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## مجلس حقوق الإنسان

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البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### تقرير الخبرة المستقلة المعنية بمسألة حقوق الإنسان والفقير المدقع ماغدالينا سيولفيدا كارمونا

إضافة

#### البعثة التي قامت بها إلى فييت نام\*\*

موجز

قامت الخبرة المستقلة المعنية بمسألة حقوق الإنسان والفقير المدقع، ماغدالينا سيولفيدا كارمونا، ببعثة إلى فييت نام في الفترة من ٢٣ إلى ٣١ آب/أغسطس ٢٠١٠ بناءً على دعوة من حكومة فييت نام. وأثناء الزيارة جمعت الخبرة معلومات مباشرة عن حالة حقوق الإنسان الخاصة بالأشخاص الذين يعيشون في فقر مدقع، وعن السياسات الاجتماعية، ولا سيما السياسات المتصلة بالحماية الاجتماعية.

وتسلّم الخبرة المستقلة بالتقدم الهام الذي أحرزته فييت نام في مجال الحد من الفقر على مدى عقدين من التنمية الاقتصادية السريعة، ويتجلى ذلك في زيادة تمتع السكان بالحقوق الاقتصادية والاجتماعية والثقافية. بيد أن فوائد هذا التقدم كما تدل على ذلك

\* يُعمّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيعمم باللغة التي قدم بها فقط.

\*\* تأخّر تقديم هذا التقرير.

الدراسات الحكومية لم يستفد منها السكان بالتساوي، وتشكل زيادة أوجه عدم المساواة مصدر قلق بالغ. ولذلك، فمن المطلوب على نحو عاجل الاهتمام بالمسألة من جديد لكي تصل هذه الفوائد إلى النسبة الكبيرة من السكان الذين ما زالوا يعيشون في فقر مدقع، ولكي تُكفل الحماية من الأزمات المستقبلية للسكان الذين تحسنت أحوالهم. ويتطلب ذلك وضع استراتيجيات جديدة تضمن توفير حماية أفضل للفئات المتأثرين بشدة من الفقر، مثل النساء والأطفال والمسنين والعمال المهاجرين داخلياً والأشخاص ذوي الإعاقة، ولا سيما الأقليات الإثنية.

ويدرس التقرير مسألة تمتع هذه المجموعات بحقوق الإنسان، وبصفة خاصة الحقوق الاقتصادية والاجتماعية والثقافية، ويقدم توصيات ملموسة تتعلق بكيفية تنفيذ نهج قائم على حقوق الإنسان بشأن الحماية الاجتماعية والحد من الفقر في البلد.

وتدعو الخبرة المستقلة فييت نام إلى زيادة الاستثمار بدرجة كبيرة في الحماية الاجتماعية، وتشير إلى أن واجب تنفيذ سياسات الحماية الاجتماعية ينبثق مباشرة من عدد من مبادئ حقوق الإنسان.

وتثني الخبرة المستقلة على الخطوط العريضة لاستراتيجية شاملة لتوسيع نطاق الضمان الاجتماعي في البلد. وبالنظر إلى الحماية المحدودة المتاحة للسكان في إطار نظم التأمين الرسمية، فمن الضروري جداً زيادة دعم آليات المساعدة الاجتماعية. ولا يشكل الاستثمار في الحماية الاجتماعية فقط مسألة حاسمة الأهمية لانتشال الأفراد من براثن الفقر بل إنه يساعد أيضاً على حماية جميع الأشخاص الذين يمكن أن يتأثروا بالأزمات الاقتصادية أو الكوارث الطبيعية في المستقبل. ويسلط التقرير الضوء أيضاً على أهمية ضمان حصول الأشخاص الذين يعيشون في فقر مدقع على الرعاية الصحية الأساسية والتعليم مجاناً.

## Annex

### **Report of the independent expert on the question of human rights and extreme poverty on her mission to Viet Nam (23-31 August 2010)**

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## I. Introduction

1. In this report, the independent expert on the question of human rights and extreme poverty (the independent expert), Magdalena Sepúlveda Carmona, describes the findings of her mission to Viet Nam from 23 to 31 August 2010. During this visit, the independent expert collected information that provided an overview of the human rights situation of people living in extreme poverty and allowed for a rights-based analysis of key social policies in the area of social protection. Social protection and human rights were the focus of her most recent thematic reports (A/HRC/11/9, A/HRC/14/31, A/64/279 and A/65/259).

2. The independent expert met with various Government authorities, including the Deputy Prime Minister, the Committee for Ethnic Minorities Affairs, and representatives from the Ministries of: Foreign Affairs; Labour, War Invalids and Social Affairs (MOLISA); Investment and Planning; Education and Training; Agriculture and Rural Development; and Natural Resources and Environment. She also met representatives from the Committee of the Viet Nam National Assembly for Social Affairs, the Commission on People's Petition and the Viet Nam Women's Union. During her visits to provinces she met with representatives from the Provincial People's Committees of Bac Kan and Quang Nam.

3. Furthermore, she held meetings with representatives of international organizations, donor agencies and civil society organizations working in Viet Nam.

4. The independent expert also had the opportunity to visit and meet residents in the communities of Tu Lap, Me Linh district, province of Ha Noi; Yen Dinh, Cho Moi district, province of Bac Kan; and Tien Phuoc and Phu Ninh, province of Quang Nam.

5. The independent expert expresses her gratitude to the Government of Viet Nam for its invitation and its full cooperation during her mission. She also extends her thanks to the United Nations country team, in particular the Office of the Resident Coordinator, which directly assisted with preparations for the visit. Lastly, she expresses her gratitude to all those who met with her, in particular those who shared their personal experiences of living in extreme poverty in Viet Nam.

6. In the last two decades, Viet Nam has made impressive progress in reducing poverty. The Doi Moi programmes have had significant impacts on all areas of society, resulting in substantially improved living standards for many. According to Government estimates, the poverty rate has declined from 58.1 per cent in 1993 to 14.5 per cent in 2008.<sup>1</sup> The country has recently been recognized as having achieved "middle-income" status.

7. Despite this laudable progress, at least 12 million Vietnamese still lived in extreme poverty in 2008.<sup>2</sup> Moreover, poverty reduction rates are slowing down and there is a high risk of groups that had progressed falling back into poverty as a consequence of economic shocks and natural disasters, which may only become more frequent due to the effects of World Trade Organization accession, middle-income status and the effects of climate change.<sup>3</sup> Additionally, most studies recognize that successes in stimulating growth and reducing poverty remain uneven and inequality is a serious concern, having risen since

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<sup>1</sup> Socialist Republic of Viet Nam, *Millennium Development Goals 2010 National Report, Viet Nam 2/3 of the way achieving the Millennium Development Goals and Towards 2015* (Hanoi, August 2010) ("*Viet Nam MDG National Report 2010*", p. 23).

<sup>2</sup> According to the World Bank/General Statistics Office of Viet Nam general poverty line, *Viet Nam MDG 2010 National Report 2010*, p. 23.

<sup>3</sup> *Viet Nam MDG 2010 National Report*, 2010, p. 32.

1993.<sup>4</sup> There are great regional disparities and a large urban-rural divide. Moreover, ethnic minorities have clearly not enjoyed the same progress experienced by the country overall. If patterns are not reversed, poverty will remain a phenomenon dominated by ethnic minorities.<sup>5</sup>

8. Despite significant efforts by the Government, disparities also persist in access to a number of services and economic opportunities, which remains a decisive factor in the inter-generational perpetuation of poverty. These inequalities raise human rights concerns and require immediate efforts in order to be rectified. This report recommends measures that the Government of Viet Nam should take to ensure that poverty reduction and, in particular, social protection policies respect, protect and promote the full enjoyment of human rights, giving particular priority to those people living in poverty.

## II. Legal and institutional framework

9. In accordance with domestic and international legal obligations, Viet Nam is compelled to ensure the protection of the human rights, including economic, social and cultural rights, of everyone under the jurisdiction of the State without discrimination of any kind. Chapter V of the 1992 Constitution of the Socialist Republic of Viet Nam enshrined a set of “Basic rights and obligations of citizens”, which guarantees that all citizens shall enjoy equal political, civic, economic, cultural and social rights (art. 50), such as the right to participate in managing the State (art. 53), the right to work (art. 55), the right to education, including free and compulsory primary education (art. 59), the right to health care (art. 61), the prohibition of discrimination between men and women (art. 63), and the rights to assembly and association (art. 69), inter alia. The right to social security (protection) is not explicitly recognized in the Constitution. However, several provisions under Chapter V provide a legal foundation for social protection and other important social policies.<sup>6</sup>

10. This constitutional framework is further complemented by diverse domestic laws as well as international standards enshrined in international rights treaties ratified by Viet Nam,<sup>7</sup> establishing legally binding obligations that should be respected in all poverty reduction and social protection mechanisms.<sup>8</sup>

11. While a human rights approach does not necessarily prescribe precise policy measures, as States have the discretion to formulate the poverty reduction policies which are most appropriate for their circumstances, it does require that States take their human rights obligations into account when designing, implementing and evaluating policies and

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<sup>4</sup> World Bank, *Vietnam Development Report 2008: Social Protection*, p. 11.

<sup>5</sup> *Viet Nam MDG National Report 2010*, p. 114.

<sup>6</sup> See for example articles 56, 59, 60, 63, 65 and 67 of the Constitution of the Socialist Republic of Viet Nam.

<sup>7</sup> Viet Nam is party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child and its two Optional Protocols.

<sup>8</sup> In regard to social protection, particularly relevant are articles 9, 10 and 11 of the International Covenant on Economic, Social and Cultural Rights, article 5(iv) of ICERD, article 11 of the Elimination of All Forms of Discrimination against Women and article 26 of the Convention on the Rights of the Child.

interventions related to the reduction of poverty. These legally binding obligations relate to the final outcome as well as the process employed.

12. The independent expert stresses that international human rights obligations complement domestic law and must be respected. The independent expert welcomes the efforts of the Vietnamese Government to ensure compliance with international standards through the Strategy on Judicial Reform, the Strategy on the Development of the Legal System and the Social and Economic Development Strategy.

13. The independent expert underlines that these reform efforts should take into account the universality and indivisibility of all human rights, and promote simultaneously and harmoniously all civil, political, economic, social and cultural rights. Frequently the meaningful fulfilment of economic and social rights relies on the enjoyment of civil and political rights. To this end, the rights to freedom of opinion, expression and information (International Covenant on Civil and Political Rights, art. 19; Convention on the Rights of the Child, art. 13), assembly (International Covenant on Civil and Political Rights, art. 21), association (International Covenant on Civil and Political Rights, art. 22; International Covenant on Economic, Social and Cultural Rights, art. 8; Convention on the Rights of the Child, art. 15), as well as the right to participate in society (International Covenant on Civil and Political Rights, art. 5; Convention on the Elimination of All Forms of Discrimination against Women, arts. 7 and 8) are fundamental in ensuring that individuals can raise their voices to ensure better social policies and enjoyment of economic, social and cultural rights. These rights must be implemented in accordance with the provisions contained in the above-mentioned articles. Particular attention should be paid to the rights of minorities to participate effectively in social, economic and public life and in economic progress and development (arts. 2(2) and 4(5) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities).

14. During her visit, the independent expert noted the Government's positive attitude towards accession to or ratification of further human rights instruments, as recently expressed by the Government in the course of its universal periodic review.<sup>9</sup> In this spirit, she calls on Viet Nam to reaffirm its commitments to ratifying: the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; the Convention on the Rights of Persons with Disabilities; the International Convention for the Protection of All Persons from Enforced Disappearance; as well as the Optional Protocols to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women.

15. However, being party to international human rights instruments is not sufficient; international standards must be incorporated into domestic legislation. While the Government has expressed its intention to harmonize its legislation with international human rights standards,<sup>10</sup> additional efforts need to be made to accelerate the process.

16. The independent expert is also concerned about the lack of an independent monitoring mechanism for human rights violations. During her visit, she was informed about recent consultations on the establishment of a national human rights institution. She applauds the ongoing debate and underlines that a national human rights institution must be independent and in compliance with the Paris Principles relating to the Status of National Institutions.

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<sup>9</sup> A/HRC/12/50, paras. 479-480.

<sup>10</sup> A/HRC/WG.6/5/VNM/1, para. 72.

17. In regard to development strategies, over the last two decades Viet Nam has followed a policy of poverty reduction through economic growth. Both the Comprehensive Poverty Reduction and Growth Strategy (2003) and the Socio-Economic Development Plan 2006-2010 (2006) are grounded in the recognition of the mutually reinforcing nature of economic development and poverty reduction. However, in the light of evidence that poverty is increasingly resistant to growth alone, the independent expert welcomes the fact that both documents clearly highlight the need to address emerging inequalities in order to secure sustainable poverty reduction and recognize the crucial role that social protection can play. The Socio-Economic Development Plan proposes enhancing policies in order to achieve universal social insurance coverage and national targeted social assistance programmes. The plan also includes a number of measures to increase access to basic social services.<sup>11</sup> However, the independent expert also notes that both strategies make no direct reference to the fulfilment of human rights obligations related to these aims.

### **III. The situation of persons vulnerable to extreme poverty**

18. The independent expert visited a number of Vietnamese communities living in poverty, in urban and rural areas. In collective and individual meetings with local inhabitants, she gained an insight into their difficult living conditions, which are characterized by challenges in the exercise of various economic, social and cultural rights which Viet Nam has committed to respect, protect and fulfil for all its population without discrimination of any kind.

19. As in her previous missions, the independent expert identified groups that are particularly vulnerable to extreme poverty and that require specific initiatives to overcome the impact of economic deprivation and social exclusion. The subsections below summarize the human rights concerns regarding these groups.

#### **A. Ethnic minorities**

20. The independent expert is particularly concerned about the situation of ethnic minorities in Viet Nam. Although the Government has made considerable efforts and poverty reduction has taken place across all population groups, the situation of ethnic minorities remains critical. While in 1990 only 18 per cent of those living in poverty belonged to ethnic minorities, by 2008 ethnic minorities accounted for almost 56 per cent of this group.<sup>12</sup> While this drastic increase is partly attributable to the upward readjustment of the poverty line, it is nevertheless indicative of the extremely vulnerable situation of ethnic minorities.

21. In Viet Nam there are officially 54 ethnic groups. The majority group, known as the Kinh, represents 85.7 per cent of the population. The main obstacles for minorities are the difficult geographical location and language barriers. Seventy-five per cent of the minority population of Viet Nam lives in rural and remote areas, mainly in the Northern Mountains and the Central Highlands, with poor infrastructure and limited access to health care, education and other Government services.<sup>13</sup> While Vietnamese is the official language

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<sup>11</sup> Viet Nam Ministry of Planning and Investment, "The Five-Year Socio-Economic Development Plan – 2006-2010", p. 92.

<sup>12</sup> *Viet Nam MDG National Report 2010*, p. 114.

<sup>13</sup> World Bank, *Country Social Analysis: Ethnicity and Development in Vietnam: Summary Report* (2009), p. 13.

in Viet Nam, many minority communities do not interact in Vietnamese and speak their ethnic languages.

22. Recent studies show that the most glaring disparities in income, employment, health coverage, education and access to other Government services have formed along ethnic lines. While overall trends in poverty reduction remain positive, the income gap between the Kinh and the Hoa (which has a relatively large population in comparison with other ethnic groups) and other ethnic minorities is still significant and increasing. In 2008, while Kinh and Hoa households experienced a poverty rate of only 9 per cent, ethnic minorities averaged a 50.3 per cent poverty rate, with rates of over 80 per cent within some groups.<sup>14</sup> The rate of poverty reduction among the ethnic minorities in Viet Nam has also been relatively slower by some margin.<sup>15</sup>

23. Stark inequalities are evident even from a very early stage. For example, while 22 per cent of Kinh or Hoa children are identified by the United Nations Children's Fund (UNICEF) as living in poverty, the corresponding figure for ethnic minority children is 62 per cent.<sup>16</sup> Thirty-one per cent of ethnic minorities have never attained any education, compared to six per cent of Kinh.<sup>17</sup> Considering that education is the gateway out of poverty, and lack of education is especially damaging for ethnic minorities who may have no other opportunity to learn the official language, these inequalities are of great concern.

24. The independent expert recognizes that the Government attaches political priority to the plight of minority populations and has developed a set of programmes aimed at improving their standard of living. Through these, the Government is making a serious effort to help ethnic minorities overcome the barriers that they face. The Programme for Socio-Economic Development of Communes Facing Extreme Difficulties in Ethnic Minority and Mountainous Areas in Viet Nam, known as Programme 135, for example, has focused on developing infrastructure in remote areas in order to address geographical isolation as a source of vulnerability among ethnic minorities.<sup>18</sup>

25. However, geographical isolation alone does not explain the disproportionate vulnerability to poverty of ethnic minorities. For example, while more than 52 per cent of ethnic minorities in the Central Highlands and North-West live in hunger, less than 10 per cent of Kinh/Hoa in these areas live below the (higher) general poverty line.<sup>19</sup> This is partly because ethnic minorities tend to rely more heavily on agriculture as a source of food and livelihood, putting them at greater risk of economic and environmental shocks.

26. Evidence shows that, although infrastructure interventions have had sizeable positive impacts, generally, Kinh groups tend to benefit more from Government programmes on poverty reduction, as minorities have more difficulty in accessing services, for a variety of reasons, including linguistic barriers.<sup>20</sup> Similarly, educational disparities are caused not only by problematic physical access to schools for those minorities in remote

<sup>14</sup> World Bank, based on data from the General Statistics Office of Vietnam; recent figures.

<sup>15</sup> World Bank, *Vietnam Development Report 2008: Social Protection*, p. 13.

<sup>16</sup> According to multi-dimensional indicators, the gulf is even larger for monetary poverty (13% and 61%). See III, C., Children, below for further information on indicators; UNICEF, *An Analysis of the Situation of Children in Viet Nam 2010*, p. 45.

<sup>17</sup> World Bank, *Country Social Analysis: Ethnicity and Development in Vietnam: Summary report* (2009), p. 24.

<sup>18</sup> This programme is complemented by other initiatives such as Programme 132 and Programme 134 that include measures to support ethnic minorities with land, housing and water supply.

<sup>19</sup> World Bank, *Vietnam Development Report 2008: Social Protection*, p. 15.

<sup>20</sup> World Bank, *Country Social Analysis: Ethnicity and Development in Vietnam: Summary Report* (2009), p. 19.



areas, but also by linguistic barriers (as education is frequently provided in Vietnamese only) and economic barriers – despite initiatives to exempt them from fees, minorities are less able to afford the direct and indirect costs of education.<sup>21</sup>

27. There are several mutually reinforcing factors that contribute to the perpetuation of poverty among ethnic minorities and any effort to tackle the deep-rooted inequality must take all of these into account. Budgetary support to ethnic minority poverty reduction initiatives must be enhanced and creative strategies developed to ensure adequate targeting to the specific situation of ethnic minorities, as recognized by the Government in recent evaluations.<sup>22</sup> In this regard, it is also crucial that the Government improves data collection and develops disaggregated data for all ethnic minority groups to ensure that poverty reduction policies distinguish between the various ethnic groups and their members. Effective participatory channels should be increased and strengthened so poverty reduction programmes can take into account the expressed needs of different minority groups.

28. An additional obstacle to the development of minority groups is the lack of cultural understanding of some State officials and the stereotyping of ethnic minorities that attributes their lack of economic progress to their culture and traditional practices. A World Bank study documented reproduction of negative stereotypes among authorities and the internalization of such views among minorities, also noting that this had led to flawed policy prescriptions.<sup>23</sup> The independent expert recognizes the efforts of the Committee on Ethnic Minorities to remove negative stereotypes. Nevertheless, in her interactions with some authorities, the independent expert was told that lack of progress among minorities related to their “mindset” and “backwardness”. The Government must strengthen its efforts to change popular perceptions about minorities and enhance the capacity of Government staff and institutions to better serve their interests.

29. The independent expert fully agrees with and adopts the analysis of the independent expert on minority issues, who, after her visit to Viet Nam called for the Government to ensure that efforts to address the poverty of minorities take fully into account their views, preserve their unique cultures, languages, traditions and lifestyles, and respect their rights to own and use the lands and territories that are essential to their livelihoods.<sup>24</sup>

## **B. Women**

30. Viet Nam was one of the first countries to ratify the Convention on the Elimination of All Forms of Discrimination against Women and is a regional leader in terms of progress towards closing the gender gap. The Government reports having eradicated gender disparities in terms of access to education.<sup>25</sup> Women and men also enjoy relative equality in terms of employment opportunities: in 2008, women’s participation rate in the labour force was four percentage points lower than that of men and the total number of working hours per year for women was almost the same as for men.<sup>26</sup> However, this “relative equality” is not sufficient to ensure the full protection and enjoyment of women’s human rights in Viet

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<sup>21</sup> *Ibid.*, p. 25.

<sup>22</sup> *Viet Nam MDG National Report 2010*, p. 116.

<sup>23</sup> World Bank, *Country Social Analysis: Ethnicity and Development in Viet Nam: Summary report* (2009), pp. 43 and 46.

<sup>24</sup> A/HRC/16/45/Add.2, para. 83.

<sup>25</sup> *Viet Nam MDG National Report 2010*, p. 41.

<sup>26</sup> *Ibid.*, p. 44.

Nam, and there is concern that the early progress of Viet Nam on this front has stagnated as, for instance, the gender pay gap has remained stable since 1998.<sup>27</sup>

31. Over 80 per cent of women are economically active;<sup>28</sup> however, women are particularly vulnerable to extreme poverty and economic shocks as they are generally concentrated in low-wage, unskilled jobs in the informal sector.<sup>29</sup> In addition, traditional gender stereotypes increase women's work burden; despite the advances made between 2002 and 2008, women continued to spend twice as much time as men on household chores.<sup>30</sup> As part of its obligation to eliminate all forms of discrimination against women, the Government must ensure that women receive equal remuneration with men for work of equal value in both the formal and informal sectors. It must take specific measures to modify prejudices or stereotyped roles for men and women, in particular in regard to care duties.

32. Women continue to have more limited access than men to economic resources such as land, which contributes to their exposure to poverty. In this sense, the independent expert acknowledges the significant 2003 amendment of the Law on Land, specifying that land certificates must be in the names of both the wife and husband in cases where the land is a mutual asset. However, considerable efforts are needed to bring the situation on the ground in line with the legislation. A survey indicated that in 2006, only 15 per cent of agricultural land and 18 per cent of residential land user certificates were in the names of women or both spouses, with women therefore experiencing limited economic autonomy and access to the formal credit market.<sup>31</sup> In the communities visited, women who interacted with the independent expert confirmed that only recently issued land user certificates were in line with the 2003 legal improvement.

33. Reproductive health advances are also uneven. From 1990 to 2008 maternal mortality decreased from 233 to 75 per 100,000 live births as the number of women receiving over three antenatal checks increased. However, this rate is still high and remains four times higher among ethnic minorities and in remote and mountainous areas. Access to adequate reproductive health care services is problematic for many ethnic minority women,<sup>32</sup> and there is a shortage of skilled health care workers in these areas, and a lack of midwives who speak ethnic minority languages.<sup>33</sup> As acknowledged by the Government, improvements are needed in access to information about reproductive health services and in the provision of adequate services in remote regions and among ethnic minority groups.<sup>34</sup>

34. Studies also indicate that domestic violence against women remains a serious problem.<sup>35</sup> The independent expert welcomes the adoption of the Law on Gender Equality and the Law on Domestic Violence and calls on the State to strengthen their implementation. The Government should enhance its efforts to develop a monitoring and evaluation framework for both laws as well as training for officials.

<sup>27</sup> World Bank, *Vietnam Development Report 2008: Social Protection*, p. 39.

<sup>28</sup> Overseas Development Institute, *Gendered Risks, Poverty and Vulnerability in Viet Nam*, p. 11.

<sup>29</sup> *Viet Nam MDG National Report 2010*, pp. 47-48.

<sup>30</sup> *Ibid.*

<sup>31</sup> World Bank and Asia Development Bank, *Viet Nam Country Gender Assessment, 2006*, p. 43.

<sup>32</sup> *Viet Nam MDG National Report 2010*, p. 62.

<sup>33</sup> United Nations Population Fund (UNFPA), "Reaching out to Minorities in Viet Nam with Midwives who Speak their Language", 2010.

<sup>34</sup> *Viet Nam MDG National Report 2010*, p. 62.

<sup>35</sup> See for example General Statistics Office of Viet Nam and United Nations, *National Study on Domestic Violence against Women in Viet Nam* (2010).

35. Greater attention should also be paid to incorporating a gender lens in the country's social protection programmes and policies. The 2009 mid-term evaluation of the National Targeted Programme for Poverty Reduction recommended a more gender-sensitive approach<sup>36</sup> and the independent expert urges the Government to fully implement this.

36. In drafting the new National Strategy on Population and Reproductive Health (2011-2020), the independent expert urges the Government to respect the right of individuals or couples to decide on the timing, number and spacing of their children, as is consistent with its international human rights obligations and the commitment of Viet Nam to the 1994 Programme of Action of the International Conference on Population and Development. A "two-child policy," especially with provisions that penalize parents financially for a third child, undermines human rights and has particular implications for those living in poverty.

37. The independent expert emphasizes that the Government's approach to family planning should instead be based on education and empowerment of women in line with its international human rights obligations. Good quality information and education regarding sexual and reproductive health and family planning is vital, not only in achieving good health outcomes but also in the fulfilment of human rights. This information must be accessible and free of charge to women and girls living in poverty no matter what their ethnicity, marital status or geographical location.

### C. Children

38. One of the first States to ratify the Convention on the Rights of the Child, Viet Nam has made remarkable progress in regard to children's rights, with an unprecedented reduction in child poverty. However, according to a multi-dimensional assessment, almost one-third of Vietnamese children under the age of 16 still live in poverty, with a large urban-rural divide and regional discrepancies.<sup>37</sup>

39. Infant and child mortality halved between 1990 and 2006. However, rates are higher for the very poor, those living in remote regions, and ethnic minorities.<sup>38</sup> Malnutrition is a concern, with 17.5 per cent of children under five affected nationally, rising to 24.7 per cent in the Central Highlands.<sup>39</sup> Overall, children from ethnic minorities, children with disabilities and children affected by HIV/AIDS suffer from unequal access to social services, hampering their enjoyment of rights on an equal basis with other children.

40. Viet Nam has made impressive progress in the area of education, improving access at all levels, increasing budget allocations, building more schools and recruiting more teachers. However, again, significant disparities exist in educational opportunities and outcomes. For example, only 50 per cent of children in the North West complete primary school, compared to 90 per cent in the Red River Delta.<sup>40</sup> Of particular concern are ethnic minority children, who face several disadvantages in regard to language barriers, lack of qualified teachers from ethnic minorities, and poor infrastructure. Ethnic minority girls are particularly disadvantaged: up to one-fifth of young women from ethnic minorities report

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<sup>36</sup> Ministry of Labour, Invalids and Social Affairs (MOLISA) and United Nations Development Programme, "Support for the Improvement and Implementation of the National Targeted Programme on Poverty Reduction": Mid-Term Evaluation Report, 2009.

<sup>37</sup> UNICEF, *An Analysis of the Situation of Children in Viet Nam 2010*, p. 17.

<sup>38</sup> *Viet Nam MDG National Report 2010*, p. 54.

<sup>39</sup> Government of Vietnam, Ministry of Health.

<sup>40</sup> UNICEF, *An Analysis of the Situation of Children in Viet Nam 2010*, p. 183.

that they have never attended school.<sup>41</sup> The Government should undertake the necessary measures to ensure that its policy of equal access to education be implemented for every child regardless of ethnic origin or gender.

41. In line with its international human rights obligations, Viet Nam provides primary school tuition free of charge in public schools. Furthermore, from 2006 to 2008 about 7.8 million Vietnamese benefited from exemption or reduction of school fees and other schooling contributions.<sup>42</sup> The independent expert recognizes the clear progress in enrolment rates and increased levels of public spending on education. Nonetheless, she is concerned by the practice of charging informal fees, especially at the primary level, as well as the increasing indirect cost of education (for items such as transport, uniforms and textbooks). The 2006 Viet Nam Household Living Standards Survey revealed that households were paying significant amounts (ranging from US\$13 to US\$64 per year) for primary education, even though tuition is free.<sup>43</sup> Direct and indirect costs contribute to a growing gap in access to education between rich and poor households, particularly at the secondary level.<sup>44</sup> Hence fee exemption and reduction schemes must be expanded to include further coverage of indirect expenses, which for many families living in poverty create an insurmountable barrier to their children's education, thereby increasing the likelihood of intergenerational transmission of poverty.

42. The growing role of the private sector in provision of child-related social services is also of concern. In 2008-2009, 51.1 per cent of preschool students were in non-public education institutions, along with 21.2 per cent of upper secondary students.<sup>45</sup> As private schools are permitted to charge fees, the independent expert is concerned that this trend will widen inequality in terms of quality and accessibility of education provision. Emphasizing that the actions of the private sector can affect the enjoyment of child rights, the independent expert recalls that even when the State has delegated the provision of public services to private providers it retains responsibility for the protection of human rights and ensuring universal accessibility and quality of services.

43. Recent data suggests that 16 per cent of children aged 5-14 are involved in some form of child labour.<sup>46</sup> An estimated 27,000 children work in harmful and hazardous conditions,<sup>47</sup> with children living in extreme poverty most vulnerable to the worst forms of labour exploitation.<sup>48</sup> In line with the Government's responsibility to provide protection for children from economic exploitation (Convention on the Rights of the Child, art. 32), the independent expert calls for prevention measures to reduce the flow of vulnerable children into child labour and for direct action to identify and withdraw those children working in the worst forms of labour.

44. The protection of children from sexual exploitation and trafficking (Convention on the Rights of the Child, arts. 34 and 35), itself linked to socio-economic changes such as widening inequality, migration and urbanization, must be a further priority for the Government. There is a need for a more comprehensive social protection system in this regard to provide an adequate safety net for all children, especially the most vulnerable.

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<sup>41</sup> World Bank, *Vietnam: Country Gender Assessment 2006*, p. 26.

<sup>42</sup> MOLISA, "Social Security Strategy: Period 2011-2020" (2010), p. 18.

<sup>43</sup> UNICEF, *An Analysis of the Situation of Children in Viet Nam 2010*, p. 187.

<sup>44</sup> H. Hansen., Le Dang Trung "Better than its Reputation? The Incidence of Social Transfers and Education Fee Exemptions in Vietnam" DEPOCEN Working Paper Series No. 2007/09.

<sup>45</sup> UNICEF, *An Analysis of the Situation of Children in Viet Nam 2010*, p. 66.

<sup>46</sup> *Ibid.*, p. 23.

<sup>47</sup> *Ibid.*, p. 226.

<sup>48</sup> Understanding Children's Work, *Understanding Children's Work in Vietnam* (2009), p. 43.

45. In partnership with UNICEF, Viet Nam recently invested in the establishment of a more sensitive indicator of child poverty clustering multiple indicators of health, education, reproductive health and HIV/AIDS. These measures are highly welcomed by the independent expert as, from a human rights perspective, poverty is not limited to economic deprivation but also involves significant social, cultural and political deprivation.

#### **D. Older persons**

46. Despite the progress made in reducing poverty in Viet Nam, many groups of older people, in particular in rural and isolated areas, are still living in poverty. Moreover, as a result of declines in mortality and fertility, and increases in life expectancy, older people are becoming a significantly larger part of the population in Viet Nam. The population aged 60 and above grew from 3.71 million in 1979 to 8.08 million in 2007, and by 2010 was expected to represent about 10 per cent of the population.<sup>49</sup> This dramatic demographic change is coupled with the fact that only a small percentage are receiving public pensions and the number of older people living alone, in households with only older persons, or in “skip-generation” households has increased. Older women are particularly vulnerable, making up around 80 per cent of elderly people living alone in Viet Nam.<sup>50</sup>

47. As a consequence of the reduction in family support and the lack of coverage of public pensions, the situation of older persons must be one of the Government’s priorities. The independent expert welcomes the Government efforts to expand the coverage of social insurance schemes through voluntary pensions to ensure that today’s young generation will be protected in the future. In this regard, it calls on the Government to strengthen the outreach and administration of voluntary pensions and to consider incentives to join the scheme.

48. Considering that only a small fraction of the population at retirement age is covered by formal insurance schemes, significant efforts are also required to expand social assistance programmes targeting older persons. The independent expert welcomes the establishment of a non-contributory social pension scheme in Viet Nam as a critical element for bridging the protection gap and ensuring the progressive realization of the rights to social security and an adequate standard of living. As evidence shows, non-contributory pensions can significantly reduce poverty and vulnerability among older people. Recognizing that a universal categorical scheme is more in compliance with human rights principles and taking into account the significant improvements made in 2007, the independent expert considers that some elements of the existing scheme should be revised in order to ensure that older persons are not left to live in poverty. Most in need of attention is the eligibility age, which is 85 and over, and the low level of benefits per month. The independent expert calls on the State to revise both elements of the scheme to ensure the most widespread support possible within the maximum available resources.

49. The independent expert recognizes the recent entry into force of the Law on the Elderly, which provides an important platform to enhance the protection of the rights of older Vietnamese. Further investments in the provision of free health care to older people living in poverty are important in this context.

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<sup>49</sup> United Nations Population Fund, “Population & Development in Viet Nam: Towards a new Population/Reproductive Health Strategy”, 2011-2020 Brief 4, p. 1.

<sup>50</sup> Ibid.

## E. Persons with disabilities

50. In 2006, around 15.3 per cent of the Vietnamese population presented some sort of disability and at least 3.7 per cent presented a severe disability. Government statistics indicate a strong correlation between disability and poverty.<sup>51</sup> Persons with disabilities are particularly vulnerable to poverty because of challenges with regard to access to education, health care and work. Despite Government efforts to stimulate employment and education of persons with disabilities, recent assessments indicate the limited capacity of the existing social policies to effect change.

51. Children with disabilities are disproportionately disadvantaged: 52 per cent do not have access to education, the vast majority do not finish primary school<sup>52</sup> and 88 per cent of those over 16 have no technical training.<sup>53</sup> While the Government has developed policies for inclusive education in line with its obligations under article 23 of the Convention on the Rights of the Child, there is a considerable implementation gap. Children with disabilities also face disadvantage outside of the education sector, with only a small number able to access the social assistance to which they are entitled. The Government therefore needs to increase awareness of and ensure access to health care and rehabilitation services for children with disabilities, and improve resources for early detection and intervention.

52. Without access to education, work or income generation, opportunities are very limited for persons with disabilities. Among those who manage to find work, most have unstable self-employed jobs. In this context, the independent expert welcomes legislation stipulating that enterprises either recruit a minimum of two-three per cent of labourers with disabilities, or contribute to a fund to provide assistance to persons with disabilities. The independent expert urges the Government to ensure enforcement of this law.<sup>54</sup>

53. The independent expert recognizes the efforts made through a Revised Law on Persons with Disabilities, more in line with the Convention on the Rights of Persons with Disabilities, and calls on the Government to ensure the implementation of the law and to ratify the Convention.

## F. Internal migrants

54. While poverty is particularly prevalent in rural Viet Nam, urban areas are facing new challenges, with signs showing an increase in urban poverty.<sup>55</sup> According to recent census data, in the period 2004-2009, roughly 6.6 million people migrated internally in Viet Nam, most of them to growing urban areas.<sup>56</sup> However, official statistics only partially reflect the reality; estimates indicate that the number of migrants left “unaccounted” by the census could be up to 16 million.<sup>57</sup> It has been reported that more than 60 per cent of internal migrants work without a formal contract, and thus have no access to social insurance or health insurance. Migrants also frequently work extra hours and have substantially lower earnings than other city residents, with women even more likely to have

<sup>51</sup> World Bank, *Viet Nam Development Report 2008: Social Protection*, p. 30.

<sup>52</sup> UNICEF, *An Analysis of the Situation of Children in Viet Nam 2010*, p. 193.

<sup>53</sup> MOLISA, “Social Security Strategy: Period 2011-2020” (2010), p. 8.

<sup>54</sup> *Idem*.

<sup>55</sup> United Nations, *Internal Migration: Opportunities and challenges for socio-economic development in Viet Nam* (2010), p. 11.

<sup>56</sup> *Ibid.*, p. 6.

<sup>57</sup> United Nations, *Internal Migration and Socio Economic Development in Viet Nam, A call to action* (2010) p. 5.

no contract and to be in the lowest paid group.<sup>58</sup> In addition, internal migrants are less likely to have savings<sup>59</sup> and more than half report unstable income.<sup>60</sup> The dire housing situation of many migrants has been exacerbated by the recent increase in urban living expenses, which has not been matched by an equivalent increase in wages. Although migrants are more susceptible to health risks due to the prevalence of unhygienic and unsafe housing, the likelihood of using a health facility when sick is 19 per cent lower for internal migrants because of a lack of health insurance and low income.<sup>61</sup>

55. This situation is partly due to the requirement to participate in household registration systems. Only around 11 per cent of internal migrants register for a permanent residential permit at the new living location, and 47 per cent register for a temporary residential permit.<sup>62</sup> Despite efforts of the Government to simplify registration systems, there is evidence that they still present a systemic institutional barrier for internal migrants in accessing both basic and specialized Government services. This has worrying consequences for the perpetuation of poverty. During her visit, the independent expert received information that non-permanent resident children are only allowed to attend schools in their district of residence if there is space after permanent resident children have enrolled. Because of the undersupply of schools in many urban areas, some migrant children are therefore unable to enrol.<sup>63</sup>

56. The Government has recognized the need to adapt the procedures and hence the new Law on Residence took effect in 2007, yet temporary and unregistered migrants continue to face a burdensome and not uniformly implemented system for registration across the country.<sup>64</sup> The independent expert's interactions with communities living in poverty confirmed that there is limited understanding about registration procedures and temporary unregistered migrants face significant challenges in the use of services.

57. It is clear that migrants from rural to urban areas will continue to play a central role in the rapid economic growth of Viet Nam, and their rights and those of their families, especially their rights to an adequate standard of living, education, health and housing, must be guaranteed. The lack of accurate information about urban migrants and of adequate services to respond to this new reality risks exposing an increasingly large group to poverty.

58. The independent expert therefore urges the Government to further assess the situation of all migrants or temporary residents and adopt appropriate measures to immediately remove administrative barriers that render their access to social services difficult. Moreover, if the estimates of uncounted temporary residents are accurate, it is also clear that a speedy expansion of social services in urban areas is required.

#### **IV. Social security (protection)**

59. Considering that one of the main focal points of the work of the independent expert has been a human rights-based analysis of social protection, the following section addresses

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<sup>58</sup> World Bank, *Vietnam Development Report 2008: Social Protection*, pp. 36-7.

<sup>59</sup> UNFPA, *Internal Migration in Viet Nam: The Current Situation (2007)*, p. 20.

<sup>60</sup> World Bank, *Vietnam Development Report 2008: Social Protection*, p. 38.

<sup>61</sup> UNFPA, *The 2004 Viet Nam Migration Survey: Migration & Health*, 2006, p. 86.

<sup>62</sup> *Viet Nam MDG National Report 2010*, p. 117.

<sup>63</sup> United Nations, *Internal Migration and Socio-Economic Development in Viet Nam: A Call to Action*, 2010, p. 7.

<sup>64</sup> *Idem*.

existing initiatives related to the promotion of social protection in Viet Nam and proposes additions or improvements to them. Following the interpretation of the United Nations Committee on Economic, Social and Cultural Rights, this report uses the terms “social protection” and “social security” interchangeably.<sup>65</sup>

60. The independent expert recalls that the duty to implement social protection flows directly from a number of human rights instruments, in particular the right to social security and the right to an adequate standard of living, enshrined in the Universal Declaration of Human Rights and in treaties recognized by Viet Nam such as the International Covenant on Economic, Social and Cultural Rights (arts. 9, 10 and 11), the Convention on the Elimination of All Forms of Discrimination against Women (art. 11) and the Convention on the Rights of the Child (art. 26). As observed above, various provisions of the Vietnamese Constitution also provide a legal foundation for social protection policies and programmes in the country.<sup>66</sup>

61. From this standpoint, investing in the protection of people living in extreme poverty is neither a matter of choice, nor a gesture of compassion, but a human rights obligation.

62. When the independent expert’s visit took place, the Government was concluding the new Social Security Strategy 2011-2020, which provides an overview of major plans for the promotion of social protection initiatives in Viet Nam. The Strategy includes measures aiming at the promotion of employment, universalization of social insurance and expansion of social assistance.

63. While successful implementation is yet to occur, the independent expert recognizes that the Strategy provides a useful portrait of the current situation as well as a comprehensive plan of action to tackle many important challenges. She particularly values the fact that the document was developed on the basis of the explicit recognition of people’s right to social security and is guided by the principle of universality.<sup>67</sup> The text also affirms the need to prioritize poor and vulnerable groups “to ensure the minimum living standard in case of risks that cause temporary or permanent loss or reduction of income”.<sup>68</sup>

64. The Social Security Strategy includes several policies aimed at, *inter alia*, (a) creating employment, generating income and participation in the labour market; (b) expanding social insurance memberships, (c) social assistance and poverty reduction, and (c) social security programmes.

65. The intention of this report is not to examine in detail each of these policies but rather to provide a human rights assessment of some of them, in particular those closely related to the situation of those living in extreme poverty. In this regard, special attention will be paid to social assistance, subsidized access to health insurance, education subsidies, and to some poverty reduction programmes included in the National Targeted Program for Poverty Reduction.

66. A detailed assessment of traditional forms of social insurance, such as contributory pensions, is outside the scope of this report. The recent efforts of the Government to expand coverage of social insurance are welcome; however, the Government should undertake further efforts to ensure that those working in informal markets, in rural labour and in small enterprises are able to enjoy protection from insurance schemes on an equal basis with other workers. The coverage of compulsory social insurance schemes has increased in

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<sup>65</sup> Committee on Economic, Social and Cultural Rights, general comment No. 19.

<sup>66</sup> Constitution of Viet Nam, arts. 56, 59, 60, 65 and 67.

<sup>67</sup> MOLISA, “Social Security Strategy: Period 2011-2020” (2010), p. 2.

<sup>68</sup> *Idem*.



recent years, but still remains very limited (according to MOLISA, accounting for only 18 per cent of the total labour force). This underlines the central importance of the expansion of non-contributory schemes described below.

67. It is evident to the independent expert, from her visit and the information received, that the Government of Viet Nam attaches high importance to social protection. During the visit, the Prime Minister himself wrote a newspaper article recognizing that resources allocated for social security and welfare were still too low in Viet Nam and expressing the commitment of the Government to increase protection. In this regard, the independent expert highlights that the Government must increase support for social assistance schemes and for the expansion of health insurance coverage ensuring that human rights principles such as equality and non-discrimination, participation, transparency, access to information and accountability are respected in all policies implemented.

68. The independent expert believes in the Government's intention to strengthen the human rights approach of its social protection policies and expects the recommendations below will assist the State in doing so.

## **A. The principles of equality and non-discrimination**

69. These are overarching human rights principles that must guide all State policies.<sup>69</sup> Compliance with these principles requires, for example, giving priority to policies that address the specific obstacles preventing the most disadvantaged and vulnerable groups from enjoying their rights on equal terms with the rest of the population. To address structural disadvantage the State may also need to take affirmative action to diminish or eliminate conditions which cause or help to perpetuate poverty.

70. Ensuring compliance with these principles is particularly relevant in the following areas:

### **1. Targeting**

71. While targeting mechanisms may be seen as a way of reaching the poorest (particularly when resources are limited), from a human rights perspective caution is required, as the obligation remains for the State to strive to ensure the progressive realization of the widest possible enjoyment of rights. However, targeted schemes must be implemented within a longer-term strategy of progressively ensuring universal protection, avoiding unfair exclusion of beneficiaries and in compliance with all other human rights principles (e.g. avoiding stigmatization, ensuring transparency).

72. In certain cases, such as the provision of non-contributory pensions to older persons and social protection measures to persons with disabilities, a universal categorical approach may be preferable, both to limit unfair exclusions and to avoid the high costs of complex administrative procedures required for targeting systems. Universal programmes are also more in line with human rights obligations as they reduce opportunities for corruption and manipulation as well as possible stigmatization.

73. In practical terms, to comply with the principles of equality and non-discrimination when pursuing targeted programmes, policymakers must:

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<sup>69</sup> See e.g. International Covenant on Economic, Social and Cultural Rights, arts. 2(2) and 3; International Covenant on Civil and Political Rights, arts. 2(1), 3 and 26; International Convention on the Elimination of All Forms of Racial Discrimination art. 2(1); Convention on the Elimination of All Forms of Discrimination against Women, art 2; Convention on the Rights of the Child, art. 2(1).

(a) Carefully screen policy choices to avoid the unfair exclusion of disadvantaged and disempowered groups. Particular attention should be paid to ensure that people living in remote and mountainous areas, persons with disabilities, unemployed workers, working poor in the informal sector, urban poor, persons with HIV/AIDS, and those affected by natural disasters are covered by social protection. The State must actively seek out ways to reach these groups.

(b) Take all efforts to minimize exclusion errors. From a human rights perspective exclusion errors are much more serious than inclusion errors. The exclusion of rightful beneficiaries constitutes a violation of their right to social security and the principles of equality and non-discrimination. Moreover, those excluded are often the most vulnerable and disadvantaged, as they will find it most difficult to claim for their inclusion.

(c) Ensure that qualifying conditions for benefits of targeted schemes are gender-sensitive, reasonable, objective and transparent.

## 2. Coverage

74. The limited coverage of some of the existing programmes may raise concerns about compliance with the principles of equality and non-discrimination.

75. In regard to social assistance programmes, the independent expert welcomes the adoption of Decree 67, merging a number of initiatives, widening eligibility criteria and raising benefit levels. However, as recognized by the Government, the coverage of social assistance is still low due to tight eligibility restrictions, and the benefit levels are still insufficient. The independent expert welcomes the new Social Security Strategy, which includes among its goals an expansion of the number of beneficiaries of regular assistance, as well as the further adaptation of eligibility criteria in order to cover all households living under the poverty line and increase benefit levels.<sup>70</sup>

76. In regard to access to health care, the independent expert welcomes the adoption of the Health Insurance Law (2008) providing a platform for the expansion of compulsory and voluntary health insurance coverage. From a human rights perspective it is a significant step forward and its aim of achieving universal protection by 2014 should be commended. However, as mentioned below, further efforts are needed to ensure quality treatment; in particular, by those living in poverty.

77. Another positive measure is the Health Care Fund for the Poor (HCFP) that provides support for the inclusion of households living in poverty in health insurance schemes and provides free health services to all children of less than six years. MOLISA reports that more than 60 per cent of the total population is now covered by insurance.<sup>71</sup>

78. Evaluations indicate that HCFP and its predecessor, “Free Health Care Cards for the Poor”, have been successful at targeting the poorest groups in Viet Nam, successfully promoting their more regular utilization of medical facilities and lowering the risk of sudden catastrophic expenses. However, regional differences in implementation may be contributing to a lower than expected coverage, and there are further challenges in implementation as described below. The Government faces several challenges in improving the coverage of health insurance (e.g. to rural people) and ensuring that the quality of health care services does not diminish but rather improves progressively over time.

<sup>70</sup> MOLISA, “Social Security Strategy: Period 2011-2020” (2010), p. 29.

<sup>71</sup> *Ibid.*, p. 18.

### 3. Availability and adequate quality

79. The principle of equality and non-discrimination also requires States to ensure that social protection complies with the human rights standards of availability, accessibility, and cultural acceptability and adaptability.

80. The principle of availability requires that benefits and services should be sufficient in quality and quantity to meet the needs of the community in question. Thus, while States should bear in mind the need to expand the coverage of existing social protection schemes, the benefits must be high enough to enable people to enjoy an adequate standard of living and to realize at least the minimum core content of their economic, social and cultural rights.

81. From a human rights perspective, facilities, goods and services, and programmes must not only be available but must also be of good quality. In the Vietnamese context the provision of public health care is of particular concern in this regard. While public spending on health has increased considerably, the system is still under-resourced in several areas such as capacity and training of local staff, adolescent reproductive health, and sanitation and hygiene. In addition, the current disparities in coverage of health care between regions, between urban and rural areas and between ethnic groups also raise concerns regarding compliance with the principles of equality and non-discrimination.

82. Quality also requires that public service providers have the relevant skills and avoid prejudice against and stigmatization of those living in poverty. In this regard, the independent expert is concerned about reports of the low skill level of health care providers and negative attitudes of health staff towards patients benefiting from HCFP, which reportedly discourages many potential beneficiaries from seeking the care they need.<sup>72</sup> She welcomes the adoption of the Law on Medical Examination and Treatment, which entered into force in January 2011, requiring health care providers to meet certain criteria to obtain a licence, and encourages the Government to ensure that the licensing and monitoring provisions of the law are fully implemented. She also recommends revising the system whereby hospitals are reimbursed less for patients with a free health care card, as anecdotal evidence suggests that this can result in treatment of a lower standard for those with a free health care card.

### 4. Accessibility

83. Accessibility requires that benefits and services must be allocated and provided to all without discrimination of any kind. This implies both physical and economic access, and access to relevant information regarding these services. The geography of rural Viet Nam presents several challenges to the physical accessibility of social services for some parts of the population. The great disparities in accessing public services between regions, between rural and urban areas, and between ethnic groups raise human rights concerns that should be remedied.

84. Accessibility also requires the State to remove administrative barriers that prevent vulnerable groups from accessing social protection benefits on an equal basis with the rest of the population. Of particular concern is the permanent residential permit that limits access to social services by internal migrants.

85. Benefits and services must be economically affordable to those living in extreme poverty, who must not be disproportionately burdened by direct and indirect costs and expenses. In this regard, despite the increased investment in these sectors, the independent

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<sup>72</sup> See, for example, World Bank, *Viet Nam Development Report 2008: Social Protection*, pp. 88-89.

expert is concerned by the current trend towards user fees in health and education, and the existence of considerable indirect costs even for “free” services, which are disproportionately affecting the poorest and may contribute to a growing gap in access between rich and poor households.<sup>73</sup>

86. In the case of education, for example, the independent expert recognizes the progress achieved. According to available data, in 2006 more than 90 per cent of children from the poorest households in primary school were either fully or partially exempt from direct fees, as well as more than 45 per cent of children in lower secondary school.<sup>74</sup> However, the additional costs are still beyond the capacity of households living in extreme poverty. The most common reason for ethnic minority children dropping out of school is lack of money for informal charges and indirect fees, which Government educational subsidies do not cover.<sup>75</sup> In her visits to families living in poverty, the independent expert was told that indirect costs were an important obstacle to their children’s schooling.

87. The right to education requires that the provision of primary education shall be universal, compulsory and free (from direct and indirect costs). The independent expert therefore also recommends revising the use of fees and contributions as well as waiver schemes in the Vietnamese public schooling system.

88. State policies must take into account and remove additional barriers that those living in poverty face in accessing public services. In regard to health care, reports suggests that HCFP has done little to reduce out-of-pocket expenses for poor households, who must still pay for travel expenses and “non-essentials” such as blankets and dressings, and often even medicine.<sup>76</sup> The independent expert confirmed in her interaction with communities living in extreme poverty that the majority had health insurance cards, yet many reported being unable to afford out-of-pocket and opportunity costs, therefore abandoning or postponing important health care treatment. Financial security and health status are thus intimately linked.

## 5. Acceptability and cultural adaptability

89. Cultural adaptability requires that benefits and services must be adapted to the needs of communities or individuals in different social and cultural settings, including the cultural needs of vulnerable and disadvantaged groups. It requires, for example, that States remove administrative, linguistic or any other cultural barriers that prevent or discourage people from accessing benefits or services.

90. Cultural adaptability is particularly important in ensuring that ethnic minorities are reached and benefited by public policies. Policymakers should strengthen their efforts to understand cultural norms and to incorporate them better into policy formulations. Minorities tend to benefit less than Kinh from Government poverty reduction programmes due to difficulties in accessing information regarding them,<sup>77</sup> and therefore specific policies should be adopted to overcome linguistic barriers that have a significant impact in the

<sup>73</sup> H. Hansen., Le Dang Trung “Better than its Reputation? The Incidence of Social Transfers and Education Fee Exemptions in Vietnam” DEPOCEN Working Paper Series No. 2007/09.

<sup>74</sup> World Bank, “Viet Nam: Strengthening the social safety net to address poverty and vulnerability” (draft), 2010, p. 17.

<sup>75</sup> World Bank, *Country Social Analysis: Ethnicity and Development in Viet Nam: Summary Report* (2009), p. 25.

<sup>76</sup> World Bank, *Viet Nam Development Report 2008: Social Protection*, pp. 88-89.

<sup>77</sup> World Bank, *Country Social Analysis: Ethnicity and Development in Viet Nam: Summary Report* (2009), p. 19.

perpetuation of their poverty. Outreach must also take into account and overcome literacy barriers that may impair access by some groups of the population.

## **B. Ensuring disaggregated and up-to-date data**

91. The lack of quality data is a major shortcoming in social protection and poverty reduction schemes in Viet Nam. In order to ensure that the most disadvantaged and vulnerable groups are reached and to design more effective social protection programmes it is essential to systematically collect quality data disaggregated by location, ethnicity, gender and age. Inadequate or general data not only hides the most vulnerable and disadvantaged groups but can also lead to uninformed policymaking and inaccurate targeting of resources.

92. This is particularly crucial in relation to minority groups and internal migrants. Data on minorities should reflect the diversity of the many groups within this bracket, and should therefore be collected and disaggregated for as many ethnic groups as possible (currently it is disaggregated only for the five largest ethnic minority groups). Data on the numbers of internal migrants is also essential and must include short-term or seasonal migration.

## **C. National coordination**

93. Overall, Vietnam has to be praised for developing a broad range of national programmes regarding poverty reduction and social protection. However, this range also poses challenges. Greater coordination between sectors and ministries is needed. The Government should promote integrated approaches to deal with cross-cutting issues such as children's rights, minorities and the inclusion of persons with disabilities. Greater coordination is also needed in regard to the health system. If the Social Health Insurance system is to be able to ensure the desired outcomes, it must be better integrated into comprehensive social and economic policies in which reducing poverty and ensuring compliance with human rights is prioritized.

## **D. Participation and accountability**

94. From a human rights perspective, meaningful and effective participation of beneficiaries in programme design and implementation is not only necessary to achieve ownership and sustainability, but is grounded in the human right to participation (e.g. International Covenant on Civil and Political Rights, art. 25). Participation of beneficiaries must be ensured in all programmes and should be a core component of them.

95. The independent expert welcomes the Government's recognition of the need to enhance the participation of ethnic minorities in the implementation of the various programmes targeting them. This is necessary both in human rights terms and to ensure greater effectiveness. For example, a recent evaluation of P-135 was generally positive, but concludes with a number of recommendations for improving the programme's effectiveness, including increasing the participation of local communities.<sup>78</sup> The independent expert underlines that meaningful participation would be impossible without

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<sup>78</sup> Committee on Ethnic Minorities and United Nations, *Reviewing the Past – Responding to New Challenges: Mid-Term Review of Programme 135-II, 2006-2008* (2009), p. 71.

the dissemination of relevant information in accessible languages and without the support of public officials able to communicate with minorities.

96. Taking into consideration the central role of social assistance schemes as a complement to the social insurance system, the independent expert calls on the Government to consider adopting a law regulating social assistance in Viet Nam. A legal instrument establishing legally binding and enforceable rights and obligations in the context of social assistance is essential to ensure accountability and long-term stability. It would also help to ensure that beneficiaries are better aware of their rights, and that initiatives are not regarded as mere instruments of charity.

## V. International assistance and cooperation

97. Viet Nam has benefited from international assistance and cooperation over the last decades, having attracted significant recognition for its recorded development achievements. International cooperation will remain crucial, particularly in relation to the improvement of the legal and institutional framework for human rights and for the enhancement of social policies in general.

98. The independent expert also urges the international community to provide Viet Nam with the necessary funds to support climate change adaptation and mitigation measures. Such substantial funding should be separate and additional to pre-existing official development assistance (ODA) commitments.

99. In line with international human rights obligations,<sup>79</sup> the independent expert calls on the international community to continue to ensure long-term predictability and consistency in the support provided to Viet Nam. On the other hand, the independent expert understands that the Government must continue its efforts to improve its management of ODA, ensuring that the resources received reach the most vulnerable groups and are utilized in a timely and effective manner.

## VI. Conclusions and recommendations

100. **The independent expert recognizes and applauds the major achievements of Viet Nam in reducing poverty, improving living standards, and progressing towards the Millennium Development Goals. However, challenges remain, as highlighted in this report. As poverty is increasingly resistant to growth, and inequality remains stubbornly high, there is a need for more sophisticated and nuanced poverty reduction policies. The independent expert is confident that the Government of Viet Nam is able and willing to consolidate its achievements and overcome these challenges in order to ensure more inclusive development in the future. From a human rights perspective it is essential that the Government ensures that the benefits of economic growth are spread as evenly as possible across society.**

101. **The report includes detailed recommendations in each of its sections, but the independent expert would like to especially highlight the following:**

- (a) **Strengthening further the legal and institutional framework:**

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<sup>79</sup> In particular the International Covenant on Economic, Social and Cultural Rights, arts. 2(1), and 11 and Convention on the Rights of the Child, art. 4.

- (i) The Government must strengthen its commitment to the protection of human rights through the ratification and immediate implementation of major human rights treaties such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment; the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; the Convention on the Rights of Persons with Disabilities; the International Convention for the Protection of All Persons from Enforced Disappearance; as well as the Optional Protocols to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women.
  - (ii) The Government should establish a national human rights institution in compliance with the Paris Principles relating to the Status of National Institutions.
  - (iii) The Government should adopt a law regulating all social assistance mechanisms, in order to ensure accountability and long term stability of the social protection system.
- (b) Ensuring equitable and inclusive social and economic policies:
- (i) Address inequalities in progress by tackling the protection gaps faced by various vulnerable groups such as ethnic minorities, women, children, older persons, persons with disabilities and internal migrants, and design programmes to meet their specific needs.
- (c) Strengthening the social protection system from a human rights perspective:
- (i) In the aftermath of the transition to a middle income country, Viet Nam must continue to invest in social protection in order to ensure continuity of progress in the alleviation of poverty.
  - (ii) Remove barriers to accessing public services (administrative, financial, cultural or geographical) and ensure public services of high quality and sufficient quantity that are equally accessible to the whole population. In particular, tackle increasing indirect costs in health care and education services.
  - (iii) Improve the integration, coherence and management of social policies and improve data collection.
- (d) Role of international assistance and cooperation:
- (i) The international community should continue providing official development assistance (ODA) to Viet Nam in addition to necessary funds for climate change mitigation and adaptation measures.
  - (ii) The Government of Viet Nam must ensure that the resources received through international cooperation reach the most vulnerable groups and are utilized in a timely and effective manner.
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