictions are derived from discrimination on race, sex, color, language, religion, political or other opinion, national or social origin, property, birth or other status (for example, applying the restrictions on liberty of movement of woman or departure of the nation being approved or going with her husband is violating the Article 12).

b. Provisions of the Vietnamese laws

**The right of liberty movement within national territory**

Deriving the *national sovereignty*, the right of liberty of movement of individual on the definite national territory, all of the citizen of such country, the foreigners or non national citizen must govern by the law of such country. In other words, each country has its exclusive jurisdiction to determine the legal regime on movement of citizens who live in such territory. However, when promulgating such legal regime, each nation needs to respect the fundamental principles of international law and international treaties of which such nation is a member.

The suitability with the provisions of the international law, the State of Vietnam always respects and ensures human right, expressing

**comprehensively in Vietnamese legal regime. The liberty of movement, residence of citizen are prescribed at Article 10 of the Constitution in 1946, Article 28 of the Constitution in 1959, Article 71 of the Constitution in 1980 and Article 68 of the Constitution in 1992.**

Article 48 of Law on Civil Code is prescribed in detail as follows:

*“(1) An individual has the right to freedom of movement and residence*

*(2) The freedom of movement and residence of an individual may only be restricted pursuant to a decision of the authorized State body and in accordance with the order and procedures provided by the law”.*

Right of freedom of movement in such national territory is prescribed in law and ensures to implement to all “individual”, including Vietnamese citizen and foreigners.

Under the Article 12 of the Ordinance on entry, exit and residence of foreigners in Vietnam: “Foreigners may travel freely on the Vietnamese territory in accordance with the registered purposes of entry, except for areas banned from travel by foreigners; if wishing to enter prohibited areas, they must get permission of the competent State bodies of Vietnam managing such prohibited areas”. The restrictions on movement of foreigners are prescribed in detail as follows:

+ The foreigners must not reside at border area in accordance with the law of Vietnam (except as otherwise provided by an international treaty of which the Socialist Republic of Vietnam is a member). Foreigners who wish to enter the border areas shall have to carry out the procedures to apply for permission from the exit and entry management bodies of the provincial level police Departments that have such border areas.

+ The foreigners are not allowed to enter areas where no-pass signboards are put up under the regulations of Vietnamese competent bodies.



Foreigners who wish to enter areas where no-pass signboards are put up shall have to carry out the procedures to apply for permission from the bodies directly managing such areas<sup>7</sup>.

**Therefore, all individual, including Vietnamese citizens and foreigners have freedom right of movement in the territory of Vietnam. Such right is ensured by the law and only be restricted in the special circumstances, at some definite areas on the basic of decisions of the competent state bodies and with orders, procedures provided by the law.**

Under the provision at Article 1 of the Ordinance of the Standing Committee of the National Assembly No. 24/1999/PL-UBTVQH10 dated 28 April 2000 on entry, exit and residence of foreigners in Vietnam: *“The Socialist Republic of Vietnam State facilitates the entry, exit and transit of foreigners; protects the lives, properties and other legitimate rights and interests of foreigners residing in Vietnam on the basis of Vietnamese laws and the international treaties which the Socialist Republic of Vietnam has signed or acceded to”*

*- Entry conditions for foreigners:*

Foreigners on entry or exit must have passports or valuable papers that can substitute (hereinafter referred collectively to as passport) and have visas granted by competent Vietnamese agencies, except for case of visa exemption. The Vietnamese visas include three types: (i) The single visa which is valid for use only once during the period of not more than 12 months; (ii) Multiple visa which is valid for use more than once during the period of not more than 12 months. Depending on the purpose and duration for entry purpose of the person who entries, the competent bodies shall grant the single or multiple visa<sup>8</sup>.

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<sup>7</sup> Decree No. 21/2001/NĐ-CP, Article 12.

<sup>8</sup> The Ordinance on entry, exit and residence of foreigners in Vietnam, Article 4, 7

Validity and duration of the visa are prescribed in detail as follow: (i) Single or multiple visas, which are valid for no more than 12 months, shall be granted to persons entering Vietnam to execute projects under investment licenses or cooperation contracts with Vietnamese agencies and/or organizations; or persons accompanied by their relatives who enter Vietnam to work for foreign offices located in Vietnam; (ii) Single or multiple visas, which are valid for no more than 6 months, shall be granted to persons who are invited by agencies, organizations and individuals into Vietnam and are not covered the above mentioned cases; (iii) Single visas, which are valid for 15 days, shall be granted to persons applying for entry without any invitation by agencies, organizations and individuals in Vietnam.

Visa is not extended. When visa is expired, if the person holding the visa requires continuing entering and existing Vietnam, he or she must complete the application procedures for a new visa.<sup>9</sup>

Foreigners can enter Vietnam under the invitation of a Vietnamese body, organization, foreign body and organization and international organization located in Vietnam, Vietnamese citizen and foreigner who has legal residence in Vietnam.

However, organization, body, individual, inviting foreigners to enter Vietnam has responsibility for ensuring the entry purpose of foreigners; ensuring finance and cooperating with the State bodies to solve the problems arising to foreigners<sup>10</sup>.

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<sup>9</sup> Decree No. 21/2001/NĐ-CP dated 28/5/2001 governing and detailing the Ordinance on entry, exit and residence of foreigners in Vietnam, Article 3.

<sup>10</sup> The competent agencies, organizations, and individuals may invite foreigners to Vietnam, including: the Central Committee of the Communist Part, the National Assembly, the President of the State, the Government, and bodies under their authority; the Supreme People's Court and the People's Supreme Inspectorate;

In some circumstances, foreigners can be issued a visa at an international border-gate: For taking part in the funeral of relatives, visiting relatives who have serious illness; departing from the country of which has no diplomatic representative office, foreign consulate of Vietnam;

Entering for visit into Vietnam under programs organized by international tour enterprises of Vietnam, entering to provide urgent technical support for constructions, projects, to give first-aid to seriously ill person, to provide rescue for victims of natural disaster, epidemics in Vietnam<sup>11</sup>.

*- The restrictions on exit, entry of foreigners:*

On principle, the State of Vietnam facilitates the entry, exit of foreigners. Besides, foreigners who enter, exit into Vietnam must comply with Vietnamese laws and respect the traditions, customs and practices of the Vietnamese people.

Under the Article 8 of the Ordinance on entry, exit and residence of foreigners in Vietnam, the competent State bodies of Vietnam shall not let foreigner enter into Vietnam if they are in the following circumstances: No visa or Vietnamese visa, forging papers, deliberately making untrue declarations when carrying out procedures for entry application; for reasons

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Ministries, ministerial equivalent bodies, Government bodies, People's committee of provinces and cities under central authority, and bodies under their authority, Central bodies of people's organizations and unions;

Enterprises established under the laws of Vietnam, Diplomatic representative offices, foreign consulates, representative offices of international organizations under the United Nations or inter governmental international organization located in Vietnam;

Foreign company branches, representatives offices of economic, cultural organizations and other foreign specialized organizations located in Vietnam; Other bodies and organizations established and operating legally in Vietnam; Vietnamese citizens residing permanently in Vietnam, Vietnamese citizens residing in a foreign country but residing temporarily in Vietnam; foreigners residing permanently in Vietnam and foreigners residing temporarily in Vietnam for six months or more.

<sup>11</sup> The Ordinance on entry, exit and residence of foreigners in Vietnam, Article 6

of preventing and/or combating epidemics, serious breach of the Vietnamese laws during their previous entries, for reasons of protecting the national security and other special reasons as decided by the Minister of Public Security.

Foreigner may be suspended from exit if in one of the following cases: (i) being examined for penal liability or being the defendants in civil, economic or labor cases; (ii) being obliged to serve penal sentences; (iii) being obliged to serve civil, economic or labor judgments; being obliged to execute decisions on sanctioning administrative violations, to fulfill their tax obligations and other financial obligations.

Foreigners fall under item (iii) and (iv), if being guaranteed with money, properties or other measures to ensure the performance of such obligations according to Vietnamese laws, may exit<sup>12</sup>.

Freedom right to choose the residence in the national territory

Foreigners entering are allowed to reside on the territory of Vietnam, but must register their residence purposes, duration and address and operate strictly in compliance with the registered purposes.

Under Article 3 of the Ordinance on entry, exit and residence of foreigners in Vietnam in 2000, Foreigners are persons who do not bear the Vietnamese nationality. Article 3, point 2 Decree No. 138/2006/NĐ-CP date 15/11/2006 of the Government providing detailed provisions for implementation of the Civil Code with respect to civil relations involving foreign elements governs definitely that *“Foreigners means a person without Vietnamese nationality, including a person with a foreign nationality and a stateless person”*.

Therefore, foreigners include 2 groups: a person with a foreign nationality and person without nationality: (i) a foreign nationality mean a person who bears the nationality of a country other than of Vietnam. (ii) A stateless

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<sup>12</sup> The Ordinance on entry, exit and residence of foreigners in Vietnam, Article 9

people mean persons who do not bear either the Vietnamese or foreign nationality.

The Ordinance on entry, exit and residence of foreigners in Vietnam in 2000 governs two forms: temporary and permanent residence.

+ Foreigners may temporarily reside in Vietnam in accordance with the registered purposes, duration and addresses. If temporarily residing under one year, foreigners are granted the temporary residence certificates compatible to the valid duration of visa. If temporarily residing for one year or more, foreigners are granted the temporary residence cards, validity between 1 and 3 years. The temporary residence card bearers shall be exempt from visas upon their entry and exit during the valid duration of the cards.

+ Foreigners temporarily residing in Vietnam shall be considered and approved by the competent State bodies for permanent residence under one of the following circumstances: (i) They are people who have struggled for freedom and national independence, for socialism, for democracy and peace or for the cause of science, but have been subject to suppression; (ii) They have meritorious contributions to the cause of building and defending the Vietnamese Fatherland; (iii) They are spouses, offspring, parents of Vietnamese citizens residing in Vietnam.

## **2.9. The right of freedom of assembly and association**

### **a. Provisions of international laws**

The right to freedom of assembly and association are specified in UDHR at the first time. In particular, Article 20 of UDHR stated that everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association. Furthermore, the right to freedom of assembly and association continually affirmed in Article 21 and 22 of ICCPR. In details:

Article 21 of ICCPR stated that: “the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others”.

Human Rights Committee has not had any general comment referring to the content of Article 22, however, inferring from the content of the article, it can be seen that this right is not absolute. The said right may be limited by the law, for the necessary demands in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22 of the ICCPR provided that everyone has the right to free establishment of association, including the right to form and join unions so as to protect his interests. The execution of this right can only be restricted by laws, due to essential needs of a democratic society in order to protect national security, public safety, public order, public health, morals or others’ rights of freedoms. This article would play no role in prohibiting the issue of statutory limitations relating to the exercise of the right to free establishment of association of armed force and police.

Human Rights Committee has not had any general comment referring to the content of Article 22, however, inferring from the content of the article, it can be seen that the right to "free establishment of association" includes the following specific rights:

- Setting up new associations;
- Joining existing associations;
- Governing associations, including finding and mobilizing funds for operation.

The right to free establishment of association is actually a complement to the right to peacefully free assembly specified in Article 21 of the ICCPR. In similarity to the right to peacefully free assembly, the right to free establishment of association is not absolute, because it allows countries to impose limitations on the implementation of this right, as long as it is based on provisions of the Convention.

#### **b. Provisions of Vietnamese laws**

In accordance with the general principles of international standards, the State of Vietnam always respects and guarantees human rights, citizens' rights of freedom and democracy. This spirit is expressed through Vietnamese legal system in general and criminal law, criminal procedure in particular.

The Penal Code 1999 contains the provision on crime punishable infringements of the right to assembly, establishment of associations, freedom of belief, religion of citizens in (Article 129), Chapter XIII - Crimes of infringing upon citizens democratic freedoms, in details:

Those who commit acts of obstructing citizens from exercising their rights to assembly, establishment of association, which conform to the interests of the State and the people, rights to freedom of belief and religion, to follow or not to follow any religion, and who have been disciplined or administratively sanctioned for such acts but continue to commit violations shall be subject to warning, non-custodial reform for up to one year or a prison term of between three months and one year.

In addition, the offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.

It can be seen that provisions of Article 129 of the Vietnamese Penal Code are relatively consistent with international standards. The behaviour of "obstructing" citizens from exercising their rights to assembly, establishment of association, which conform to the interests of the State and the people, rights to freedom of belief and religion, to follow or not to follow any

religion shall be considered a crime. This means that Vietnamese state allows citizens to “exercising their rights to assembly, establishment of association, which conform to the interests of the State and the people, rights to freedom of belief and religion, to follow or not to follow any religion”. Obstructing these rights shall be regarded as illegal. Thus, the content of provisions of Article 129 above is relatively consistent with provisions of Articles 18, 21 and 22 of the ICCPR. However, Article 129 of the Penal Code has not mentioned the punishment for the behaviour of preventing citizens from travelling and residing which is contrary to provisions of Article 12 of the ICCPR. This is a limitation of this Code.

Article 4 of the Criminal Procedure Code stipulates that operation principles of procedure-conducting bodies is to respect for, and defence of, fundamental rights of citizens, as follows: “When conducting the procedure, the heads and deputy heads of investigating bodies, investigators, chairmen and deputy chairmen of procuracies, procurators, presidents and vice-presidents of courts, judges and jurors must, within the scope of their respective responsibilities, respect and protect the legitimate rights and interests of citizens, regularly examine the lawfulness and necessity of the applied measures, promptly cancel or change such measures if deeming that they are in violation of law or no longer needed”. Although the article does not directly address the protection of the right to free travelling and residing, freedom of belief and religion, freedom of speech and expression, free establishment of association of citizens, it indirectly refers to the protection of those rights because the Constitution 1992 has recognized that the aforementioned rights are legitimate rights and interests of citizens (Articles 68, 69 and 70).

*Assessments and suggestions:* According to analysis and evaluation of provisions of criminal law and criminal procedure law concerning the rights of liberty, democracy, it can be seen that, basically, provisions of Vietnamese Penal Code and Criminal Procedure Code have been compatible



with international standards of human rights. However, obstructing citizens from travelling and residing is not considered crimes and seriously treated by applicable Penal Code. Therefore, for further improvement as well as to fully and thoroughly satisfy requirements of international standards, according to our opinion, it is necessary to conduct further research on amendment and supplement of Article 129 of the Penal Code as follows:

Firstly, the scope of Article 129 of the Penal Code should be broadened so that it contains not only acts infringing the right to assembly, establishment of association, freedom of belief, religion citizens, but also acts unreasonably obstructing in citizens from freedom of travelling and residing.

Secondly, aggravating frame regarding specific aggravating circumstances to handle the crime stipulated in Article 129 of the Penal Code should be supplement so as to deal more severely with serious offenses that are more dangerous than usual, such as committing crimes in an organized manner, committing crimes more than once, committing crimes against more than one person; causing serious consequences...

### **PART III. SUMMARY OF REVIEW RESULTS IN 2011 AND 2012**

#### **3.1. Overall assessment**

In recent years, Vietnam has adopted many international conventions on human rights, including the International Covenant on Civil and Political Rights 1966 (ICCPR); the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR); the Convention on the Elimination of All Forms of Discrimination against women 1979 (CEDAW); the International Convention on the Elimination of all Forms of Racial 1955; the Convention on the Rights of the Child 1989 ( CRC ) and The *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*;... Under these Conventions, countries must respect and protect human rights in all areas, including the rights to be assured by criminal law and criminal procedure as the right to life, the right to seek for commutation or change of punishment,

the right not to be tortured, cruelly, inhumanly or demeaningly treated, not to be enslaved, the right to liberty and personal security, not to unjustly arrested and imprisoned, the right to be ruled by courts or competent tribunals for the offense, the right to equality before courts and tribunals... These conventions also require its state members to conduct necessary legislative measures to ensure more and more fully recognized human rights.

Recognizing the need and importance of strengthening guarantees of human rights in the process of globalization, international integration and building a socialism law-governed state, the Resolution No. 48-NQ/TW dated 24 May 2005 of the Political Bureau regarding strategy for building and improving Vietnamese legal system to 2010 and up to 2020 has set the goal of building and improving the legal system for ensuring human rights and freedom, democracy of citizens , in which the task of strengthening legal basis for accountability of state agencies in legislating, promulgating, organizing enforcement of law, international treaties on human rights, civil rights in civil, political, economic, cultural - social areas that Vietnam is a member; improving protection regime of state to legitimate rights and interests of citizens, the accountability of government agencies , particularly the courts in protecting those rights. Subsequently, the Resolution No.49-NQ/TW dated 2 June 2005 of the Political Bureau concerning strategy for judicial reform to 2020 has underlined the need to complete the Penal Code and judicial proceedings in order to guarantee uniformity, democracy, openness, transparency, respect and protection of human rights, reduce imprisonment, extend the application of non-custodial penalty, limit death penalty which applies towards particularly serious crimes.

The harmonization of national law with international law in general and with requirements of international conventions on human rights in particular is essential not only to more fully implement international obligations which Vietnam has committed but also, as practical requirements of the country, to better ensure human rights, freedom, democracy of

citizens in the spirit of the Resolution No. 48 and No. 49 of the Political Bureau.

Overall, the adoption and implementation of human rights is guaranteed by all legal system from the Constitution - the original legislation specified the most basic issues of human rights to laws and bylaws concretizing human rights in specific areas of social life such as politic, economy, culture, society, national security, foreign affairs and other fields. However, in the framework of the project “*Strengthening access to justice and protection of rights in Vietnam*”, the legal team of Vietnam were assigned to conduct research assessing the compatibility of the laws of Vietnam in comparison with international conventions on human rights to which Vietnam is a member, especially civil and political rights. This report is the result of such research evaluation.

Basically, provisions of Vietnamese laws are compatible with provisions of international conventions on human rights. As important legal tools in preventing and fighting against crimes, protecting the interest of the State, legitimate rights and interests of citizens, the Penal Code and the Criminal Procedure Code has actively contributed to ensuring human rights especially the rights involved in judicial activities, such as the right to life, the right to seek for commutation or change of punishment, the right not to be tortured, cruelly, inhumanly or demeaningly treated, not to be enslaved, the right to liberty and personal security, not to unjustly arrested and imprisoned, the right to be ruled by courts or competent tribunals for the offense, the right to equality before courts and tribunals... These legal provisions have gradually been improved to ensure compatibility with development conditions of the country.

### **3.2. Vietnamese law relating to civil and political rights**

Through the review, it can be seen that the legal system of rights to humane treatment, no arbitrary detention, torture, corporal punishment was

essentially complete and unified. The principal provisions on the protection of fundamental civil and political rights as the constitutional principles and provisions of important laws such as the Penal Code, Criminal Procedure Code, Civil Code, Law on Criminal Judgment Enforcement... The bylaw documents (Decree of the Government, the resolution of the Council of Judges of the Supreme People's Court, the circular of the Ministries) has instructed and specified the provisions of the Constitution and the Penal Code, the Criminal Procedure Code as well as prescribed administrative procedures to ensure implementation of these rights.

Right from the first Constitution of Vietnam in 1946, the provisions relating to this area have been recognized in Chapter 2 of “The obligations and rights of citizens”. This has shown the important role of statutory rights and obligations of citizens in the Constitution and also showed special interest of the Democratic Republic of Vietnam to the regulations since the State was newly born. After that, the provisions on the rights and obligations of citizens had been completed and supplemented in Constitutions 1959, 1980 and 1992.

However, the provisions of human rights in the constitutions of Vietnam in general and in the current Constitution 1992 also has shortcomings, limitations needed to be evaluated objectively and it should be supplemented and amended to suit the current context.

The name of the program relating to all human rights in the Vietnamese constitutions so far are “rights and obligations of citizens” or “basic rights and obligations of citizens”. It means that all constitutions are only emphasized the “civil rights” but not “human rights”. Although the Constitution 1992 is the first constitution of Vietnam recognized the term “human rights” but it is noted by the formula: “In the Socialist Republic of Vietnam, the human rights on political, civil, economic, social and cultural aspects are respected, embodied in the civil rights and are defined in the Constitution and the law”. This confusion was reflected in the concept of

human rights and civil rights, or it can also be understood that human rights and civil rights in the Constitution of are identical.

Moreover, all articles of Constitutions are only recognized human rights and civil rights by the formula “citizens have the right to ...”, “... is the right of citizens”. The recognition of civil rights rather than human rights in the Constitution is not satisfactory because the concept of citizenship is narrower than human rights. Human rights are natural rights for all people, while citizenship is defined by the State. At the same time, the recognition of the chapter’s name “The rights and obligations of citizens” does not cover the entire contents of the chapter because a number of provisions in this chapter does not relate to the Vietnam citizens but the Vietnamese community overseas (either or not Vietnamese citizen) and foreigners residing in Vietnam.

The Constitution 1992 which passed amendments in 2013 by the National Assembly is an important step on the way to improve the law, to protect better and better basic human rights. The Constitution 1992 saves for human rights and civil rights a quite extensive framework with many basic rights that international human rights law and the constitution of the countries in the world have been recognized.

*Location of human rights, civil rights statutory:* The regulatory sequence of human rights, civil rights in the Constitution expressed the awareness of the State on the importance of this issue as well as it of recognizing those rights in the Constitution. Method and framework of constitutional rights in the Constitution 1992 (amended in 2013) have made progress. Specifically, the statutory of human rights, citizen rights is located in Chapter 2 which is right after of the first Chapter on political regime regulations. In terms of form, this mechanism is consistent with the method of statutory constitutional rights in majority of countries around the world. More importantly, it shows how to specify the nature of the Constitution's original written contract between the State and the people to establish

mechanisms to curb state power through the mechanism of human rights, civil rights.

One of the other progresses is that the Constitution 1992 (amended in 2013) has overcome the confusion of human rights and civil rights and the approach to rights has permeated deeply into the content and form of expression. Expression is that the rights are established not by state “decision” but it implied that the citizens enjoy the rights by default and the State has the obligation to ensure human rights and civil rights.

The above progress can guarantee constitutional content, reflect the nature of human rights, civil rights and preventing arbitrary of the State in the regulations, collect, remove, reduce or provide improper conditions for the enjoyment of human rights of citizens by the Constitution and laws. This is how the constitutional right express the nature of democracy, rule of law or the institutions of the socialist rule of law that we are continuing to build and improve.

*Collocation of regulations:* Basically, the Constitution 1992 (amended in 2013) arranges articles according to groups of rights to ensure consistency between human rights and civil rights, and ensure systematic and feasibility of those rights in practice. Accordingly, the articles of Chapter II on human rights, civil rights are arranged in the following order: general provisions including principles, ensure on the implementation of rights, limitation and restriction of rights; civil and political rights; economic, social and cultural rights; the rights and obligations of citizen; rights and obligations of foreigners. These rights related to each other but different from objects, responsibilities and mechanisms are specified in the various articles.

*Language expression:* Some regulations begin with the phrase “The State shall ensure ...”, “The State shall protect ...”, “The State shall create conditions ...” is considered the “language of mercy is used in many articles of the Constitution 1992 (amended in 2001). The use of this language feels like the State blesses citizen other than the citizen is automatically entitled to

this. “These provisions contain potential risk of arbitrariness from the state agencies, cropping, reducing or removing these rights whenever the State wants to”. Therefore, in the amendment to the constitution in 2013, the language expression in Chapter II is not really flexible but it has reduced maximally the language of mercy and usually begins with the phrase “Citizens have right...”, “Everyone has the right...”.

### **3.3. Vietnamese law in relation to international treaties on civil and political rights**

*Conformity with the international treaties on human rights:* The international treaties on human rights is an important legal basis contributing to the establishment of common standards and minimizing human rights. On the basis of *pacta sunt servanda* principle, countries are obliged to comply with and implement the standards recognized in international treaties to which they are members. Hence, to ensure compatibility between the provisions of the Constitution with the international treaties on human rights to which Vietnam is a contracting party to show respect international commitments of Vietnam, and facilitate advantages in the process of ensuring the implementation of human rights in practice. The collation and comparison of the provisions on human rights, civil rights in the Constitution amended Constitution 1992 with the provisions of the international legal instruments on human rights is necessary to meet the requirements of performance and allow evaluation of the advantages and disadvantages as well as existing limitations from which proposes direction to improve the legal system.

Review results show that the legal system of Vietnam has fully recognized civil and political right: the Constitution, the Civil Code, the Penal Code, the Criminal Procedure Code, the Law on Criminal Judgment Enforcement... In general, the legal documents of Vietnam are in accordance with the provisions of the International Covenant on Civil and Political Rights.

Regarding to civil rights, Vietnam has issued relatively complete system of legal regulations of the group of rights which express and comply with the content of the relevant international treaties, including special emphasis to the provisions on the right to life, right to non-discrimination and equality before the law, right to freedom and security of the person, right to not arbitrary arrest and detention, the right to not be tortured, right to be treated with humanity and respect for human dignity, the right to protection of privacy and shelter and rights to a fair trial.

One of the noteworthy point, also the new point specified in the Constitution 1992 (amended in 2013) is the recognition of right to life of person. Although the Penal Code of Vietnam remains the death penalty the recognition of the right to life does not mean that it will eliminate the death penalty. This view is in fact not inconsistent with international human rights law because the the ICCPR recognized right to life but not obliged member states to abolish the death penalty.

However, the international human rights law states a limitation that in countries where the death penalty has not been removed, it is only allowed to apply this penalty to the most serious crimes. In this regard, paragraph 3 of Article 8 of the Penal Code also stipulates that the death penalty only applies particularly to serious crime. Therefore, in general, the provisions on the right to life in the draft amended Constitution are brief but consistent with the provisions of international law on human rights. Besides, in the process of amending and completing the criminal law, Vietnam is actively considering to minimize the death penalty.

Regarding to other civil rights, basically, the provisions of the law of Vietnam are in accordance with the provisions of international law on human rights. However, in order to improving the legal system, it is needed to consider the following points:

- The ICCPR provides specifically the right not to be discriminated against, according to which “there is not any distinction of any kind, such as



race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...”. Meanwhile, there is no consensus among the legal documents of Vietnam. Specifically, the Criminal Procedure Code has not specified educational level, occupation as grounds and provides social status as a ground which has not been stipulated in other laws. Therefore, there should have a review and consistency in the the legal documents on the grounds not to be discriminated against.

- In order to ensure a full compatibility with the international standards of human rights, it should continue to study and complete the provisions of the Penal Code relating to offenses infringing upon the health, honor, dignity and implementation of the search warrant, shelter, jobs, location or collection of correspondence, telegrams and parcels. The above provisions should be specified in the guidelines as a basis for the agency or person authorized to apply uniformly.

Besides the civil rights, legal documents of Vietnam also recognizes and ensures political rights with particular emphasis to the provisions on freedom of movement and residence, freedom of speech, press media and information, the right to freedom of belief and religion, freedom of association, peaceful assembly and the right to participate in political life.

Basically, the provisions of the law of Vietnam are compatible with the provisions of international law on human rights. However, to further improve and respond fully and thoroughly the requirements of international standards, it is necessary to review and improve the Law on exit, entry and residence, and enacts new legislation in areas such as access to information, assembly, association....

To ensure civil and political rights, two areas of particular significance is an important field of criminal and criminal procedure. With the promulgation of the Penal Code and Criminal Procedure Code, Vietnam has actively contributed to ensuring human rights especially the rights involved in judicial activities, such as the right to life, the right to seek

commutation or change the punishment, the right not to be tortured, treated cruel, inhuman or demeaning, the right not to be enslaved, the right to liberty and security of person, not arbitrary arrested and imprisoned, the right to be ruled by courts or tribunals which have jurisdiction for the offense, the right to equality before courts and tribunals, legal remedies... this regulations is gradually completed to ensure compliance with conditions for development of the country.

However, in the context of international integration and the socialist rule of law construction in our country, the two Codes have revealed limitations and inadequacy, failing to meet the requirement of preventing and fighting against crime in the new situation. In addition, globalization and issues such as terrorism, racism, international migration, human trafficking, poverty, climate change,... are serious threats to the life, safety and human rights. This requires enhanced measures to ensure further human rights, including legislative measures, in particular the continued completion of criminal law and criminal procedure law. Requirements for further improving the law in general and criminal law, criminal procedure in particular is also consistent with the policy of judicial reform of the Party and State of Vietnam increasingly towards ensuring better human rights and contribute to the harmonization between the laws of Vietnam and international conventions on human rights to which Vietnam is a member.

### **3.4. Assessment and recommendations**

In a nutshell, as a member of the ICCPR since the early 1980s, Vietnam has the obligation to fully implement “the minimized international standards of human rights” recognized in this Convention, which is needed to firstly internalize into the Constitution. On the basis of absorbing, inheriting the constitutional ideology of Vietnam from the early twentieth century, the basic human rights such as freedom to expression, information, freedom of religion, right to vote, right to freedom of movement and residence, right to be protected by law, the right to equality before the law...

have been recognized in four Constitutions at different levels and it can be said that it is relatively sufficient, at least in terms of the number of rights. However, as a fundamental statute, the Constitution only stops at a solemn recognition of this right. To implement these rights, they should be concretized by the law on the different areas in different conditions and created a mechanism to protect its efficiency in practice.

Currently, the Constitution 1992 (amended in 2013) has passed by the National Assembly. This is an important legal basis for Vietnam to continue to improve the provisions of law, to ensure conformity with the Constitution and ensure the implementation of international treaties on human rights to which Vietnam is a member. One of the important new point recognized in the Constitution 1992 (amended in 2013) in accordance with the provisions of the ICCPR is the regulation in Clause 2, Article 14 of the limitation and restriction of human rights, civil rights, according to which “*Human rights and citizens’ rights may 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 regulations meet basic criteria which is not arbitrarily limit the human rights and civil rights; those rights are restricted only in certain urgent cases related to national security and social security and order. It can be seen remarkable points below:

- Human rights, civil rights are restricted only by law;

- The above provisions are reasonable because the National Assembly is the only authority competent to enact laws on human rights and civil rights; therefore, it is the only agency authorized to limit human rights and civil rights. This is consistent with the principle of the amendment, supplement or replacement, cancel, annul or suspend the execution of legal documents, according to which “Legal documents shall only be revised, substituted, cancelled or abolished by means of documentation by the state agencies that have promulgated those legal documents or shall be suspended,

cancelled or abolished my means of documentation by relevant state agencies”; it complies with the principle that the state is of the people, by the people and for the people.

Article 14 of the 1992 Constitution (amended in 2013) is a particularly significant provision, contributing to the expansion of human rights, civil rights, ensuring the consistency in applying the laws. This also set forth requirements that the laws and bylaws must have the consistent content with this Article and have not any arbitrary regulations limiting human rights, civil rights. Therefore, in the current process of implementing the Constitution, one of the priority issue is focus on amending, supplementing or building new projects of laws and other legislations. Under the Government's plan to organize the implementation of the amended 2013 Constitution, in 3 years from 2014 to 2016, the Government plans to build and submit to the National Assembly, the National Assembly Standing Committee (NASC), amending, supplementing or promulgating 82 laws and ordinances to ensure the suitability and specification of the provisions of the Constitution. Particularly in 02 years, 2014 and 2015, it's expected to submit 52 projects.

The amendments, supplements and new construction of legislations in order to ensure the suitability and enforcement of the Constitution shall contribute to improving the quality and efficiency, and satisfy more and more the civil rights, political rights, in accordance with the provisions of international law on human rights. However, the present issues in the implementation of human rights in most of nations is not only the admittance, commitment to ensuring the implementation of the right but also the establishment of enforcement mechanisms as well as the methods of stipulating exception regulations in order to limit the rights in the case of necessity. The solutions put forward also needs to be improved according to this direction. There're some proposals and notices as follows:

- One of the progresses which Vietnam has to attain is issuing the Law on Approaching Information. The Law on Approaching Information shall take the essential role to connect all current desultory regulations on approaching information. This Law shall provide basic principles in approaching information, perfect problems and inadequacies of legal regulations, thence, create a comprehensive legal frame to ensure the right to approach information of people. This is also the necessary condition to ensure the complex of free speech right, newspaper and information rights.

- To promulgate legislations on refugees: In the coming time, Vietnam will have to face the problem of refugees. It's not by accident that the organizational structure of the United Nations has the United Nations High Commissioner for Refugees (UNHCR) as well as in international laws there're international global multilateral treaties on refugee problems, in which stipulate the international legal obligations of nations in accordance with the international standards of human rights, particularly ensuring that the refugees can enjoy the right to have a nationality with the most favorable conditions. As an active member of the international community, has been highly appreciated in implementing human rights, Vietnam should stipulate the relevant provisions of international law on refugees in its domestic law. Currently, it's limited in the provisions of such regulations in the Law on Vietnamese Nationality, which allows refugees to be naturalized Vietnamese citizenship based on their own decisions, because this group of people have not nationalities or have nationalities but have not the citizen protection from the countries that they are citizen. If the implementation of this proposal shall create a degree of coverage of Vietnam nationality law on the entire population of Vietnam, ensure the overall and synchronization of Vietnam's systems of regulations on nationality, and demonstrate the compliance and strict enforcement of Vietnam to international commitments on citizenship rights for all compositions of the population without any discrimination.

- Law on the Election of Deputies to the National Assembly 1997 and the Law on Election of Deputies to the People's Councils 2003: Regulations in the Constitution and the current laws of Vietnam on voting rights, candidature rights are built based on and clearly reflects the principle of "the will of the people is the power basis of the public power, such will must be manifested during the regular, righteous elections which organized according to the principles of equality, universal suffrage and secret ballot". However, to make the will of the people to be reflected more sufficiently in the election, specifically to make the provisions of the current laws on the election more suitable to the ICCPR as well as UHDR, some legal provisions need to be reinforce and improved, relating to the following issues: negotiation in the introduction of candidates, cancel of the election results according to the election unit, additional elections, the list of voters in additional elections and re-elections.

- The Penal Code and the Criminal Procedure Code: review results, evaluation of the compatibility between the relevant provisions of the current criminal laws and procedures and the international legal instruments showed that, basically, regulations of the laws of Vietnam has satisfied the requirements of the international conventions on human rights in which Vietnam is a member. However, in relation to some specific issues, criminal law and criminal procedure law of Vietnam needs to be improved continuously in order to be compatible with the international standards, in which it must include provisions on the right to be protected from arrest, arbitrary detention contrary to law; right to be judged fairly; some groups of rights of children and women; etc. ... Some specific offenses in the Penal Code should be amended and supplemented in accordance with the requirements of international legal instruments. To enhance the protection of people, especially human rights in the field of criminal justice in the future, the above points should be reviewed and revised soon.

- Law on Vietnamese Nationality 2008: in the nationality law of other countries it usually has particular provisions regarding to automatically loss of nationality cases (naturally loss of nationality). Law on Vietnamese Nationality 2008 recognized cases of losing Vietnamese nationality due to someone didn't register to keep his/her nationality as too "simple" as other cases of losing Vietnamese nationality is unreasonable, because losing nationality ipso facto including many cases depend on actual circumstances and characteristics of countries and peoples that they establish. In this part, Law on Vietnamese Nationality 2008 should have reasonable modifications, to ensure coherence and logic of a legal document. These are suggestions from the perspective of legal science, but from the perspective of practical performance of this provisions need to be carefully considered in the situation of the Vietnamese community residing abroad who are belonging to different classes, having different living conditions and circumstances, having different knowledge and understanding ... Therefore, not everyone has conditions and knowledge to register to keep his/her Vietnamese nationality, or because of living conditions do not allow them or give them the ability to register in reality ... only for objective reasons that they do not register to keep Vietnamese nationality and lose their citizenship, this is completely unfair and unreasonable. Perhaps the loss of nationality in this case represents a disproportionate causal relationship as in the case of citizenship be deprived because of the treason behavior. So this case of loss of nationality should be re-considered to leave out from the Law on Vietnamese Nationality 2008 or if not, it's necessary to supplement other additional provisions to overcome the objective reasons exist in reality lead to the situation that the citizen does not want, he/she still lose the Vietnamese nationality.

- Law on State Compensation Liability 2009: It's necessary to improve provisions on compensation for material damage, honorary damage to ensure provisions are feasible in practice. Expanding compensation

liability in the field of legislative and executive; To specify liability of the heads of other agencies, legal entity's liabilities.

- Ordinance on Beliefs and Religions 2004: Currently, Ordinance on Beliefs and religions 2004 is the highest legislation defines the religious and belief activities in Vietnam. Although Resolution No.25 Session IX/2003 stated the opinion of "Preparing to the construction of Law on Beliefs and Religions", but due to various reasons, this Law hasn't been enacted. In this situation, based on inadequacies, outdated problems and incomprehensive regulations of the Ordinance, the state authorities must be positive, proactive in finalizing the Draft of Amended Ordinance on Belief and Religion.

- Ordinance on Entry, Exit and Residence of foreigners in Vietnam: To improve more and more and satisfy completely and absolutely the new Constitution's provisions and the International's standards, it's required to review and improve the legal regulations on Entry, Exit and Residence of foreigners in Vietnam with the overall goal is to improve the legal environment for such activities; there from proceed to construct an Act of Entry, Exit in order to handle the relationship in the field of cross - border citizen

- Decree 22/2005/ND-CP need to be amended to comply with the new situation. Most of groups of provisions in Decree 22 appears to be inadequate, unable to meet requirements of a legal document which is directly adjusting the religious and belief activities in religious life nowadays. Therefore, it's required to set high priorities in amending outdated provisions and in supplementing provisions which is lacking. The content need to be focused is the following groups of provisions: specific provisions on legal entity; to amend, specify criteria for the recognition of the religious organizations; to define the types of religious activities which are not specified in Decree 22 to ensure the public order. In addition, it's necessary to issue Decree on sanctions against illegal religious activities.



In summary, civil and political rights is one of the basic human rights, including about 16 groups of rights and they were adjusted by most legal documents in the legal system of Vietnam. Currently, Vietnam prioritizes to review, institutionalize civil and political rights by increasing the uniformity and consistency to meet the requirements of human rights in the new situation and trend of international integration, the policy of judicial reform and improve the legal system and international integration to ensure better implementation of the rights of citizens regarding to freedom of expression, media, information, religion, the right to equality before the law, the right to vote, right to stand for election and participate in managing the country...

## APPENDIX

### APPENDIX I. LEGAL DOCUMENTS TO BE REVIEWED

No.	LEGAL DOCUMENTS (NATIONAL ASSEMBLY)	YEAR
1.	The Constitution of Vietnam (amended 2001, 2013)	1992
2.	The Criminal Code (amended, supplemented in 2009)	1999
3.	The Criminal Procedure Code	2003
4.	Law on Child Protection, Care and Education	2004
5.	The Civil Code	2005
6.	Law on Donation, Removal and Transplantation of Human Tissues and Organs and Donation and Recovery of Cadavers	2006
7.	Law on Special Amnesty	2007
8.	Law on State Compensation Liability	2009
9.	Law on Medical Examination and Treatment	2009
10.	Law on Criminal Judgment Enforcement	2010
11.	Law on Human Trafficking Prevention and Combat	2011
12.	Law on Handling Administrative Violation	2012

No.	LEGAL DOCUMENTS (GOVERNMENT)	YEAR
13.	Decree No. 89/1998/NĐ-CP dated 07/11/1998 on Promulgating the Regulations on Temporary Custody and Detention	1998
14.	Decree 98/2002/NĐ-CP dated 27/11/2002 on amending and supplementing a number of articles of the regulation on custody and detention issued together with the government's decree no. 89/1998/ND-CP	2002
15.	<u>Decree 162/2004/NĐ-CP</u> dated 7/09/2004 on Promulgating the Regulations on Temporary Custody under Administrative Procedure	2004
16.	<u>Decree 114/2006/NĐ-CP</u> dated 3/10/2006 on handling administrative violation regarding to population and children	2006
17.	<u>Decision 96/2007/QĐ-TTg</u> dated 28/06/2007 on the Management, Care and Counseling for HIV in Prisons, Medical Establishments and Social Welfare Establishments in Viet Nam	2007
18.	<u>Decree 76/2008/NĐ-CP</u> dated 04/07/2008 detailing the implementation of a number of articles of the Law on special amnesty.	2008
19.	Decree 113/2008/NĐ-CP dated 28/10/2008 on Promulgating	2008

	the regulation on prisons	
20.	Decree 125/2008/NĐ-CP amending and supplementing Decree No. 76/2003/ND-CP prescribing and guiding in detail the application of the measure of consignment to educational camp	2008
21.	Decree 66/2009/NĐ-CP amending and supplementing Decree No. 142/2003/ND-CP on application of the administrative measure of consignment to educational camp	2009
22.	Decree 118/2010/NĐ-CP dated 29/12/2010 amending and supplementing a number of articles of decrees prescribing the application of the measure of consignment to education camp or reformatory	2010
23.	Decree 82/2011/NĐ-CP dated 16/9/2011 on execution by lethal injection	2011
24.	Decree 09/2011/NĐ-CP dated 25/01/2011 amending and supplementing food and medical examination and treatment regimes applicable to persons held in custody and temporary detention provided in Article 26 and 28 of the regulation on custody and temporary detention promulgated together with the government's decree no. 89/1998/ND-CP of 7/11/201998	2011
25.	Decree 64/2011/NĐ-CP dated 28/07/2011 stipulating the execution of the measure of compulsory medical treatment	2011
26.	Decree 80/2011/NĐ-CP providing measures to assure community re-integration for persons having completely served their prison sentences	2011
27.	Decree 81/2011/NĐ-CP dated 16/09/2011 providing for the food, clothing, care and management regimes of reformatory schools' students	2011
28.	Decree 117/2011/NĐ-CP dated 15/12/2011 providing for management regimes and food, clothing and medical care of prisoners	2011
29.	Decree 71/2011/NĐ-CP dated 22/08/2011 guiding a number of articles in Law on Child Protection, Care and Education	2011
30.	Decree 10/2012/NĐ-CP dated 17/02/2012 guiding and detailing measures to implement judicial education at communes, wards and townships for juvenile offenders	2012

No.	LEGAL DOCUMENTS (MINISTRIES, BRANCHES)	YEAR
31.	Joint Circular 02/TTLN dated 6/9/1989 of the Ministry of	1989

	Home Affairs (currently the Ministry of Public Security) and the Supreme People's Procuracy on detention, rehabilitation and supervision of detention and rehabilitation	
32.	<i>Joint Circular 01/2000/TTLT-TANDTC-VKSNDTC-BTP-BCA</i> dated 12/6/2000 of the Supreme People's Court, Supreme People's Procuracy, Ministry of Justice and Ministry of Public Security guiding section 3 of the Resolution no. 32/1999/QH10 dated 21/12/1999 of the National Assembly and Resolution no. 229/2000/NQ-UBTVQH10 dated 28/01/2000 of the Standing Committee of the National Assembly	2000
33.	<i>Resolution 04/2004/NQ-HDTP</i> dated 05/11/2004 of the Judges' Council of the Supreme People's Court guiding the execution of some regulations in section 3 of the Civil Procedure Code 2003 on the "first-instance"	2004
34.	Joint Circular 07/2004/TTLT-BCA-VKSNDTC guiding the imprisonment of prisoners serving custodial penalties	2004
35.	Decision 113/2004/QĐ-UBND dated 23/4/2004 of the People's Committee of Ho Chi Minh City issuing regulations on the allowance to returning home of people under/after rehabilitation	2004
36.	<i>Resolution 05/2005/NQ-HDTP</i> dated 08/12/2005 of the Council of Judges of the Supreme People's Court guiding the implementation of a number of provisions in the third section of the Criminal Procedure Code 2003 on the "appellate"	2005
37.	<i>Decision 810/2006/QĐ-BCA-C11</i> dated 04/7/2006 of the Minister of Public Security issuing the process of protecting court sessions, escorting the accused, witnesses to court and the execution process of the death penalty	2006
38.	Joint Circular 02/2006/TTLN-BCA-BQP-BYT-TANDTC-VKSNDTC dated 18/5/2006 guiding the temporary suspension on execution of imprisonment for imprisoned persons suffering seriously ill	2006
39.	Decision 183/2006/QĐ-UBND dated 26/12/2006 of the People's Committee of Ho Chi Minh City on the management of the beggars living on public places in the city	2006
40.	Decision 80/2006/QĐ-UBND dated 16/5/2006 of the People's Committee of Ho Chi Minh City on establishing and issuing operating regulations of the Advisory Council on	2006

	turning people in healing, vocational training institutions and employment for drug users and solving community reintegration	
41.	Section II of the Resolution of the Council of Judges of the Supreme People's Court 02/2007/NQ-HDTP dated 02/10/2007 guiding a number of provisions in the 5 <sup>th</sup> section "court's judgment and decision enforcement of the criminal Procedure Code	2007
42.	Directive 7/2007/CT-UBND dated 4/5/2007 of the People's Committee of Can Tho Province on the strengthening of management, education, support to object of special amnesty and prison forgiveness	2007
43.	Decision 88/2009/QD-UBND dated 6/11/2009 of People's Committee of Ho Chi Minh City on time of nourishing the beggars living in public place	2009
44.	Resolution 23/2009/NQ-HĐND dated 9/12/2009 of the People's Committee of Bac Giang Province promulgating regulations on responsibility to contribute and grant drug users, sex workers treated for drug addiction in the family, community and mandatorily, voluntarily Social Labour Education Center of the Province	2009
45.	Joint Circular 04/2010/TTLT-BCA-BYT dated 9/8/2010 guiding the examination and treatment of persons in custody or detention, prisoners, inmate educational institutions, school in State hospital	2010
46.	Resolution dated 217/2010/NQ-HĐND dated 12/7/2010 of the People's Council of Phu Tho Province approving the scheme on management, care, nurture on people with mental illness in the Province	2010
47.	Decision 2424/QD-UBND dated 12/7/2010 of the People's Council of Phu Tho Province promulgating scheme on management, care, nurture people with mental illness in Phu Tho province	2010
48.	Resolution 32/2011/NQ-HĐND dated 9/12/2011 of the People's Council of Bac Giang Province promulgating regime of contributions, exemption and reduction for people after rehabilitation in Social Labour Education Center	2011
49.	Decision 169/2011/QD-UBND dated 13/5/2011 of the People's Committee of Bac Giang Province promulgating	2011

	coordinating regulations to receive and support community reintegration of returning people trafficked abroad	
50.	Decision 514/2011/QD-UBND dated 30/12/2011 of the People's Committee of Bac Giang Province promulgating regulations on support system for people after rehabilitation in residence; regime of contribution and exemptions for people after rehabilitation in the Social Labour Education Centre in the Province	2011