

COMMENTARY ON HUMAN RIGHTS PROVISIONS IN DRAFT AMENDMENTS TO 1992 CONSTITUTION



(as published for consultation on 2 January 2013)

Introduction

- The United Nations highly appreciates the invitation to present its analysis of the current draft amendments to the Constitutional Amendment Drafting Committee for their consideration.
- The United Nations in Viet Nam has analyzed the draft amendments to the 1992 Constitution of the Socialist Republic of Viet Nam in light of the international human rights treaties to which Viet Nam is a party¹ and other customary international human rights law, including the Universal Declaration of Human Rights.

General considerations

- **State as duty-bearer:** The UN welcomes the clear statement that human rights are recognized, respected, protected and guaranteed (Article 15.1). However, the article does not express the State's duty to protect and promote human rights, which is the "first responsibility of Governments"². Good practices in this regard include the Constitutions of Poland³, Estonia⁴ and Timor-Leste.⁵
- **Incorporation of international obligations:** This State's duty to protect and promote human rights extends to those rights guaranteed in the international instruments to which Viet Nam is a party⁶, and which are more extensive than those set out in the Constitution. One good practice adopted in many Constitutions is to make it clear that the State protects the human rights set out in international treaties and other instruments to which the State is a party⁷.
- **Supremacy of international law.** Many Constitutions also reflect the binding force of international law⁸ which must prevail over inconsistent provisions of domestic law⁹, in the same way as Viet Nam already provides in relation to laws (Article 6 of the Law on Treaties 2005). A similar provision in the Constitution would bring Viet Nam into compliance with international good practice and strengthen the supremacy of international law in Viet Nam's legal system.

¹Currently, the International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR); International Covenant on Civil and Political Rights (hereafter ICCPR); International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of the Child, and its two Optional Protocols.

²Paragraph 1 of the Vienna Declaration and Programme of Action

³Article 30 of the 1997 Constitution of Poland: "*The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.*"

⁴Article 14 of the 1992 Constitution of Estonia: "*Guaranteeing rights and liberties shall be the responsibility of the legislative, executive, and judicial powers, as well as of local government.*"

⁵Section 6 of the 2002 Constitution of Timor Leste: "*The fundamental objectives of the State shall be: ...b) To guarantee and promote fundamental rights and freedoms of the citizens and the respect for the principles of the democratic State based on the rule of law.*"

⁶ Cf. for instance the responsibility to "undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind" (Art. 2, ICCPR) and to "undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind" (Art.2, ICESCR)

⁷ Compare **Article 31 of the 1993 Constitution of Cambodia**: "*The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights*", and Thailand, *Constitution of the Kingdom of Thailand* (2007), Section 82. "The State shall promote friendly relations with other countries and adopt the principle of non-discrimination and shall comply with human rights conventions in which Thailand is a party thereto as well as international obligations concluded with other countries and international organisations."

⁸ See for instance article 26 of 1969 Vienna Convention on the Law of Treaties: "every treaty in force is binding upon the parties to it and must be performed by them in good faith."

⁹ For instance Article 15.4 of the **1993 Constitution of the Russian Federation (as amended 2008)**: "The universally-recognised norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation establishes other rules than those envisaged by law, the rules of the international agreement shall be applied."

- **Restriction of rights:** Article 15.2, which sets out the grounds on which human rights may be restricted, does not require such restrictions to be ‘determined by law’, nor are they limited to the ‘just requirements... in a democratic society’ as required by Article 4 of the ICESCR concerning economic, social and cultural rights, and other individual articles of ICCPR concerning certain civil and political rights. As a result, the current draft would allow human rights to be restricted by executive decisions or determinations without democratic scrutiny, and for a wider set of purposes than allowed under international law. We recommend adopting wording complying with international human rights standards in line with international good practice¹⁰.
- Furthermore, under international law certain rights cannot be limited under any circumstance, such as the right to life, the prohibition of torture, or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent, freedom of thought, conscience and religion and others. This is not reflected in the current draft; we recommend consideration of a provision to this effect similar to those in the Constitutions of Indonesia¹¹ and the Russian Federation¹². We also note that some of these fundamental rights, such as the prohibition of slavery or servitude, prohibition of imprisonment due to a contractual obligation or prohibition of retroactivity of a criminal offense, are not referenced in the current draft, and would recommend their inclusion.
- The prohibition of “abuse of rights” in Article 16.2 is unclear in meaning, and appears to justify further limitations of rights beyond those allowed under international human rights law, and accordingly we recommend its deletion.
- **Remedies for violations of human rights:** The fundamental responsibility to provide an effective and enforceable remedy for violations of human rights¹³ is not guaranteed by the current Constitution or the draft amendments:
 - The creation of a Constitutional Council to review the constitutionality (and therefore the human rights compliance) of legal documents (art. 120) is a positive step, but is not in itself sufficient to guarantee obligations under international law, because the Constitutional Council as drafted does not have the right to review executive or judicial acts (as opposed to legal documents), and there is no provision allowing individuals to bring cases before the Constitutional Council.
 - International good practices in this regard include:
 - enabling individuals to bring complaints that their constitutional (and human) rights have been violated to independent bodies with the power to remedy them such as constitutional courts or constitutional councils with the mandate to hear

¹⁰For instance, *The Constitution of the Russian Federation* (1993, with the Amendments and Additions of December 30, 2008), Article 55(1).” The listing in the *Constitution* of the Russian Federation of the fundamental rights and freedoms shall not be interpreted as a rejection or derogation of other universally recognized human rights and freedoms. (2). In the Russian Federation no laws shall be adopted cancelling or derogating human rights and freedoms. (3). The rights and freedoms of man and citizen may be limited by federal law only to the extent necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State” .

¹¹Indonesia, *The 1945 Constitution of the Republic of Indonesia* (As amended in 2002), article 28I (1) The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances. (2) Every person shall have the right to be free from discriminatory treatment based upon any grounds whatsoever and shall have the right to protection from such discriminatory treatment.

¹²Russian Federation, *The Constitution of the Russian Federation* (1993, with the Amendments and Additions of December 30, 2008), Article 56 (1). In conditions of a state of emergency, in order to ensure the safety of citizens and the protection of the constitutional system and in accordance with federal constitutional law certain limitations may be placed on human rights and freedoms with the establishment of the extent and duration of such limitations. (2). A state of emergency may be introduced in the whole territory of the Russian Federation and in certain parts thereof in the circumstances and according to the rules established by the federal constitutional law. See *Federal Constitutional Law No. 3-FKZ of May 30, 2001 on the State of Emergency* (3). **The rights and freedoms envisaged in Articles 20 [right to life], 21 [protection of human dignity, prohibition of torture, violence, inhuman treatment and punishment, medical experimentation], 23 (the first part [the right to the inviolability of private life, personal and family secrets, the protection of one's honour and good name]), 24 [protection of information about private life], 28 [conscience, the freedom of religion], 34 (the first part right to free use of his abilities and property for entrepreneurial and economic activities not prohibited by law) 40 ([right to a home] the first part), 46-54 [right to fair trial, due process] of the *Constitution of the Russian Federation*, shall not be liable to limitation.**

¹³ See e.g. Article 2, ICCPR

complaints by individuals that state bodies have violated human rights protected by the Constitution, and/or

- establishment of National Human Rights institutions established in accordance with the Paris Principles.

Specific rights

- **Article 20** provides that “citizens’ rights are inseparable from citizens’ obligations”. We would suggest reconsideration of this provision, which does not reflect the international law that human rights are not conditional upon compliance with or fulfillment of obligations.
- **Freedom of movement and residence (article 24)**: the article is restricted to citizens, and is only recognized “in accordance with the law”. However, article 12, ICCPR grants freedom of movement and residence to everyone lawfully within the territory of a country, as well as to leave it. Restrictions of such freedom is possible only when it is provided by law, for certain purposes, and consistent with other rights in the Covenant (article 12.3, ICCPR)
- **Freedom of expression, information and association (article 26)**: The article extends the rights only to “citizens”, and the rights are granted only “in accordance with the law”. These are universal human rights whose enjoyment can only be limited in exceptionally as provided by articles 19 (3) and 22(2) of the ICCPR.
- **Gender equality (art.27)** – The right of gender equality set out in article 27 should apply to all persons, not just citizens. Note that both the ICCPR and ICESCR require a State party to ensure rights for “all individuals within its territory” without distinction of any kind, including sex or other status. (article 2)¹⁴
- **Criminal justice (art. 32)**: The previous version of this provision provided that “no one shall be found guilty or subjected to punishment except by the legally valid sentence of a court”. It is not clear why the words “or subjected to punishment” have been removed in draft Article 32.
- Furthermore, the current draft refers to only a very few of the fundamental criminal justice rights, and omits many others, particularly the right to a “fair and public hearing by a competent, independent and impartial tribunal established by law” (Article 14, ICCPR) and the specific rights guaranteed under Article 14. We would recommend that Viet Nam follow the good practice of other Constitutions which set out the fundamental criminal justice rights in more detail, such as the Philippines¹⁵, Russian Federation¹⁶ and Thailand.¹⁷

¹⁴ See e.g. Thailand, *Constitution of the Kingdom of Thailand* (2007), Section 30. All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights.

¹⁵Philippines, *The 1987 Constitution of the Republic of the Philippines*, Section 14. (1) No person shall be held to answer for a criminal offense without due process of law. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable; Section 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion, when the public safety requires it; Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies; Section 17. No person shall be compelled to be a witness against himself.

¹⁶Russian Federation, *The Constitution of the Russian Federation*(1993, with the Amendments and Additions of December 30, 2008), Article 47 (1). No one may be deprived of the right to the consideration of his or her case in that court and by that judge in whose cognizance the given case is according to law; (2) A person accused of committing a crime shall have the right to the examination of his case by a jury court in cases envisaged by federal law; Article 48 (1). Everyone shall be guaranteed the right to qualified legal assistance. In cases envisaged by law the legal assistance shall be free; (2). Any person detained, taken into custody or accused of committing a crime shall have the right to receive the assistance of a lawyer (counsel for the defence) from the moment of detention, confinement in custody or facing charges accordingly; Article 49 (1). Everyone accused of committing a crime shall be considered innocent until his guilt is proved according to the rules fixed by federal law and confirmed by the sentence of a court which has come into legal force, (2). The accused shall not be obliged to prove his innocence, (3). Unremovable doubts about the guilt of a person shall be interpreted in favour of the accused; Article 50 (1). No one may be convicted twice for one and the same crime, (2). In administering justice it shall not be allowed to use evidence received by violating federal law, (3). Everyone convicted of a crime shall have the right to appeal against the judgement in a superior court according to the rules envisaged by federal law, as well as to ask for pardon or mitigation of punishment; Article 51 (1). No one shall be obliged to give evidence incriminating themselves, a husband or wife or close relatives the range of whom is determined by federal law, (2). Federal law may envisage other cases of absolution from the obligation to testify.

¹⁷Thailand, *Constitution of the Kingdom of Thailand* (2007), Section 39. No person shall be inflicted with a criminal punishment unless he has committed an act which the law in force at the time of commission provides to be an offence and imposes a punishment therefor, and the punishment to be inflicted on such person shall not be heavier than that provided by the law in force at the time of the commission of the offence. The suspect or the accused in a criminal case shall be presumed innocent. Before the passing of a final judgement convicting a person of having

- **Marriage (art. 39):** given that Viet Nam is currently consulting on whether to allow same-sex marriage, consideration could be given to wording which would be consistent with this option in the future.
- **Children’s rights (art. 40):**
 - The right of children to participate in all decisions concerning them (CRC) is not yet reflected in the draft.
 - The State’s role as duty-bearer is not yet fully reflected in the draft. Furthermore, the fundamental principle that all decisions involving children must be taken in the best interests of the child (CRC) is not reflected.
- **Right to health (art. 41)** The right to health is universal and not limited to citizens only. Consideration should be given to including the key elements of the right to health as guaranteed by ICESCR.¹⁸ It is recommended that article 41.2 be limited to intentional disease transmission only.
- **Right to education (art. 42):** We note that the right to free primary school education has been removed in the current draft, and would recommend that consideration be given to reinstating this right. The draft does not yet reflect the right of all children, including ethnic minority children, to be instructed in their mother tongue (see under article 45 below).
- **Right to choose language of communication (art. 45):** The UN welcomes the inclusion of the right to freely choose the language of communication. In order to be comprehensive, the draft amendment is recommended also to expressly include the right to an interpreter in court proceedings as provided by article 14, ICCPR, as well as the right to be educated in one’s native language.
- **Family planning (art. 62):** The draft does not yet set out the key principles of reproductive rights in line with Viet Nam’s international commitments¹⁹ and consideration should be given to including these.
- **Independence of judiciary (art. 108):** the statement that judges are independent “during trials” does not fully convey the obligation to ensure that judges act fully independently in relation to the performance of their judicial functions.

For convenience, the attached Table sets out some indicative wording which could be adopted in line with the above comments.

committed an offence, such person shall not be treated as a convict; Section 40. A person shall have the rights in judicial process as follows: (1) right to access to judicial process easily, comfortably, quickly and indiscriminately;(2) fundamental rights in judicial process composing of, at least, right to public trial; right to be informed of and to examine into facts and related documents adequately; right to present facts, defences and evidences in the case; right to object the partial judges; right to be considered by the full bench of judges; and right to be informed of justifications given in the judgement or order; (3) right to correct, prompt and fair trial; (4) an injured person, alleged offender, plaintiff, defendant or the accused, interested parties, interested person or witness to the case shall have the right to appropriate treatment in judicial process including the right to be investigated correctly, promptly and fairly and not to testify against himself; (5) an injured person, alleged offender, the accused and witness to a criminal case shall have the right to necessary and appropriate protection and assistance from State. The gratuity, compensation and expenses to be paid shall be provided by the law; (6) every child, youth, woman or aging or disabled person shall have the right to appropriate protection in judicial process and shall have the right to appropriate treatment in the case related to sexual offences; (7) an alleged offender and the accused in criminal case shall have the right to correct, prompt and fair investigation or trial with an adequate opportunity in defending his case, the right to examine or to be informed of evidence, right to defend himself through counsel and the right to bail; (8) a person shall, in civil action, have the right to appropriate legal assistance from State.

¹⁸ These include: The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health; The right to prevention, treatment and control of diseases; Access to essential medicines; Maternal, child and reproductive health; Equal and timely access to basic health services; The provision of health-related education and information; Participation of the population in health-related decision making at the national and community levels **Basis:** General comment N° 14 (2000) on the right to health, adopted by the Committee on Economic, Social and Cultural Rights.

¹⁹ These include: The right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so; The right of all couples and individuals to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence; The promotion of the responsible exercise of these rights for all people should be the fundamental basis for government- and community-supported policies and programmes in the area of reproductive health, including family planning; The principle of voluntary choice in family planning. Governmental goals for family planning should be defined in terms of unmet needs for information and services. Demographic goals, while legitimately the subject of government development strategies, should not be imposed on family-planning providers in the form of targets or quotas for the recruitment of clients.

Basis: The International Conference on Population and Development (ICPD Programme of Action which was adopted in Cairo in 1994 and to which Viet Nam is a party.

UN INDICATIVE SUGGESTIONS FOR WORDING OF PROVISIONS

The table below gives illustrations of possible changes in wording to reflect the comments in the analysis above.

Article no.	Text of current draft Amendment of 1992 Constitution (as published 02.01.2013)	Indicative alternative wording	Rationale
15	<ol style="list-style-type: none"> 1. In the Socialist Republic of Vietnam human and civic rights are recognized, respected, protected and guaranteed according to the Constitution and the law. 2. Human rights and civic rights are only restricted in case of necessity for the purpose of national defense, national security, social order, ethics and community's health. 	<ol style="list-style-type: none"> 1. The State authorities of the Socialist Republic of Vietnam recognise, respect, protect and guarantee human rights according to the Universal Declaration of Human Rights, international treaties and other instruments to which Viet Nam is a party, the Constitution and laws. If an international treaty to which Viet Nam is party establishes other rules than those provided in the Constitution and laws, the international treaty shall prevail. 2. Human and civil rights may be limited by law only to the extent necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State. 3. The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from slavery and servitude, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances 	<ol style="list-style-type: none"> 1. State as duty-bearer; Incorporation of international treaties and restating binding force of international treaties 2. Limitation of rights only by law 3. Statement of non-derogable rights

16	<ol style="list-style-type: none"> 1. Every person has the obligation of respecting the rights of others. 2. The abuse of human and civic rights to violate the interests of the country and the nation, the rights and lawful interests of other people is prohibited. 	<p>Every person has the obligation of respecting the rights of others. [art. 16.2 deleted]</p>	(deletion of abuse of rights clause)
20	<ol style="list-style-type: none"> 1. The citizen's rights are inseparable from his duties. 2. The citizen's rights and duties are determined by the Constitution and the law. 3. The citizen has the duty of fulfilling his duties to the State and society. 	<p>[art. 20.1 deleted]</p> <ol style="list-style-type: none"> 1. The citizen's rights and duties are determined by the Constitution and the law. 2. The citizen has the duty of fulfilling his duties to the State and society. 	(rights not conditional on fulfillment of duties)
24	The citizen shall enjoy freedom of movement and of residence within the country; can freely travel abroad and return home from abroad in accordance with the provisions of the law.	Citizens and others lawfully within the territory of Viet Nam shall enjoy freedom of movement and of residence within the country; and can freely travel abroad. Citizens are free to return home from abroad.	(right of movement/residence universal and not conditional on legal provisions)
26	The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and demonstrate in accordance with the provisions of the law.	Everyone shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and demonstrate.	(these rights are universal and not conditional on legal provisions)
27	<ol style="list-style-type: none"> 1. Female and male citizens are equal and have equal rights in all political, economic, cultural, social fields and in the family. 2. The State has the policy of equality between female and male citizens in all fields. The State, society and family shall create conditions for women to raise their qualifications in all fields and fully play their roles in society. 3. All acts of gender discrimination are strictly prohibited 	<ol style="list-style-type: none"> 1. Men and women are equal and have equal rights in all political, economic, cultural, social fields and in the family. Men and women shall receive equal pay for work of equal value. 2. The State has the duty to ensure equality between women and men in all fields. The State, society and family shall create conditions for women to raise their qualifications in all fields and fully play their roles in society. 3. All acts of gender discrimination are strictly prohibited 	(gender equality a universal right, state is responsible for ensuring and protecting)
32	1. No one shall be regarded as guilty and be subjected to punishment before the sentence of the Court has acquired full legal effect.	1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge	(fair trial and criminal rights should be set out in full)

	<ol style="list-style-type: none"> 2. The prosecuted person has the right to be judged by a court of law. No one shall be convicted twice for the same crime. 3. The person under investigation, arrest, held in custody, or prosecuted has the right to legal assistance from the defender 4. Any person who has been arrested, held in custody, prosecuted, brought to trial in violation of the law shall be entitled to the recovery of material and reputation suffered. Anybody who contravenes the law in arresting, holding in custody, prosecuting, bringing to trial another person thereby causing him damage shall be dealt with by law. 	<p>against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.</p> <ol style="list-style-type: none"> 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; <p>(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;</p>	
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		<p>(c) To be tried without undue delay;</p> <p>(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;</p> <p>(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;</p> <p>(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;</p> <p>(g) Not to be compelled to testify against himself or to confess guilt.</p> <p>4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.</p> <p>5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.</p> <p>6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned</p>	
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		<p>on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.</p> <p>7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.</p>	
39	<p>Article 39</p> <p>1. Men and women have the right to get married and divorce. Marriage shall conform to the principles of free consent, progressive union, monogamy and equality and respect for each other between husband and wife.</p> <p>2. The State protects marriage and family, protect the rights and interests of the mother and the child.</p>	<p>1. Adults have the right to get married and divorce. Marriage shall conform to the principles of free consent, progressive union, monogamy and equality and respect for each partner.</p> <p>2. The State protects marriage and family, protect the rights and interests of the mother and the child.</p>	<p>Language suggested to ensure future flexibility with regards to Viet Nam's current consultation on amendment the Law on Family and Marriage to permit same-sex marriage.</p>
40	<p>Article 40</p> <p>1. Children have the rights to be protected, cared for and educated by families, schools, the state and the society.</p> <p>2. Maltreatment, neglect, exploitation of children and other forms of violation of child rights must be prohibited.</p>	<p>1. All children below 18 years of age have the rights to protection, care, education, and participation in decisions that affect their lives.</p> <p>2. The state as a primary duty bearer, is obliged to guarantee and protect children's rights. In all state actions, the best interests of the children should be a primary consideration</p> <p>3. All acts of torture, maltreatment, abandonment, labour abuse and exploitation and other acts which violate the rights of the</p> <p>3. Child are strictly prohibited.</p>	<p>Redrafted to be consistent with Convention on Rights of the Child</p>

41	<p>Article 41</p> <ol style="list-style-type: none"> 1. Citizens are entitled to health protection; equal in access and use of health services and has obligation to observe regulations on disease prevention, health examination and disease treatment. 2. Any acts that threaten the lives and health of the community are strictly forbidden.. 	<ol style="list-style-type: none"> 1. Everyone is entitled to health protection, especially in the situation of illness, disability and old age. Everyone enjoys equal and timely access to information and basic health care services. 2. Any acts that intentionally threaten the lives and health of the community are strictly forbidden. 	<ol style="list-style-type: none"> 1. Universal right to health, not conditional on obligations. 2. Make clear that unintentional disease transmission should not be criminalized.
42	<ol style="list-style-type: none"> 1. The citizen has both the right and the duty of learning. 	<ol style="list-style-type: none"> 1. Everyone has the right to education in their mother tongue 2. Primary education is compulsory and dispensed free of charge 	<ol style="list-style-type: none"> 1. Universal right to education, right to education in mother tongue 2. Reconfirm right to free primary education
62	<p>Article 62</p> <ol style="list-style-type: none"> 2. It is the responsibility of the State, society, the family and the citizen to ensure care and protection for mothers and children; to carry into effect the population programme and family planning; ensure a suitable population scale and structure; and enhance the quality of population. 	<ol style="list-style-type: none"> 2. The State and society have a duty to provide protection of people's health, especially for maternal and child health; to ensure equal access to family planning information and voluntary choice by people in family planning services toward a suitable population scale and structure to meet requirements of socio-economic development, and enhance quality of life. 	Redrafted to reflect international norms in relation to family planning.
108	<p>...</p> <ol style="list-style-type: none"> 2. During a trial the judges and jurors are independent and shall only obey the law; the intervention in the trial by judges and jurors by state bodies, organizations and individuals are strictly prohibited. 	<p>...</p> <ol style="list-style-type: none"> 2. Judges and jurors carry out their duties independently and shall only obey the law; the intervention in the decisions of judges and jurors by state bodies, organizations and individuals are strictly prohibited. 	(independence of judiciary; right to interpreter for ethnic minorities)

UN INDICATIVE SUGGESTIONS FOR WORDING OF PROVISIONS

The table below gives illustrations of possible changes in wording to reflect the comments in the analysis above.

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15	<ol style="list-style-type: none"> 1. In the Socialist Republic of Vietnam human and civic rights are recognized, respected, protected and guaranteed according to the Constitution and the law. 2. Human rights and civic rights are only restricted in case of necessity for the purpose of national defense, national security, social order, ethics and community's health. 	<ol style="list-style-type: none"> 1. The State authorities of the Socialist Republic of Vietnam recognise, respect, protect and guarantee human rights according to the Universal Declaration of Human Rights, international treaties and other instruments to which Viet Nam is a party, the Constitution and laws. If an international treaty to which Viet Nam is party establishes other rules than those provided in the Constitution and laws, the international treaty shall prevail. 2. Human and civil rights may be limited by law only to the extent necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State. 3. The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from slavery and servitude, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances 	<ol style="list-style-type: none"> 1. State as duty-bearer; Incorporation of international treaties and restating binding force of international treaties 2. Limitation of rights only by law 3. Statement of non-derogable rights

16	<ol style="list-style-type: none"> 1. Every person has the obligation of respecting the rights of others. 2. The abuse of human and civic rights to violate the interests of the country and the nation, the rights and lawful interests of other people is prohibited. 	<p>Every person has the obligation of respecting the rights of others. [art. 16.2 deleted]</p>	(deletion of abuse of rights clause)
20	<ol style="list-style-type: none"> 1. The citizen's rights are inseparable from his duties. 2. The citizen's rights and duties are determined by the Constitution and the law. 3. The citizen has the duty of fulfilling his duties to the State and society. 	<p>[art. 20.1 deleted]</p> <ol style="list-style-type: none"> 1. The citizen's rights and duties are determined by the Constitution and the law. 2. The citizen has the duty of fulfilling his duties to the State and society. 	(rights not conditional on fulfillment of duties)
24	The citizen shall enjoy freedom of movement and of residence within the country; can freely travel abroad and return home from abroad in accordance with the provisions of the law.	Citizens and others lawfully within the territory of Viet Nam shall enjoy freedom of movement and of residence within the country; and can freely travel abroad. Citizens are free to return home from abroad.	(right of movement/residence universal and not conditional on legal provisions)
26	The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and demonstrate in accordance with the provisions of the law.	Everyone shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and demonstrate.	(these rights are universal and not conditional on legal provisions)
27	<ol style="list-style-type: none"> 1. Female and male citizens are equal and have equal rights in all political, economic, cultural, social fields and in the family. 2. The State has the policy of equality between female and male citizens in all fields. The State, society and family shall create conditions for women to raise their qualifications in all fields and fully play their roles in society. 3. All acts of gender discrimination are strictly prohibited 	<ol style="list-style-type: none"> 1. Men and women are equal and have equal rights in all political, economic, cultural, social fields and in the family. Men and women shall receive equal pay for work of equal value. 2. The State has the duty to ensure equality between women and men in all fields. The State, society and family shall create conditions for women to raise their qualifications in all fields and fully play their roles in society. 3. All acts of gender discrimination are strictly prohibited 	(gender equality a universal right, state is responsible for ensuring and protecting)
32	1. No one shall be regarded as guilty and be subjected to punishment before the sentence of the Court has acquired full legal effect.	1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge	(fair trial and criminal rights should be set out in full)

	<ol style="list-style-type: none"> 2. The prosecuted person has the right to be judged by a court of law. No one shall be convicted twice for the same crime. 3. The person under investigation, arrest, held in custody, or prosecuted has the right to legal assistance from the defender 4. Any person who has been arrested, held in custody, prosecuted, brought to trial in violation of the law shall be entitled to the recovery of material and reputation suffered. Anybody who contravenes the law in arresting, holding in custody, prosecuting, bringing to trial another person thereby causing him damage shall be dealt with by law. 	<p>against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.</p> <ol style="list-style-type: none"> 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; <p>(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;</p>	
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39	<p>Article 39</p> <p>1. Men and women have the right to get married and divorce. Marriage shall conform to the principles of free consent, progressive union, monogamy and equality and respect for each other between husband and wife.</p> <p>2. The State protects marriage and family, protect the rights and interests of the mother and the child.</p>	<p>1. Adults have the right to get married and divorce. Marriage shall conform to the principles of free consent, progressive union, monogamy and equality and respect for each partner.</p> <p>2. The State protects marriage and family, protect the rights and interests of the mother and the child.</p>	<p>Language suggested to ensure future flexibility with regards to Viet Nam's current consultation on amendment the Law on Family and Marriage to permit same-sex marriage.</p>
40	<p>Article 40</p> <p>1. Children have the rights to be protected, cared for and educated by families, schools, the state and the society.</p> <p>2. Maltreatment, neglect, exploitation of children and other forms of violation of child rights must be prohibited.</p>	<p>1. All children below 18 years of age have the rights to protection, care, education, and participation in decisions that affect their lives.</p> <p>2. The state as a primary duty bearer, is obliged to guarantee and protect children's rights. In all state actions, the best interests of the children should be a primary consideration</p> <p>3. All acts of torture, maltreatment, abandonment, labour abuse and exploitation and other acts which violate the rights of the</p> <p>3. Child are strictly prohibited.</p>	<p>Redrafted to be consistent with Convention on Rights of the Child</p>

41	<p>Article 41</p> <ol style="list-style-type: none"> 1. Citizens are entitled to health protection; equal in access and use of health services and has obligation to observe regulations on disease prevention, health examination and disease treatment. 2. Any acts that threaten the lives and health of the community are strictly forbidden.. 	<ol style="list-style-type: none"> 1. Everyone is entitled to health protection, especially in the situation of illness, disability and old age. Everyone enjoys equal and timely access to information and basic health care services. 2. Any acts that intentionally threaten the lives and health of the community are strictly forbidden. 	<ol style="list-style-type: none"> 1. Universal right to health, not conditional on obligations. 2. Make clear that unintentional disease transmission should not be criminalized.
42	<ol style="list-style-type: none"> 1. The citizen has both the right and the duty of learning. 	<ol style="list-style-type: none"> 1. Everyone has the right to education in their mother tongue 2. Primary education is compulsory and dispensed free of charge 	<ol style="list-style-type: none"> 1. Universal right to education, right to education in mother tongue 2. Reconfirm right to free primary education
62	<p>Article 62</p> <ol style="list-style-type: none"> 2. It is the responsibility of the State, society, the family and the citizen to ensure care and protection for mothers and children; to carry into effect the population programme and family planning; ensure a suitable population scale and structure; and enhance the quality of population. 	<ol style="list-style-type: none"> 2. The State and society have a duty to provide protection of people's health, especially for maternal and child health; to ensure equal access to family planning information and voluntary choice by people in family planning services toward a suitable population scale and structure to meet requirements of socio-economic development, and enhance quality of life. 	Redrafted to reflect international norms in relation to family planning.
108	<p>...</p> <ol style="list-style-type: none"> 2. During a trial the judges and jurors are independent and shall only obey the law; the intervention in the trial by judges and jurors by state bodies, organizations and individuals are strictly prohibited. 	<p>...</p> <ol style="list-style-type: none"> 2. Judges and jurors carry out their duties independently and shall only obey the law; the intervention in the decisions of judges and jurors by state bodies, organizations and individuals are strictly prohibited. 	(independence of judiciary; right to interpreter for ethnic minorities)