



**UNODC**

United Nations Office on Drugs and Crime

# **Country Review Report of the Socialist Republic of Vietnam**

Review by Lebanon and Italy of the implementation by Vietnam of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2011 - 2012

## **I. Introduction**

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

5. The following review of the implementation by Vietnam of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Vietnam, supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Lebanon, Italy and Vietnam, by means of telephone conferences and e-mail exchanges and involving Mr. Rahif Hajj Ali and Mr. Charbel Sarkis from Lebanon, Ms. Anna Pagotto from Italy and Mr. Tran Duc Luong, Mr. Nguyen Tuan Anh, Mr. Nguyen Quoc Van, Mr. Ngo Manh Hung, Ms. Nguyen Thu Trang and Ms. Hoang Thi Thanh Thuy, among others. The staff members from the Secretariat were Ms. Tanja Santucci and Mr. Panagiotis Papadimitriou.
6. A country visit, agreed to by Vietnam, was conducted in Hanoi, Vietnam from 20 February 2012 to 24 February 2012. During the on-site visit, meetings were held with the Government Inspectorate, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Public Security, the Supreme People's Procuracy, the Vietnam Fatherland Front, the Supreme People's Court, the State Bank of Vietnam, the National Lawyer Association, the National Bar Association and the Office of the Central Steering Committee on Anti-Corruption, as well as with representatives of international donors and development organizations.
7. The review team also met with Towards Transparency, the national contact of Transparency International in Vietnam. Towards Transparency contributed to the response of the Government to the self-assessment checklist, and prepared a separate survey report in support of the Government's self-assessment of the implementation of the Convention against Corruption. International donors were also consulted by the Government in the process of completion of the self-assessment checklist.

### **III. Executive summary**

#### **1. INTRODUCTION**

##### **1.1. Legal System of Vietnam**

8. The Convention was signed by Vietnam on 10 December 2003 and ratified by the President on 30 June 2009. Vietnam deposited its instrument of ratification on 19 August 2009.
9. The position of the Convention in Vietnam's legal system is one level below the Constitution and one level above other sources of law. The Convention like other international treaties can be applied directly, in whole or in part, or through incorporation into domestic laws and regulations. Vietnam made a declaration upon ratification that the provisions of the Convention are non-self-executing. Vietnam has a civil law system with elements of socialist legal theory.

##### **1.2. Overview of the anti-corruption legal and institutional framework of Vietnam**

10. The institutions most relevant to the fight against corruption in Vietnam are the Government Inspectorate, the Ministry of Justice, the Ministry of Public Security, the Supreme People's Procuracy, the Supreme Court, the State Bank of Vietnam, the Central Steering Committee on Anti-Corruption and the Vietnam Fatherland Front. Other relevant stakeholders include the National Assembly representatives, the National Lawyer Association and civil society.
11. The Penal Code of 1999 was amended most recently on 19 June 2009. The Law on Prevention and Combating of Corruption was enacted in 2005. Comprehensive amendments to the Penal Code have been scheduled in the law-making programme of the National Assembly in its tenure 2011-2016, including regarding bribery, trading in influence, the liability of legal persons, and protection of witnesses, experts and victims. Legislation on anti-money laundering was expected to come into force in the near future and a regulation on the protection of reporting persons will come into force on 1 July 2012.

#### **2. IMPLEMENTATION OF CHAPTERS III AND IV**

##### **2.1. Criminalisation and Law Enforcement (Chapter III)**

###### **2.1.1. Main findings and observations**

12. A general observation related to the implementation of Chapter III in Vietnam is that the relevant criminal legislation appears to be applicable generally to two different categories of persons: for some offences, the prohibited acts apply to all persons while for others only certain persons "holding positions and powers" are covered. Vietnamese officials clarified that the concept of "persons holding positions and powers" under Vietnamese law corresponds to the group of public officials enumerated in article 2 of the Convention and applies equally to persons elected and appointed to positions of power.

*Bribery offences; trading in influence (articles 15, 16, 18, 21)*

13. Active bribery is partially criminalized in Article 289 of the Penal Code read together with Article 277 for bribes of two million Dong or more, or less than two million Dong but causing serious consequences or repeated violations. Cases of promise and offer of bribery are not addressed but can be charged under the offence of preparing to commit a crime (for serious and especially serious crimes) or as incomplete offences, provided that there is evidence that the promise or offer would cause the public servant to act or refrain from acting in his or her official duties. Bribes are limited to money, property or other material benefits, and the subject of the offence are persons holding “positions and powers”. Under paragraph 6 of Article 289, persons who are coerced to offer bribes but self-report them before detection may be exempt from penal liability and have all or part of the offered property returned.
14. Passive bribery is addressed in Article 279 of the Penal Code, which is limited to the receipt of material benefits and addresses persons holding positions and powers in order that they act or refrain from acting at the request, or for the benefit of, the bribe giver. The solicitation of bribes is considered an aggravating factor when determining the criminal liability of the bribe taker.
15. Vietnam has not adequately addressed the bribery of foreign public officials and officials of public international organizations. Although the term “agency or organization” as used in Article 277 has not been interpreted by the courts, it was explained to include agencies and foreign organizations in Vietnam or international organizations, unless Vietnam’s international treaties stipulate otherwise. Article 279, read together with Article 6 of the Penal Code, is applicable to the acceptance of bribes by foreign public officials or officials of public international organizations for crimes committed outside Vietnam in the circumstances set out in Vietnam’s international agreements; the solicitation of bribes is not addressed.
16. Trading in influence is partially addressed in Articles 289 (on bribe offering) and 283 of the Penal Code (abusing positions and/or powers to influence other persons). The limitations are that Article 289 does not describe the act of “bribe giving”, so that Article 277 must also be applied. Moreover, only material benefits are covered.
17. Bribery in the private sector is not criminalized in Vietnam.

***Laundering of proceeds of crime; concealment (articles 23, 24)***

18. Money laundering is partially implemented in Articles 250 and 251 of the Penal Code. Articles 20, 18 and 17 are also relevant. To fully implement the Convention, the anti-money laundering legislation would have to inter alia more clearly define the prohibited acts in relation to the transfer and conversion of property. There was no evidence that self-laundering is covered. Several acts stipulated in the Convention, such as bribery in the private sector, have not been criminalized and are not regarded as predicate offences. These gaps would be addressed in anti-money laundering legislation expected to come into force in the near future.
19. Concealment is addressed in Articles 250 and 313 of the Penal Code.

***Embezzlement; abuse of functions; illicit enrichment (articles 17, 19, 20, 22)***

20. Embezzlement of property by a public official is stipulated in Articles 278 and 280 of the Penal Code. As with the bribery provisions, serious consequences must accrue for the offence of embezzlement to be completed in respect of property that is valued at less than two million Dong. The object of infringement can be property directly or indirectly under the management of the person committing the criminal act.
21. Abuse of functions is partially implemented by Article 282 of the Penal Code (Abusing powers while performing official duties). It was explained that the provision “for undue benefits or personal motivation” in Article 282 the Penal Code also encompasses third party benefits.
22. Vietnam has not criminalized illicit enrichment, but has taken concrete steps in considering the adoption of such measures, notwithstanding its reservation to being bound by the article.
23. Embezzlement in the private sector is partially implemented in Article 140 of the Penal Code, which is limited to preventing, through fraudulent means or for illegal purposes, the return of assets received by loan, borrowing, hiring or contract.

***Obstruction of justice (article 25)***

24. Relevant offences are found in Articles 309 and 289 of Penal Code. However, acts of bribing or forcing witnesses or victims not to testify or to provide evidence are not criminalized. Further, Article 257 stipulates the offence of “acting against persons conducting official duties”, whereas Article 297 stipulates the offence of “forcing judicial officials to act against laws”. The latter covers only obstruction of justice causing serious consequences during the criminal process. There have been no cases to date under the referenced provisions.

***Liability of legal persons (article 26)***

25. Vietnam made a reservation not to abide by article 26 of the Convention and has not established the required liability of legal persons. Although legal entities may be subject to administrative and civil (but not criminal) liability pursuant to Article 93 of the Civil Code and Articles 1 and 6 of the 2002 Ordinance on handling administrative violations, this liability does not cover the corruption offences. Administrative liability for money laundering is possible. It was observed that the stipulated sanctions for legal persons are not sufficient. Vietnamese officials repeatedly indicated an intention to prioritize the enactment of criminal liability measures for legal persons.

***Participation and attempt (article 27)***

26. Punishment for participation is established principally in Article 20 (Complicity) of the Penal Code, which applies to organizers, executors, instigators and helpers of criminal acts as accomplices. Article 18 of the Penal Code addresses the attempted commission of crimes.

***Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)***

27. Penalties for corruption in Vietnam range from one year up to twenty years of imprisonment and death penalty. Fines range 3 million Dong to 50 million Dong or from 1 to 5 times the value of the bribe. Sanctions also include partial or full confiscation of assets and removal of officials from their position. The imposition of sanctions depends on the circumstances of each case, including mitigating and aggravating circumstances. No functional immunities exist in Vietnam for public officials at any level.
28. Vietnam follows a system of discretionary prosecution. The power to make a decision whether to prosecute or not rests with prosecutors at all levels of procuracy.
29. Pre-trial detention may be replaced by non-custodial measures in a manner consistent with the Convention. Similarly, parole for convicted persons takes into account, among other considerations, the nature and gravity of the offence.
30. Vietnamese legislation provides for the possibility of suspension of public officials against whom judicial proceedings have been initiated. Public officials convicted of corruption are removed from office and may be subject to additional penalties, such as a ban from holding certain positions. Policies and measures aiming at the reintegration of convicted persons are insufficiently concrete and specific.
31. The legal framework for cooperation between accused persons and law enforcement is relatively complete. In particular, persons who “self-report” may not be punished and would also qualify for reduced penalty terms or mitigated punishment.

***Protection of witnesses and reporting persons (articles 32, 33)***

32. Measures for the protection of witnesses include physical security, maintaining the confidentiality of a person’s identity, providing an assumed identity or the use of safe houses for witnesses and their families. Testimony cannot be given through the use of video technology due to technical difficulties. Vietnam has not entered into international agreements providing for the relocation of witnesses. It was noted that consideration could be given to the establishment of witness protection programmes.
33. The legislation of Vietnam guarantees the right of citizens to make complaints or report alleged offences, but does not seem to afford corresponding protection to reporting persons. A regulation on the protection of reporting persons will come into force on 1 July 2012.

***Freezing, seizing and confiscation; bank secrecy (articles 31, 40)***

34. The legislation of Vietnam regulates freezing, seizure and confiscation of assets that are proceeds or instrumentalities of crime. Assets subject to seizure and confiscation include yields and benefits derived from proceeds of crime, as well as assets converted, transformed or intermingled with legitimate property. The absence of provisions on confiscation of property destined for use in commission of an offence was noted.
35. Further, all inspection, investigation, prosecuting and adjudicating agencies in Vietnam may impose confiscation and freezing measures if warranted, without the need of a court order or decision. A reversal of the burden of proof concerning the origin of alleged

proceeds of crime is not established. Bank secrecy does not create any obstacles to the investigation of corruption offences. The legislation regulates access of State agencies to the information and records of financial institutions.

***Statute of limitations; criminal record (articles 29, 41)***

36. The relevant sections of the 1999 Penal Code of Vietnam are Articles 23 and 24. The statute of limitations in corruption crimes is between ten and twenty years. Where an alleged offender deliberately flees and is being sought by warrant, the time of fleeing is not counted and the statute of limitations is re-calculated from the time the person gives him/herself up or is arrested. No criminal cases have been barred by the statute of limitations in the last three years.
37. While there are no specific provisions in place, foreign convictions can be considered during a trial, including as mitigating or aggravating circumstances.

***Jurisdiction (article 42)***

38. In general, the jurisdiction of Vietnamese courts is established in accordance with the provisions of the Convention. Vietnam may establish jurisdiction over offences against its nationals committed abroad only as permitted by existing treaties.

***Consequences of acts of corruption; compensation for damage (articles 34,35)***

39. The provisions of the Civil Code on the invalidity of transactions due to violations of law or contravention to social ethics are applied to annul or rescind contracts related to acts of corruption. Also, the Criminal Proceedings Code provides for the compensation of damage resulting from acts of corruption in a manner consistent with the Convention.

***Specialized authorities and inter-agency coordination (articles 36,38, 39)***

40. The principal specialized authorities are the Supreme People's Procuracy and the Government Inspectorate. The former is a judicial body that reports only to the National Assembly and not to the Executive. The reporting structure of the Government Inspectorate appears to adequately ensure its operational independence.
41. Public authorities generally provide information to law enforcement agencies upon request, and not on their own initiative. Multiple agencies are competent for receiving citizens' complaints, and Vietnam has put in place an award system where citizens can be recognized for anti-corruption efforts and receive financial rewards.

**2.1.2. 2.1.2 Challenges and recommendations**

- The inadequacy of existing normative measures was cited as a challenge in implementing article 15. It is necessary to broaden the definition of bribery, which is limited to material benefits and persons holding positions and powers in the State apparatus. This should be considered a priority area during the revision of the Penal Code.
- The inadequacy of existing normative measures was cited as a challenge in implementing article 16. The Penal Code should clarify that the term "agency or organization" includes foreign agencies and organizations. There is a need for an

explicit provision in the Penal Code to address corruption by foreign officials and officials of public international organizations. This should be considered a priority area during the revision of the Penal Code.

- The process to fully implement the bribery provisions through amendments to the Penal Code is a long-term process in Vietnam, with some measures being implemented through 2015 and others through 2020.
- Specificities in Vietnam's legal system were cited as a challenge in implementing article 20.
- The inadequacy of existing normative measures and specificities in the legal system were cited as a challenge in implementing article 21. There is a need to enact legislation criminalizing bribery in the private sector as a priority area for Vietnam, notwithstanding the non-mandatory nature of this provision. Officials repeatedly noted the absence of relevant measures as a priority challenge in the fight against corruption.
- Additional legislative provisions are required to fully implement the offence of embezzlement in the private sector. This should also be considered a priority area.
- A lack of statistics in the area of money laundering was noted, and it was recommended that Vietnam keep record of money laundering cases. Further, a comprehensive review of the anti-money laundering legislation should be conducted.
- Provisions regarding the criminal liability of legal persons in corruption offences should be elaborated, although alternative forms of civil and administrative liability would also satisfy the requirements of the Convention. This should be considered a priority for Vietnam to avoid issues of impunity for legal persons engaged in corruption. The lack of relevant measures was also noted to affect the ability of Vietnam to fully provide mutual legal assistance in cases involving legal persons (UNCAC article 46, paragraph 2). The inadequacy of existing normative measures was cited as a challenge.
- The inadequacy and lack of compatibility of existing normative measures, and the lack of implementing resources for the protection of witnesses, were cited as challenges in implementing article 32.
- Specificities in the legal system of Vietnam were cited as a challenge in fully implementing article 33. Vietnam is encouraged to adopt effective measures for the protection of reporting persons, such as the possibility of anonymous reporting, and to establish witness protection programmes.
- Limited resources were reported to be a challenge in implementing articles 34, 35, 36, 37, 38, 40.
- Challenges related to gathering of data stemming from parallel mandates on anti-corruption and weak statistical capacity were reported in relation to article 38.
- It is recommended that Vietnam consider adopting relevant measures, as appropriate, to enhance cooperation between public authorities and the private sector.
- Specificities of the legal system of Vietnam were cited as a challenge in fully implementing article 41.

## **2.2. International cooperation (Chapter IV)**

### **2.2.1. Main findings and observations**

***Extradition; transfer of sentenced persons; transfer of criminal proceedings  
(articles 44,45, 47)***

42. Vietnam makes extradition conditional on the existence of a treaty, and has made a declaration upon the ratification of the Convention that it will not take the Convention as a legal basis for extradition. Extradition requests are handled in accordance with Vietnamese laws, bilateral treaties on extradition, and the principle of reciprocity. Vietnam has concluded twelve bilateral treaties on mutual legal assistance which also deal with extradition, two treaties covering extradition specifically, and has been actively engaged with other States in view of concluding additional treaties on the matter.
43. The absence of dual criminality is an optional ground for refusing extradition under Vietnamese legislation. Almost all treaties make extradition conditional on the existence of dual criminality. The Vietnamese competent authorities may extradite persons whose acts do not constitute offences under Vietnamese law in application of the principle of reciprocity. The institution responsible for receiving and submitting requests for extradition and transfer of sentenced persons is the Ministry of Public Security.
44. The Law on Mutual Legal Assistance of 2007 sets out in detail the procedure to be followed and the deadlines to be met by competent authorities when deciding on extradition requests. It also permits the person sought to be taken into custody while the extradition request is considered. Moreover, the guarantees of fair treatment and respect of fundamental rights for all persons subject to criminal proceedings provided for by Vietnamese law also apply to extradition proceedings.
45. There is no definition of political offences in Vietnamese legislation; Vietnam determines the political nature of offences for which extradition is sought on a case-by-case basis. Vietnam reported that it would not consider corruption related offences to be of a political nature.
46. Extraditable offences are those punishable by imprisonment of at least one year, where the remaining imprisonment term is at least six months, or by death penalty. Vietnam shall refuse extradition if it has reasonable grounds to believe that the person sought is being prosecuted or punished on account of his or her race, religion, sex, nationality, social status, or political opinions.
47. Extradition will be refused if the person sought is a national of Vietnam. In such cases a domestic prosecution will be considered by the Vietnamese authorities. Recent extradition treaties contain provisions on the mandatory prosecution of non-extradited nationals at the request of the other party to the treaty. Vietnam would not consider the enforcement of a sentence imposed in a requesting State against a national of Vietnam whose extradition is refused.
48. There is no obligation on Vietnam to consult with requesting States before refusing extradition. However, the practice of the Ministry of Public Security is to engage in such consultations before deciding a request.
49. The transfer of sentenced persons is regulated in the Law on Mutual Legal Assistance (Articles 49 to 60). Vietnam has concluded four bilateral treaties on the matter. Vietnam reported that to date, transfers did not concern persons convicted of corruption.

50. The transfer of criminal proceedings is regulated in the Criminal Proceedings Code and the Law on Mutual Legal Assistance, which permits such transfer where a prosecution in Vietnam cannot be pursued because the alleged offender is abroad.

*Mutual legal assistance (article 46)*

51. International cooperation in criminal matters is regulated in the Criminal Proceedings Code of Vietnam and the Law on Mutual Legal Assistance. Vietnam does not use the Convention as the legal basis for mutual legal assistance, as it considers all its provisions to be non self-executing.

52. Vietnam has entered into several bilateral treaties on mutual legal assistance, and is also party to the ASEAN treaty on mutual legal assistance in criminal matters. Where no treaty is in force, mutual legal assistance may be granted under the principle of reciprocity.

53. The Law on Mutual Legal Assistance and applicable international treaties cover adequately the purposes for which mutual legal assistance may be granted and the elements that requests shall contain. International treaties in force often stipulate that requests should be executed in accordance with the procedures specified in the request, provided that they do not contradict domestic legislation.

54. The spontaneous transmittal of information is not prohibited under Vietnamese law and is regulated in several bilateral treaties.

55. The grounds for refusal of mutual legal assistance are consistent with the Convention. The legislation also stipulates that reasons for refusal of requests should be given to the requesting State.

56. A detailed timeline for the execution of mutual legal assistance requests is set out in the Law on Mutual Legal Assistance. The average time for execution ranges from one month to one year, depending on the complexity of the case. The Law also provides for the postponement of the execution of a request if such execution would hinder the investigation, prosecution or trial of an offence or the enforcement of a judgment in Vietnam. Vietnam would generally consult with requesting States prior to refusing a request, although consultations are not mandatory.

57. The absence of dual criminality is a mandatory ground for refusing requests for mutual legal assistance. Some international treaties to which Vietnam is party provide either for granting assistance even in the absence of dual criminality or for the possibility of consultation prior to refusing a request on this ground.

58. Notwithstanding the dual criminality requirement, Vietnamese authorities may provide information for offences not criminalized under the laws of Vietnam to networks such as INTERPOL or ASEANAPOL. Although it has not established criminal liability of legal persons, Vietnam would consider requests for mutual legal assistance involving legal persons, based on the principle of reciprocity and its will to maintain good international relations.

59. Vietnam has reported that from July 2008 to January 2012, it had received three requests for mutual legal assistance relating to corruption offences and had executed two of those. The third one was pending at the time of the country visit.
60. The principle of specialty of information provided in the context of mutual legal assistance is enshrined in domestic legislation and treaties concluded by Vietnam. Also, confidentiality of requests is respected in a manner consistent with the Convention. There are no provisions in the legislation of Vietnam permitting the hearing of witnesses by video conference.
61. According to the declaration made by Vietnam, the Ministry of Justice, the Ministry of Public Security and the Supreme People's Procuracy were designated as authorities for mutual legal assistance in criminal matters. Vietnam could require that a request for mutual legal assistance be submitted through diplomatic channels, if this is provided for in the applicable bilateral treaty.

***Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)***

62. Vietnamese law enforcement authorities cooperate regularly with their counterparts abroad. Such cooperation is based on memoranda of understanding signed by the Ministry of Public Security and senior officials in foreign States, or on mechanisms of cooperation established at the local / provincial level. The cooperation channels of INTERPOL and ASEANAPOL were reported to be frameworks for quick and efficient exchange of information in preventing and combating crime.
63. Joint investigations have not been established in Vietnam. The Strategy on Preventing and Combating Corruption towards 2020 provides that the adoption of measures permitting the establishment of joint investigative bodies should be considered. There are no provisions regulating the use of special investigative techniques or the admissibility in court of evidence derived from such techniques.

**2.2.2. Successes and good practices**

- The significant number of treaties on mutual legal assistance concluded by Vietnam, in particular with countries in the same region, was noted. Such a network of treaties creates a good framework for the provision of mutual legal assistance, and has permitted Vietnam to grant assistance in corruption related cases.

**2.2.2. Challenges and recommendations**

- Vietnam reported inadequate human, technological and institutional capacity to be a challenge in the implementation of article 45.
- Vietnam should give consideration to using the Convention as a legal basis for mutual legal assistance as appropriate in order to streamline procedures and cooperation with other States parties to the Convention.
- Inadequate resources for implementation were cited as a challenge in implementing article 49.
- Vietnam is encouraged to introduce in its legislation and applicable bilateral treaties the possibility to afford mutual legal assistance for offences established under the Convention even in the absence of dual criminality.

### **3. TECHNICAL ASSISTANCE NEEDS**

64. The following technical assistance needs were identified by Vietnam.

- Article 15: Model legislation and a summary of good practices/lessons learned. The reviewers suggested that legal assistance might be useful to broaden the definition of bribery in Vietnamese law.
- Assistance to conduct research to perfect the Penal Code was requested on issues related to the implementation of articles 18 and 20.
- Model legislation was requested for the implementation of articles 16, 20 to 22, and 26.
- Article 23: A summary of good practices/lessons learned and training, educating staff of judicial agencies and banks. The reviewers also observed a need for capacity building of the financial intelligence unit and other law enforcement authorities to detect and investigate money laundering cases.
- Article 24: A summary of good practices/lessons learned and training for public officials of judicial agencies.
- Article 36: The need for additional resources and training of staff of investigative agencies to enhance operational capacities was underscored.
- A summary of good practices and lessons learned was requested with respect to articles 16, 20 to 22, 25 to 27, 30-36, 38 to 42, 46 to 50.
- Technical and financial assistance was requested related to the implementation of article 30, paragraph 10.
- Assistance in conducting surveys and developing thematic reports was requested on issues related to the implementation of articles 16, 21, 22, 26, 31, 33 to 35, and 37 to 39.
- Legal advice was requested on issues related to the implementation of articles 31 and 32.
- Training activities and courses to enhance professional skills of relevant public officials were sought with regard to articles 36, 41, 44, and 46 to 50.
- Financial support to implement pilot programmes on protecting witnesses, experts and victims was requested.
- The development of an action plan for the implementation of articles 37, 38 and 39 was requested.
- Model treaties were requested for the implementation of articles 44 and 45, and model agreements/ arrangements for the implementation of article 50.

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

65. On 10 December 2003, the Socialist Republic of Vietnam signed the United Nations Convention against Corruption (hereinafter referred to as UNCAC or the Convention). After nearly six years of research and assessment on the conformity of the Vietnamese legal system, as well as difficulties, challenges and solutions in implementing the Convention, on 30 June 2009, the President of the Socialist Republic of Vietnam officially ratified the Convention by Decision No. 950/2009/QĐ-CTN, which was deposited with the United Nations and became effective on 19 August 2009. The Convention officially came into effect for Vietnam on 18 September 2009. This is considered an important legal-political event that represents the determination and commitment of Vietnam before the international community in the fight against corruption.

66. As part of its ratification, Vietnam declared a reservation to article 66, paragraph 2, of the Convention. Accordingly, “The Government of the Socialist Republic of Vietnam does not consider itself bound by the provisions of Article 66, paragraph 2, of this Convention.”

At the same time, Vietnam made two declarations about the implementation of the Convention as follows:

“1. Pursuant to principles of the Vietnamese law, the Socialist Republic of Vietnam declares that it does not consider itself bound by the provisions with regard to the criminalization of illicit enrichment set forth in Article 20 and the criminal liability of legal persons set forth in Article 26 of the United Nations Convention Against Corruption.

2. The Socialist Republic of Vietnam declares that the provisions of the United Nations Convention Against Corruption are non-self-executing; the implementation of provisions set forth in the Convention shall be in accordance with Constitutional principles and substantive law of the Socialist Republic of Vietnam, on the basis of bilateral or multilateral cooperative agreements with other States Parties and the principle of reciprocity.”

67. Vietnam made a notification to the United Nations on 1 December 2009 as follows: “In accordance with Article 44 of the Convention thereof, the Socialist Republic of Vietnam declares that it shall not take the Convention as the legal basis for extraditions. The Socialist Republic of Vietnam shall conduct extradition in accordance with the Vietnamese law, on the basis of treaties on extradition and the principle of reciprocity.”

68. Vietnam further made the following notifications under article 6, paragraph 3 and article 46, paragraphs 13 and 14:

“1. The Government Inspectorate of the Socialist Republic of Viet Nam is the national authority of the Socialist Republic of Viet Nam, which may assist other States Parties in providing information for the prevention of and combating against corruption;

2. The Ministry of Justice, Ministry of Security and the Supreme People’s Procuracy of the Socialist Republic of Viet Nam are national authorities, which may receive requests for mutual legal assistance in accordance with the Vietnamese law;

3. English is the acceptable language for the Socialist Republic of Viet Nam with respect to requests for mutual legal assistance.”

## **B. Position of the Convention in the legal system of Vietnam**

### ***Relationship between national and international laws in Vietnam***

69. The relationship between the national and international laws in Vietnam is provided in the Law on signing, accession and implementation of international treaties of 2005 and the Law on enactment of legal normative documents of 2008. The Law on signing, accession and implementation of international treaties of 2005 is a legal document which provides

overall regulations for treaty-related matters in Vietnam. Regarding the relationship between national and international laws, this Law provides for principles, levels as well as the application of international treaties. Although the Law on enactment of legal normative documents of 2008 mainly regulates the enactment of domestic legal normative documents, it also stipulates that the drafting of legal normative documents must take into account the international treaties that Vietnam has signed or accessed.

70. At present, Vietnamese laws do not provide specific regulations regarding the position of international treaties to which Vietnam is a party. However, according to article 6 of the Law on signing, accession and implementation of international treaties of 2005, in case legal normative documents and an international treaty to which Vietnam is a party contain different regulations regarding the same issue, provisions of the international treaty will be applied (paragraph 1). Therefore, regulations of international treaties that Vietnam has signed or accessed will be implemented, even in the case that Vietnamese laws have not been adequate. As a result of this provision, the position of international treaties is one level below the Constitution and one level above other legal documents.
71. Article 6 of the Law on signing, accession and implementation of international treaties of 2005 on “International treaties and domestic laws” stipulates that “1. In case legal normative documents and an international treaty to which the Socialist Republic of Vietnam is a member contain different regulations regarding the same issue, provisions of the international treaty will be applied; 2. The enactment of legal normative documents must ensure not to obstruct the implementation of international treaties to which the Socialist Republic of Vietnam is a member which regulates the same issue; 3. Based on the requirements, contents, nature of the international treaty, the National Assembly, State President, Government, on deciding to accept the obligations of international treaty, decide at the same time to apply, directly, in part or the whole of that international treaty to agencies, organizations, individuals if the provisions of that international treaty are clear and detailed enough to be implemented; decide or recommend the amendments, supplementation, cancellation or enactment of legal normative documents to implement that international treaty.”
72. In addition, in 2001 Vietnam acceded to 1969 Vienna Convention on the Law of Treaties. Article 26 of this Convention provides the Pacta sunt servanda principle as follows: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”. This principle has been transformed into the Law on signing, accession and implementation of international treaties of 2005 as follows: “The State of the Socialist Republic of Vietnam complies with international treaties to which the Socialist Republic of Vietnam is a member” (Para 6, article 3).
73. According to existing legal normative documents of Vietnam, the international treaties that the Socialist Republic of Vietnam has signed or to which it has acceded have higher legal priority than domestic laws, even if they contain different or contradictory provisions.

### ***Regulations on the application of international treaties in Vietnam***

74. Article 6, paragraph 3 of the Law on signing, accession and implementation of international treaties of 2005 provides that Vietnam accepts two methods to implement international treaties: (a) direct implementation and (b) institutionalization of international

provisions into domestic legal normative documents. The institutionalization of international treaties is done in the following two general ways:

1) Amend or supplement legislation to ensure the implementation of international treaties. According to Article 14, paragraph 10 of the Law on signing, accession and implementation of international treaties of 2005, the agency proposing the signing of a treaty has the responsibility to recommend measures to directly apply, in part or in whole, international treaties, or to amend, supplement, cancel or enact legal normative documents to implement international treaties. Therefore, in order to implement international legal obligations deriving from international treaties that require an amendment or supplementation of existing laws, the proposing agency must actively, in collaboration with the Ministry of Foreign Affairs and the Ministry of Justice, recommend to the relevant authorities to do so. In the work of law-making, according to Article 5 of the Law on enactment of legal normative documents of 2008, one of the principles of developing or enacting new legal normative documents is “not to obstruct the implementation of international treaties to which the Socialist Republic of Vietnam is a member”. This measure helps to ensure the implementation of international legal obligations deriving from international treaties.

2) Conduct the institutionalization of international norms of the treaties into domestic laws. The obligation to implement international treaties is closely linked to the issue of the institutionalization of international treaties into domestic laws. The fundamental goal of institutionalization is to ensure the advantages for the implementation of international treaties.

### ***Procedures to implement international treaties in Vietnam***

75. Regarding the procedures to implement international treaties, an important question that Vietnam has to deal with is how to ensure full implementation of international obligations deriving from treaties. Based on the stipulations of Chapter VI of the Law on signing, accession and implementation of international treaties of 2005, there are several important issues related to the procedures to implement international treaties of Vietnam, in accordance with the *Pacta sunt servanda* principle, as follows:

1) Plan to implement international treaty. According to Article 71 of the Law on signing, accession and implementation of international treaties of 2005, Plan to implement international treaty shall include: international implementation roadmap; provisional allocation of responsibilities among state agencies in implementing international treaties; measures for organization, management, financial issues and other necessary measures to implement international treaties; dissemination of international treaties.

The implementation of international treaties must first be based on the situation and specific context of Vietnam in specific development stages. Therefore, authorized state agencies have to figure out the process and measures to implement the treaties for specific stages, suitable with development situation of the country. At the same time, it's necessary to perfect mechanism to implement the treaty, manage financial resources, including international contributions and supports for the implementation of international treaties.

2) Assigning authorized agencies in implementing international treaties. Responsibility to implement international treaties is, firstly, the responsibility of the State. However, in the

State apparatus, this responsibility belongs to the ministries, sectors and agencies of all levels. Within their scope of responsibilities and mandates, they bear the responsibility to set up specific plans and measures to implement the commitments that Vietnam is bound to by international treaties. The implementation of certain types of treaties depends on functions and responsibilities of each ministry and sector. In case of difficulties and shortcomings, they must, in collaboration with the Ministry of Foreign Affairs, propose recommendations to the Government and the State President on the implementation of international treaties within their scope of authorities.

Through the institutionalization of the provisions of international treaties, at different levels, the provisions of international treaties can be considered as constituents of domestic laws. For this reason, international treaties hold an important position in the system of national laws of Vietnam.

### **C. Overview of the implementation of UNCAC in Vietnam**

76. Based on the declarations made when Vietnam ratified the Convention and pursuant to the Law on signing, accession and implementation of international treaties of 2005 as well as the Law on enactment of legal normative documents of 2008, in order to actively implement the Convention, Vietnam officially issued an **Implementation Plan** of the United Nations Convention Against Corruption (under Decision No. 445/QĐ-TTg dated 7 April 2010 of the Prime Minister). This Implementation Plan fully complies with the regulations on the position and application of international treaties in Vietnam mentioned above. The objectives, contents and roadmaps of this plan are synchronized with those of the National Strategy on Preventing and Combating Corruption towards 2020 of Vietnam. In particular, the Implementation Plan sets out the specific tasks and roadmap for the purpose of institutionalization and implementation of regulations and requirements of the Convention and serves as the basis for the implementation process.
77. According to the Implementation Plan, the key tasks aimed at implementation of the Convention include:
- 1) Continue the propagation and dissemination of legislation on the prevention of corruption and contents of the Convention. This measure will help raise the awareness of cadres, civil servants and other classes of people on anti-corruption laws and the Convention. This would strengthen the responsibility of cadres, civil servants in implementing the Convention and the active participation of all classes of people in society in the fight against corruption in general and monitoring the implementation of the Convention by the state apparatus itself.
  - 2) Conduct research and make proposals to perfect the legal documents of Vietnam on measures to prevent corruption, including:
    - strengthening the independence and performance of the anti-corruption agencies;
    - perfecting the mechanism and rules on publicity, transparency and preventing corruption in public procurement;
    - perfecting regulations in the financial sector, banks to prevent money laundering;
    - perfecting the mechanisms and policies for cadres, officials of anti-corruption agencies;

- perfecting regulations on remuneration towards people who have achievements in the prevention of corruption, as well as codes of conduct and ethics for staff, public officials, and officials;
- perfecting audit standards, increasing transparency in the financial and accounting sectors and increasing transparency of the assets and income of civil servants;
- building a system of criteria to evaluate and measure corruption and the effectiveness of anti-corruption work;
- making State administrative management work public and transparent;
- simplifying administrative procedures and ensuring the provision of information and periodic reports on the status of corruption and the outcomes of anti-corruption work.

3) Supplement corruption offences and law enforcement regulations, including:

- Supplement to the Penal Code offence of offering bribes to foreign public officials and officials of public international organizations;
- supplement to the Penal Code offence of bribery of foreign public officials and officials of public international organizations;
- research and propose solutions for the criminalization of acts of corruption in the private sector for the offences of offering and taking bribes and embezzlement in the private sector, any illegal enrichment behavior and criminal liability of legal persons;
- research and propose the concretization and perfection of the criminal liability of legal persons;
- research and propose the concretization and perfection of the regulations on protection of witnesses, experts and victims and regulations on international cooperation in witness protection.

4) Complete mechanisms for international cooperation against corruption, including legal provisions on mutual legal assistance (MLA), extradition, transfer of sentenced persons, joint investigation, and the application of special investigative techniques. Increase the exchange of international and regional experiences on anti-corruption and the implementation of the Convention.

5) Perfect the mechanism for asset recovery, including research, and propose to supplement the implementation of the civil parts of criminal judgments by foreign courts. Enhance international cooperation on the recovery of corrupted assets. Modify and supplement regulations on transparency of assets and income. Research and propose measures to control the assets and incomes of cadres and public servants.

6) Enhance working facilities and improve investigation techniques of professional and corruption crimes for cadres in charge of anti-corruption work and strengthen international cooperation in training and retraining of anti-corruption specialized staff. Build mechanisms to exchange information, documents and data for the prevention of corruption with other countries. Conduct a general review and evaluation on the implementation of the legal documents on anti-corruption, and conduct surveys and interviews in order to collect information, analyze, evaluate and propose measures to prevent corruption in the fields of State management.

78. The Implementation Plan for the Convention also sets out an implementation roadmap consisting of three stages, specifically as follows:

1) Phase I (through 2011): This phase focused on perfecting the institutions and policies to implement the requirements of the Convention, strengthening the capacity of anti-corruption agencies, raising the awareness of officials, public servants and other strata in society of the Convention, and implementing measures to prevent and combat corruption in practice.

2) Phase II (2011 - 2016): This phase focuses on evaluating the implementation of solutions to implement the Convention and amend or supplement legal provisions on preventing and combating corruption in order to improve the effectiveness of the implementation of the Convention.

3) Phase III (2016 - 2020): This phase will focus on a comprehensive review of the implementation of the Convention and supplementing mechanisms, as well as consolidating the organization and improving the quality and effectiveness of anti-corruption work in general and the implementation of the Convention in particular.

79. To deploy the Implementation Plan, Vietnam established an inter-sectoral UNCAC **Working Group** to implement the Convention on 11 March 2010 (under Decision No. 434/QĐ-TTCT of the Government Inspector General), and a **Review Team** of governmental experts was created on 2 June 2010 to review the implementation of the Convention (under Decision No. 776/QĐ-TTg of the Prime Minister).

80. Members of the UNCAC Working Group and Review Team are researchers, managers and practitioners representing different government agencies related to the implementation of the Convention, such as the Ministry of Public Security, the Supreme People's Procuratorate, the Ministry of Justice, the Ministry of Foreign Affairs, the Office of the Government, the Office of the Central Steering Committee on Preventing and Combating Corruption, and the Government Inspectorate. The Heads of the Working Group and Review Team are the leaders of the Government Inspectorate, the agency assigned to be the focal point to assist the Government of Vietnam in implementing and monitoring the implementation of the Convention.

81. Since it was established, the UNCAC Working Group has developed work plans to ensure effective deployment of the Implementation Plan for the Convention. Accordingly, representatives from ministries, branches and agencies involved in the Working Group and Review Team will directly monitor and evaluate the status of implementation of the Convention in the field of State management or activities of their own agencies. Based on the results of the work of its members, the Working Group and Review Team will develop specific measures or propose concrete measures to the Government to accelerate the process of implementation of the Convention.

#### ***Summary of initial results of deploying the UNCAC Implementation Plan***

82. In the last five years, the State of Vietnam has enacted various anti-corruption proposals, policies and initiatives, including:

- (i) Simplification of administrative procedures (Proposal 30);
- (ii) Transparency of assets and income (Decree No. 37/2007/NĐ-CP, amended and supplemented by Decree No. 68/2011/NĐ-CP);

- (iii) Regular rotation of working positions of public servants in several sectors and branches (Decree No. 158/2007/NĐ-CP);
- (iv) National Strategy on Preventing and Combating Corruption towards 2020 (Resolution 21/NQ-CP dated 12/5/2009);
- (v) Integration of anti-corruption contents into educational, training programs (Decision No. 137/2009/QĐ-TTg);
- (vi) Adoption of the UNCAC Implementation Plan (Decision No. 445/QĐ-TTg);
- (vii) Launching of Anti-corruption Initiatives Program on an annual basis;
- (viii) Holding an annual meeting to appraise individuals having significant achievements in anti-corruption; and
- (ix) Ratifying and beginning the implementation of the Convention.

83. After nearly two years of deploying the UNCAC Implementation Plan, at the time of review (June 2011), Vietnam has carried out synchronizing solutions to promote the implementation of the Convention in the following areas:

1) The perfection of institutions: Vietnam has enacted a number of laws to improve public services and public officials' mechanisms and inspection work, such as:

- Law on Public servants and cadres, Law on Public employees, Law on Inspection (amended and supplemented in 2010);
- Issuing national action plan against money laundering and terrorism financing;
- Continuing to conduct research on theoretical and practical bases for the criminalization of certain acts of corruption, and of taking, giving and bribery in the private sector, as well as embezzling assets in the private sector;
- Other ministries, sectors and administrative levels of Vietnam have promulgated and launched the implementation of Codes of Conduct by officials and public servants;
- Issuing regulations on the remuneration of individuals with outstanding achievements in reporting and detecting acts of corruption; and
- Modifying regulations on the transparency of assets and income.

In particular, on 2 December 2009, the Prime Minister issued Decision No.137/2009/QĐ-TTg approving a proposal to integrate anti-corruption contents into educational and training programs. This document shows awareness of the Party and State in the fight against corruption, taking prevention as the core, promoting education and training for public servants and students in preventing and combating corruption.

2) Implementation of concrete measures on prevention of corruption:

- continuing to speed up the inspection, examining, audit, investigation and supervision in order to proactively prevent and detect corruption, especially in conducting inspections on responsibility towards anti-corruption work of all agencies and levels of state management;
- raising of public awareness through the promotion of anti-corruption communication activities and promoting active participation of the public on the prevention and fight against corruption by improving the quality of the bi-annual anti-corruption dialogue between the Government of Vietnam and the community of international donors and organizations as well as the political-social-professional organizations;

- encouraging and supporting people to actively propose initiatives to fight corruption through the Anti-Corruption Initiative Vietnam (VACI) program.

In the past, supervision by the National Assembly and the National Assembly's Standing Committee over anti-corruption work nationally was conducted and resulted in certain achievements. Every year, the National Assembly's Judicial Committee conducts verifications of the Government's anti-corruption report and provides specific assessments on the status of corruption and anti-corruption work. It also considers and requests agencies to report on specific corruption cases. The National Assembly's Standing Committee takes part in supervising the anti-corruption work of anti-corruption authorized agencies. National Assembly representatives further make inquiries about corruption cases.

***Several difficulties of Vietnam in the implementation of the Convention***

84. As described by Vietnam in its self-assessment on the implementation of the Convention, Vietnam faces several challenges in implementation. First, many regulations of Vietnamese laws and Vietnam's MLA treaties with other countries have not been adequate and synchronized. The process of negotiating, signing and amending or supplementing MLA treaties and the process of researching, developing or amending existing laws to adapt the practical situation of Vietnam, while at the same time ensuring synchronization with the provisions of other international treaties that Vietnam is party to, will need large sources of experience, time, labor, budget and synchronizing collaboration among relevant authorities of Vietnam.
85. Second, infrastructure as well as technical conditions and international experiences in anti-corruption work of Vietnam are still limited. Language barriers, lack of working skills in the international environment, and access to distinctive political and legal regimes will be the obstacles and challenges for public servants of Vietnam when participating in international cooperation on anti-corruption.
86. Third, awareness of the Convention and its implementation by public servants and citizens is in general inadequate due to limited dissemination of and research on the Convention.

***Preparation for the review of Vietnam's UNCAC implementation and development of the self assessment report:***

87. Since the establishment of UNCAC Working Group, Vietnam has conducted various activities to develop its self assessment report, such as:
- conducting thematic studies on the content of the Convention and on resolutions of the Conference of the State Parties to the Convention and its Working Groups (resolutions on the Review Mechanism, asset recovery, technical assistance and corruption prevention);
  - holding technical workshops with international experts on the process and methods of developing a self-assessment report;
  - organizing workshops to consult with ministries, branches and localities on the draft self-assessment report;
  - organizing workshops to consult with donors, international organizations, political organizations, socio-political organizations, socio-professional organizations and socio-professional-political organizations.

88. Vietnam has also conducted surveys to assess corruption risks and the effectiveness of measures to prevent and combat corruption in some areas of State management, such as health, education, land and minerals. Survey results have been put into discussion in bi-annual anti-corruption dialogues between the Government of Vietnam and international donors and social-political-professional organizations. Currently, Vietnam is conducting research with a view to building mechanisms to measure corruption and monitor and evaluate the work against corruption. These mechanisms would take into account the requirement for monitoring and evaluating the implementation of the Convention in the near future.
89. The self-assessment report was prepared using the UNCAC self-assessment checklist, based on the UNODC Omnibus software (version 2011). The report provides answers to four questions in the section “General information”, 180 questions in Chapters III and IV of the Convention, and the last question “Other information” (question 299) of the Checklist. To substantiate the report, three annexes were attached, including:
- Annex 1: Citing of legal documents to explain and illustrate the responses to the checklist.
  - Annex 2: Summary descriptions of 15 corruption cases which have been punished. These are cases that follow the requirements of the Convention.
  - Annex 3: Consolidation of technical assistance needs in implementing the Convention.
90. Vietnam explained in its self-assessment that a basic difficulty for Vietnam in completing the self-assessment checklist was the requirement to reflect in a comprehensive manner the practical implementation of the Convention and to provide specific assessments on the effectiveness of anti-corruption legal instruments in Vietnam nearly two years since its ratification. Vietnam explained in its self-assessment that the cause of this difficulty is the fact that Vietnam only recently ratified the Convention, so the practical time for implementation is very short, and accordingly, progress in anti-corruption efforts could not be adequately reflected. It is also because of this reason, in order to ensure the continuity and inheritance of review process, that statistics and illustrations on the implementation of anti-corruption legal instruments in Vietnam were reflected in the self-assessment report mainly from 2005, when the Law on Prevention and Combating of Corruption was enacted, until the time of review.
91. On the other hand, when Vietnam prepared its self assessment report, the consolidated implementation of important anti-corruption policies and regulations of Vietnam, such as the Law on Prevention and Combating of Corruption 2005 and the National Strategy on Prevention and Combating of Corruption towards 2020, had just begun and was expected to be completed by March 2012. Therefore, it was considered impossible to come to a comprehensive and in-depth conclusion on the implementation of the Convention as well as other policies and regulations of Vietnam.

#### **D. Legal system of Vietnam**

92. The legal system of Vietnam is the written law system, which is mainly influenced by Marxist-Leninist political-legal theory. The legal system of Vietnam does not accept case law as a source of law. Regarding legal sources and the structure of laws, the legal system of Vietnam shares some similar characteristics with the common European legal system (Civil law). In structural aspects, the system of legislation includes legal norms, legal

institutions and branches of law. Unlike many other countries, the Vietnamese legal system is classified into specific branches, including: constitutional law; administrative law; finance and tax laws; laws on land use rights, and environment; labor law; civil law; commercial law; economic law; criminal law; legal proceedings such as civil proceedings; economic proceedings; criminal proceedings; and administrative proceedings. The definition of the structure of the legal system in Vietnam under the specific law branches is based on the subject and methods of regulation of each branch. For example, the administrative law's subjects of regulation are the administrative agencies, officials, civil servants and other agencies, entities, organizations or individuals involved in the administrative system. The method of regulation of the administrative law is based on the relationship of orders and obedience (in other words, there is an inequality between the subjects and objects of management). The subjects of regulation of civil law are individuals, legal entities and organizations participating in civil transactions, and the regulation method is based on the principle of equality and voluntary agreement between the subjects involved.

93. Vietnam's legal system is composed of a system of different legal documents, hierarchically and highly consistent. The system of legal documents are developed and issued by competent agencies following procedures determined by law (Law on Promulgation of legal normative documents). Among them, the Constitution has the supreme legal effect and is considered the basic and fundamental statute of the entire system of legal normative documents. Any other legal normative documents must not contradict the Constitution and other legal documents with higher legal effect. The legal normative documents are ranked in descending order of the legal effect, including:

1) The Constitution is enacted, amended and supplemented by the National Assembly. The Constitution stipulates regimes of politics, economy, culture, society, national defense, security, basic rights and obligations of citizens; structure, principles of organization and operation of state agencies, institutionalizes the relationship of the Party.

2) Laws and Codes (compared to Law, the Code has a broader scope of regulation) of the National Assembly stipulate basic issues in the field of economy, society, national defense, security, finance, monetary, budgetary, tax, ethnicity, religion, culture, education, health, science, technology, foreign relations, organization and operation of the state apparatus, civil service regime, workers, servants, the rights and obligations of citizens.

3) Resolutions of the National Assembly are enacted to determine the tasks of socio-economic development, the state budget and the allocation of central budget; adjust the state budget; approve budget balance; stipulate the work of the National Assembly, the National Assembly's Standing Committee, the National Council, Committees of the National Assembly, the delegations of National Assembly, and deputies to the National Assembly; and to ratify treaties.

4) Ordinances of the National Assembly's Standing Committee stipulate the issues assigned by the National Assembly. After a period of implementation, they are submitted to the National Assembly for consideration of whether to be issued as Laws or Codes.

5) Resolutions of the National Assembly's Standing Committee are promulgated to interpret the Constitution, laws, ordinances and instructions for operation of the People's

Council and to decide other matters under the jurisdiction of the National Assembly's Standing Committee.

6) Orders and decisions of the State President are issued to perform the tasks and powers of the State President as set out in the Constitution, laws and resolutions of the National Assembly, ordinances and resolutions of the National Assembly's Standing Committee.

7) Decrees of the Government are issued to provide detailed regulations to implement the laws and resolutions of the National Assembly, ordinances and resolutions of the National Assembly's Standing Committee and decisions of the State President; to provide specific measures to implement policies in the areas of economy, society, national defense, security and other issues under the scope of management and administration of the Government; to define the tasks, mandates and organizational apparatus of the ministries, ministerial-level agencies, government agencies and other agencies under the authority of the Government; to stipulate the necessary issues that do not meet sufficient requirements to build a law or an ordinance; and to meet the requirements of state management, economic management and social management. The promulgation of a decree must be approved by the National Assembly's Standing Committee.

8) Decisions of the Prime Minister are issued: to prescribe the measures to lead the operations of the Government and State administrative system from the central to grassroots levels; to prescribe the working mode with members of the Government, Chairmen of the People's Committees of provinces and cities under central authority and other matters under the jurisdiction of the Prime Minister; to prescribe the measures to direct and coordinate activities of members of the Government; and to examine the operation of ministries, ministerial-level agencies, government agencies and the People's Committees of all levels to implement the policies and laws.

9) Circulars of ministers and heads of ministerial-level agency are issued to provide detailed regulations to implement laws and resolutions of the National Assembly, ordinances and resolutions of the National Assembly's Standing Committee, orders and decisions of the State President, Government decrees and decisions of the Prime Minister; regulations on procedures and technical standards and norms of the sectors under their jurisdictions; specify measures to performing the management over the sectors of their jurisdiction and other matters assigned by the Government.

10) Resolutions of the Council of Judges of the Supreme People's Court are promulgated to guide the courts to apply the law uniformly.

11) Circulars of the Chief Judge Supreme People's Court are promulgated to implement the management over the local people's courts and military courts on organizational matters and to regulate other issues under the jurisdiction of the Chief Judge of the Supreme People's Court.

12) Circulars of the Chief Procurator of the Supreme People's Procuracy are issued to prescribe measures to ensure the performance of duties and powers of the Procuracy of the local and military People's Procuracies; regulate other matters under the jurisdiction of the Chief Procurator of the Supreme People's Procuracy.

13) Decisions of the State Auditor General are issued to regulate and guide the state auditing standards; regulate audit procedures, audit records.

14) Joint Resolutions between the National Assembly's Standing Committee or between the Government and central agencies of socio-political organizations are issued to guide the implementation of the legal issues relating to the participation of the socio-political organizations in the State management.

15) Circulars between the Chief Judge of the Supreme People's Court and the Chief Procurator of the Supreme People's Procuracy, as well as between ministers, heads of ministerial-level agencies, the Supreme People's Court and Supreme People's Procuracy are promulgated to guide the uniform application of law in the procedural activities and other issues related to the duties and powers of the agency.

16) Circulars between the ministers and heads of ministerial-level agencies are issued to guide the implementation of laws and resolutions of the National Assembly, ordinances and resolutions of the National Assembly's Standing Committee, decisions of the State President, and decrees and decisions of the Prime Minister related to the functions, duties and powers of those ministries and ministerial-level agencies.

17) The contents, authorities, forms, orders and procedures to issue a legal normative document of People's Councils, People's Committee are pursuant to the Law on Promulgation of legal normative documents of the People's Council, People's Committee.

## **E. Political system of Vietnam**

94. The political system of Vietnam is understood as a system of political, socio-political and other social institutions, including the Communist Party, the Government, the Vietnam Fatherland Front, the mass citizen organizations and socio-political organizations. Principles and mechanisms for the operation of the whole political system of Vietnam are put under the leadership of the only party, that is the Communist Party of Vietnam, for the target of a fair, democratic and civilized society.

95. Article 4 of the Constitution of the Socialist Republic of Vietnam stipulates that: "The Communist Party of Vietnam, the pioneer of the working class of Vietnam, the faithful representative of the interests and rights of the working class, of working people and of the whole nation, following Marxism - Leninism and Ho Chi Minh's thoughts, is the force leading the State and society. All organizations of the Party operate within the framework of the Constitution and laws".

### ***The Communist Party of Vietnam***

96. Vietnam's Communist Party is the ruling party whose organizations and operations are based on the principle of democratic centralism. The Party leads the political system, and at the same time is a part of that system. The highest organ of power is the National Congress, which is held every 5 years. The Congress elects the Central Executive Committee, which in turn elects the Politburo and General Secretary. Every citizen of Vietnam from 18 years of age, if he or she voluntarily joins the Communist Party of Vietnam and if he/she has enough qualifications, can be considered to be allowed to join the Party. A new Party member must undergo a trial period of at least one year before

being able to be recognized as an official member of the Party. Until this time, he/she is able to obtain the right to vote, to participate in elections and to apply to elections as a candidate in the Party. The Communist Party of Vietnam has undergone 11 Congresses.

### *System of agencies under the State apparatus*

97. The system of agencies under the State apparatus is organized based on the principle of socialist collective power. Article 2 of the Constitution stipulates that: “The State of the Socialist Republic of Vietnam is the socialist rule-of-law state of the people, by the people, for the people. All State power belongs to the people and the basis is the alliance among the working class and the peasantry and the intelligentsia. The state power is unified, with the assignment and coordination among state agencies in implementing the legislative, executive, judiciary powers”.
98. Article 6 of the Constitution stipulates that: “People use the state power through the National Assembly and the People’s Councils which are the representatives for the will and aspirations of the people, elected by the people and bear responsibility to the people. The National Assembly, the People’s Councils and other agencies of the State organize and operate under the principle of democratic centralism.” The structure of the State apparatus of Vietnam includes the National Assembly, the State President, The Government, the People’s Councils and Committees of all levels, People’s courts of all levels, People’s Procuracy of all levels.
99. National Assembly: The National Assembly is the highest representative body of the people, the highest organ of power of the Socialist Republic of Vietnam. The National Assembly has the functions of setting up constitutions and legislations, supremely supervising over all operational activities of the State and deciding fundamental policies on internal and external, socio-economic, defense and security tasks, major principles on organization and operation of the State apparatus, social relations and activities of citizens. The term of the National Assembly is five years, operating through meeting sessions, twice a year. National Assembly deputies are citizens of Vietnam, from 21 years of age, of good character, qualified, competent and elected by the voters by confidence with the total number of not more than 500 deputies. National Assembly deputies are tasked to participate in the meeting sessions of the Congress during its term; have the right to submit proposals on laws, bills and draft ordinances to the National Assembly and the National Assembly’s Standing Committee; and have the right to question the State President, National Assembly, Prime Minister and Government members, Chief Judge of the Supreme People’s Court, Chief Procurator of the Supreme People’s Procuracy. Chairman and Vice Chairmen of the National Assembly are elected by the Congress in the first session of each term. The National Assembly’s Standing Committee is the standing organ operating between two terms of the Congress. The National Assembly’s Standing Committee has the right to supervise the implementation of the Constitution, laws and resolutions of the National Assembly, ordinances and resolutions of the National Assembly’s Standing Committee; monitoring activities of the Government, the Supreme People’s Court, and the Supreme People’s Procuracy; issuing ordinances, interpreting the Constitution, laws, ordinances, and decisions to conduct overall or local mobilization of soldiers, claims on urgent situation throughout the country or in localities and other tasks. The Congress has one council, that is the National Council. At the same time, the Congress also consists of nine functional committees, including a Legal Committee, Judiciary Committee, Economic Committee, Committee for Finance and Budget,

Committee for Defense and Security, Committee for Culture, Education and Youth, Teenagers and Children, Committee on Social Affairs, Committee on Science, Technology and Environment, Committee on Foreign Affairs.

100. **State President:** The State President is the Head of State, elected among the National Assembly deputies by the National Assembly to act on behalf of the Socialist Republic of Vietnam in terms of internal and external relations. The Constitution of the Socialist Republic of Vietnam clearly stipulates that the State President has 12 tasks, the most important of which is to proclaim the Constitution, laws and ordinances; dominate the people's armed forces and hold the position of President of Council of National Defense and Security; and request the National Assembly to elect and dismiss the Vice State President, Prime Minister, Chief Judge of the Supreme People's Court, and the Chief Procurator of the Supreme People's Procuracy. The assisting organization to the State President includes Vice-State Presidents, the Council for National Defence and Security, and the Office of the President. Vice State Presidents are elected among the National Assembly deputies by the National Assembly based on proposal of the State President. Vice State Presidents assist the President to implement his tasks and may be authorized by the State President to do some tasks or to be acting State President. The mechanism assisting the State President in conducting his work is the Office of the State President.
101. **The Government of Vietnam:** The Government is the executive organ of the National Assembly, the highest State administration organ of the Socialist Republic of Vietnam. The Government of Vietnam is under the supervision of the National Assembly and reports its work to the National Assembly, the National Assembly's Standing Committee and the State President. The Government includes the Prime Minister, Deputy Prime Ministers, ministers and other members of the Government. Among them, the Prime Minister is elected among the National Assembly deputies of the five-year term and dismissed by the National Assembly based on the State President's proposal. The Deputy Prime Ministers are approved by the National Assembly based on the proposal of the Prime Minister; they work under the assignment of tasks by the Prime Minister and one of them can be authorized by the Prime Minister to act on his behalf in case of absence. The ministers and heads of ministerial-level agencies are approved by the National Assembly based on the proposal of the Prime Minister and perform the functions of State management over branches or fields of work assigned.
102. **People's Councils at all levels:** People's Councils at all levels are the organ of State power at the localities, representing the wills, aspirations and ownership of the people, are elected by local people and bear responsibility to the local people and superior State agencies. The People's Councils are divided into three administrative levels, including: central cities and provincial level; districts, towns and provincial cities; and communes, wards and townships.
103. **People's Committees at all levels:** People's Committees at all levels are elected by the People's Council and are the executive organ of the People's Council and the State administrative bodies at localities, responsible for implementation of the Constitution, laws and legal documents of the superior State agencies as well as the resolutions of the People's Council. Similar to the People's Councils at all levels, the People's Committees are also divided into three administrative levels, including: central cities and provinces level; districts, towns and provincial cities; and communes, wards and townships.

104. People's courts at different levels: The Supreme People's Court, the local people's courts (district and province), the Military Court (the central level, military-grade zones and regional level and other courts as stipulated by laws) are the judicial authorities of the Socialist Republic of Vietnam. The Supreme People's Court is the highest judicial body of the Socialist Republic of Vietnam and is competent to supervise the trials by the local people's courts and military courts. The Chief Judge of the Supreme People's Court bears the responsibilities and reports on their activities to the National Assembly. When the National Assembly does not hold regular meetings, the Chief Judge is responsible and reports to the National Assembly's Standing Committee and the State President. Chief judges of the local courts are responsible for reporting their work to the people's council and answer questions of the People's Council.
105. People's Procuracy at different levels: The system of prosecution agencies includes the Supreme People's Procuracy, local People's Procuracies (provincial and district) and the Military Procuracies (the central level, military-grade zones and regional level), having the authority to exercise the rights of prosecution and control judiciary activities within the scope of responsibilities stipulated by law. People's Procuracies are headed by a chief procurator. The chief procurators at lower levels are under the leadership of the chief procurator at higher levels. The chief procurators of the local people's procuracies and military's procuracies of all levels are under the leadership of the Chief Procurator of Supreme People's Procuracy. The Chief Procurator of the Supreme People's Procuracy bears responsible and reports to the National Assembly. When the National Assembly does not hold meetings, the Chief Procurator bears responsibilities and reports to the National Assembly's Standing Committee and the State President. Chief procurators of local People's Procuracies are responsible for local work and report to People's Councils and answer questions of the People's Councils.
106. Vietnam Fatherland Front: Vietnam Fatherland Front is a political coalition organization, a voluntary union of political organizations, socio-political organizations, social organizations and individuals representing various social classes, ethnics, religions and Vietnamese people settling in foreign countries. Vietnam Fatherland Front and its affiliates are the political basis of the people's government. The Front promotes the tradition of national unity, strengthening of political consensus and the spirit of the people involved to build and strengthen the people's government, together with the State to care for and protect the legitimate interests of people, motivate people to exercise their rights to ownership and to strictly obey the Constitution and laws. It also supervises the activities of State agencies, elected representatives and officials and State employees.
107. The Trade Union: The Trade Union is a socio-political organization of the working class and of workers. Together with State agencies, economic organizations, social organizations, the Trade Union takes care to protect the interests of staff, employees, officers and other types of workers, takes part in the state and social management work, participates in supervising the activities of State agencies and economic organizations, and educates officials, workers and employees to build and defend their motherland.
108. Other social-political organizations, social organizations, and other professional-social organizations: In addition to the Fatherland Front and the Trade Union, in Vietnam currently, there are a number of other political and social organizations, such as the Women Association, Youth, Veterans, and other industrial associations. These organizations have played an important role in the liberation of the country. In the reforms

and industrialization and modernization, social institutions are making important contributions to transferring the policies of the Party and Government of Vietnam into practice.

## **F. Previous assessments of anti-corruption measures**

109. National assessments on the effectiveness of anti-corruption policies and regulations of Vietnam have been conducted on regular basis in the following forms:
- periodic or irregular inspections by State management agencies on the implementation of the laws on anti-corruption;
  - assessments by supervision of the National Assembly over anti-corruption work;
  - social surveys and research on the situation of corruption and anti-corruption work (this is done by State management bodies, socio-political organizations or other international organizations and donors);
  - consolidated reviews of the implementation anti-corruption policies and legal documents.

### ***Inspections and examination of the implementation of anti-corruption laws in Vietnam***

110. Under the provisions of Articles 59, 60, 61 and 76 of Vietnam's Law on Prevention and Combating of Corruption and Articles 27 to 37 of Decree No. 120/2006/ND-CP of 20 October 2006, which stipulates in detail and guides the implementation of several articles of the Law on Prevention and Combating of Corruption, the examination and inspection of the implementation of laws on anti-corruption shall be carried out by the State management agencies on a regular or periodic basis. The purposes of examination and inspection are to review, evaluate and take measures to ensure the strictly obedience to the rules of law on anti-corruption of agencies, organizations, units and individuals.
111. The examination of the implementation of the anti-corruption law focuses on reviewing and evaluating the implementation of the provisions of the Law on Prevention and Combating of Corruption and related regulations on anti-corruption. The examination reviews the responsibilities of the agencies and organization authorities, units and individuals in implementing the law on anti-corruption and proposes measures to handle infringement or measures to enhance effective, efficient implementation of the law on anti-corruption. Regarding the methods of inspection, the examination is conducted by the agencies, organizations or units of higher level towards the agencies, organizations, entities, affiliates or individual of lower levels based on the program or plan approved by competent authorities or when the signs of violation of anti-corruption laws are detected.
112. The inspection of the implementation of the anti-corruption laws focuses on reviewing and evaluating the implementation of anti-corruption laws of agencies, organizations, units on specific aspects, including:
- publicity and transparency in the operation of the agencies, organizations and units;
  - development and implementation of regimes, norms and standards; code of conduct, ethics rules, the switch of positions of staff and public servants, officials;
  - transparency of assets, income;
  - other provisions on anti-corruption; review and conclude on the responsibility of the heads of agencies, organizations, units in organizing and directing the implementation of legal provisions on anti-corruption.

Regarding the methods of inspection, following an annual inspection plan which has been approved by the heads the agencies of the same level, or under request by the heads of agencies of the same level, or when the signs of violation of anti-corruption regulations are detected, the inspection agencies of all sectors and all levels begin inspecting the enforcement of the anti-corruption laws are of other agencies, organizations, units under the management of the State management agencies of the same level or of the direct subordinate agencies.

113. Some initial results of the examination and inspection work on the implementation of anti-corruption laws are the following. According to the provisions of the Law on Prevention and Combating of Corruption and the documents guiding the implementation in Vietnam, the results of the inspection on the national scale will be consolidated and included in the report of the Government of Vietnam on anti-corruption work every six months or annually. For example, according to the report on anti-corruption work of the Government in 2009, the results of examination and inspection on the implementation of anti-corruption laws showed 200 cases of violation in the exercising regime, norms and standard with a total value of 16.5 billion Vietnamese Dong (VND); 187 cadres and civil servants were administratively disciplined; 13 staff and public officials were charged with criminal punishment; 211 staff and public officials were required to return gifts to the agencies, organizations and units in a total amount of 55.55 million VND; and 121 staff were detected to have violated the codes of conduct.

***Assessments by supervision of the National Assembly over anti-corruption work***

114. Annually, the National Assembly considers reports by the Government on anti-corruption work and National Assembly deputies make relevant inquiries. The National Assembly's Standing Committee organizes missions to conduct on-site thematic supervisions on anti-corruption work and the National Assembly's Judicial Committee verifies the Government's report and also supervises the detection and handling of corruption cases. Since 2007, the National Assembly's Judicial Committee has conducted four verifications on the Government's report in 2007, 2008, 2009 and 2010. In its verification reports, the Committee has provided objective and independent assessments on the corruption situation and anti-corruption work all over the country. These reports are presented in National Assembly meetings or circulated to National Assembly deputies for discussion at discussion sessions on the social-economic situation. In general, the reports of the National Assembly's Judicial Committee have obtained high consensus and been highly appreciated by Assembly deputies.

***Assessment of the implementation of anti-corruption laws through social surveys and research on the situation of corruption and anti-corruption (conducted by State management agencies, socio-political organizations or other international organizations and sponsors):***

115. During the past years, several activities have been conducted to evaluate the implementation of the anti-corruption law, such as: diagnostic studies of corruption in Vietnam (from 2004 to 2005 by the Central Party's Committee of Internal Affairs with the assistance of the International Development Agency of Sweden and the World Bank); assessment on the implementation of the Law on Prevention and Combating of Corruption in Vietnam with situation research on the construction industry (May 2009 by a group of local and international experts with the assistance of the International Development

Agency of Denmark); survey on the risk of corruption in the medical field (November 2009 conducted by a consultant group in the framework of the 6<sup>th</sup> Anti-corruption Dialogue); survey on the risk of corruption in education sector (May 2010 by a group of consultants within the framework of 7<sup>th</sup> Anti-corruption Dialogue); survey on corruption risks in the areas of land (November 2010 by a consultant group in the framework of 8<sup>th</sup> Anti-corruption Dialogue); and survey on corruption risks in the areas of management and exploitation of minerals (May 2011 by a consultant group in the framework of 9<sup>th</sup> Anti-corruption Dialogue).

***Assessing the effectiveness of anti-corruption measures through consolidated reviews of the implementation of anti-corruption policies and legal documents***

116. At present, the Government Inspectorate is taking the lead role, in coordination with line ministries, to conduct a consolidated review of the five-year Action Plan to Implement the 2005 Law on Prevention and Combating of Corruption, in connection with a review of the first stage of implementation of the National Strategy on Prevention and Combating of Corruption towards 2020.
117. Although there have not been any comprehensive assessments on the effectiveness of anti-corruption measures and the consolidated anti-corruption policies and legal documents to date, Vietnam has previously undertaken a review of its regulations on transparency of assets and income. The method was based on reports of ministries, sectors and administrative levels and delivered questionnaires to officials, public servants and different management levels on the implementation of rules on transparency of assets and income. The review identified some weaknesses in the legal provisions, such as: an exemption from the declaration requirement for people studying or working long-term abroad or having changed their working positions; the extent and type of declared properties do not reflect fully the property and income of declaring persons; the scope of declaration is only limited to the property of spouses and minor children, which has created loopholes allowing the transfer of property to adult children who are not subject to declaration; the lack of measures to verify the accuracy of the declaration of assets and income, a lack of specific regulations to handle false declarations of property, and the lack of a mechanism to verify the actual value and the origin of property and income.

***Assessing the effectiveness of anti-corruption measures is always linked to the assessments on the situation and causes of corruption in Vietnam***

118. Regarding assessments of the corruption situation in Vietnam, in 2006 a Resolution of the 3<sup>rd</sup> meeting of the Party's Central Executive Committee of tenure X, dated 21 August 2006 on Enhancing the leadership of the Party towards the work of anti-corruption and anti-wastefulness indicates that: "Corruption and wastefulness are still happening seriously in many sectors, levels and areas with a wide scope and complicated nature, resulting in bad consequences on many aspects, eroding confidence of the people, and is one of the big threats to the existence of our Party and regime". Most recently, in January 2011, Resolution of the XI<sup>th</sup> National Party Conference also recognizes that: "red tape, corruption, wastefulness, crimes, social evils, degrading of morality and lifestyle have not been prevented and rolled back... Red tape and the corruption situation are still serious, eroding the trust of the people in the Party and State".

119. Regarding the causes of corruption in Vietnam, some recent official reports and studies have indicated several causes of corruption, as well as of shortcomings in anti-corruption work, which can be summarized as follows:

- Policies and laws are not perfect and synchronized. There are still many loopholes which need to be adjusted and supplemented, especially in the areas vulnerable to corruption such as land use and management, basic construction investment, management of mineral and natural resources, and equitization of State owned enterprises;
- The organization and operation of the political system in general and of the State apparatus in particular still contain many weak points, and their quality and effectiveness have not been high enough. The functions, responsibility and mandates of several agencies and organizations are not clearly defined and are overlapping or scattered.
- Many agencies, organizations and their heads are not fully aware of the seriousness and the danger of corruption and wastefulness. As a result, their leadership is not strong, there is a lack of objectiveness in the implementation process and a lack of supervision, or they even tolerate and conceal corruption and wastefulness. The people and the collective strength of whole political system have not been adequately relied on and promoted.
- Personnel affairs in general and the training and education of public servants are still weak. Political thoughts, moral quality and lifestyle of a considerable part of party members and public officials have been degraded. Many leaders holding key positions in sectors and branches, including senior leaders, have not been examples of moral quality and leadership in the fight against corruption and wastefulness.
- Corrupt acts are increasingly sophisticated, complicated and occurring in almost all areas of social life. Corrupt persons hold positions of power, and the detection and handling of corruption thus faces many difficulties and requires high determination and effectiveness. In addition, it is necessary to enact new anti-corruption mechanisms, policies and solutions and more time is needed to see their effects. In order to have a comprehensive and in-depth assessment on the corruption situation and anti-corruption work in Vietnam at this stage, and to compare changes in comparison to previous stages, the forthcoming Report on the Consolidation of implementation of 2005 Law on Prevention and Combating of Corruption and the forthcoming Report on the Review of the first stage implementing the National Strategy on Prevention and Combating of Corruption towards 2020 will have more detailed and official assessments.

120. A summary of relevant anti-corruption policies and legal documents was provided to the reviewers.

## **G. Implementation of selected articles**

### Chapter III. Criminalization and law enforcement

121. A general observation related to the implementation of Chapter III of UNCAC in Vietnam is that the relevant criminal legislation appears to be applicable generally to two different categories of persons: for some offences, the prohibited acts apply to all persons while for others only certain persons “holding positions and powers” are covered. For

example, Article 1 of the 2005 Law on Prevention and Combating of Corruption prescribes that corruption is an act committed by a person holding a position and having power who has abused his or her position and/or power for undue benefits. In this context, people holding positions and powers include: a) cadres, public officials and servants; b) military officers, professional military personnel, military workers in agencies and/or units under the People's army; operational commissioned and non-commissioned officers, technical-professional commissioned and non-commissioned officers in agencies and units under the People's Public Security; c) leaders and managers in State-owned enterprises; leaders and managers who represent the contributed capital of the State in enterprises; and d) persons who are assigned to perform a task or an official duty and have power in performing that task or official duty. In other parts the Penal Code applies to all "persons".

122. During the country visit, Vietnamese officials clarified that the concept of "persons holding positions and powers" under Vietnamese law applies to all categories of persons enumerated in article 2 of the Convention, which defines the term "public official," and applies equally to persons elected and appointed to positions of power.

## **Article 15 Bribery of national public officials**

### **Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

123. Vietnam indicated that it has partially implemented the provision under review. Vietnam's Penal Code stipulates the offence of giving bribes in Article 289 (see attached Annex citing legal documents). Accordingly, anyone giving bribes of two million VND or more, or less than 2 million Dong but causing serious consequences or repeated violations, will be charged with criminal liability. The bribes are limited to money, property or other material benefits (i.e. benefits valued in money). Also, as specified in Article 277 of the Penal Code of Vietnam, the violated object of the offence is the proper functioning of the agencies and organizations. As a result, the objective behavior of offering bribes is understood as the offering or requesting the offering of money, property or other material benefits to people who hold certain positions and powers so that they do or not do something as requested or for the benefits of the person giving bribes.

124. Based on the above provisions, Vietnamese officials explained that, objectively, the offence of offering bribes is completed when there is an act of bribe giving. Therefore, even in cases where someone makes a promise or suggests to offer bribes, and there is evidence to prove that it would cause the public servant to act or refrain from acting in the process of the conduct of his civil service, he/she would be charged with criminal liability for the offence of preparing to commit crime (in case the crime is of a serious and especially serious type, as specified in paragraphs 3 and 4, Article 289 and Article 17 of the Penal Code) or an incomplete offence (Article 18, Penal Code). Also, according to

Article 277, persons holding positions as mentioned above are those who have been appointed, elected, contracted or recruited in other forms, paid or unpaid, are assigned to perform certain public services, and possess certain powers while performing official duties.

125. Regarding statistics of first instance judgments of the courts, Vietnam provided the following: 2005: 30 cases/41 accused persons; 2006: 47 cases/78 accused persons; 2007: 38 cases/44 accused persons; 2008: 41 cases/85 accused persons; 2009: 26 cases/47 accused persons, and 2010: 14 cases/24 accused persons (source: General Statistic Department, Supreme People's Court).
126. To more fully implement the provision under review, Vietnam explained that comprehensive amendments to the Penal Code have been scheduled in the Law-making Programme of the National Assembly in its tenure XIII.

**(b) Observations on the implementation of the article**

127. Vietnam has partially addressed the obligations of this provision, although the reviewers noted that statistics are limited to first instance judgments of the courts through 2010. Note is also made of paragraph 6 of Article 289 of the Penal Code, according to which persons who “are coerced to offer bribes but take initiative in reporting them before being detected may be exempt from penal liability and have part of or the entire property offered as bribes returned.”
128. During the country visit, Vietnamese officials clarified that the offence of preparing to commit crime covers the promise and offer of bribery, though there are small distinctions. A person who promises or offers to give a bribe could be charged under the preparation offence.
129. The process to fully implement the bribery provisions through amendments to the Penal Code is a long-term process in Vietnam, with some measures being implemented through 2015 and others through 2020. As of the date of finalization of the country review report, the revision process for the Penal Code had begun, and a stock-taking review of its implementation at the national level was being carried out with an aim to fully implement the Convention.
130. The reviewers recommended that it is necessary to broaden the definition of bribery in the Vietnamese law, since it is limited to material benefits only. Therefore, they suggested that legal assistance might be useful, i.e. regarding intangible benefits.

**Article 15 Bribery of national public officials**

**Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

131. Vietnam indicated that it has partially implemented the provision under review. Vietnam's Penal Code stipulates the offence of taking bribes in Article 279. Accordingly, people who have abused their positions and powers, directly or through intermediaries, have received or will receive money, property or other material benefits in any form with a value of two million VND or more, or under two million Dong but causing serious consequences, or have received administrative discipline for this behavior or convicted of crimes of corruption without a dismissal of the criminal records where they continue to commit, to do or not do something for the benefit or at the request of the bribe giver, will be charged with criminal liability. Similar to the offence of giving bribes, the violated object of the offence of taking bribes is the proper functioning of the agencies and organizations. As a result, the object behavior of taking bribes is understood as receiving (having received or to be received) money, property or material benefits in any form by persons holding powers to do or not do a thing at the request, or for the benefit of, the bribe giver.
132. Based on this provision, Vietnamese officials explained that, objectively, the offence of taking bribes is constituted when there is an act to take or accept to take bribes. Also, as specified in Article 279, the behavior of demanding bribes is considered an aggravating factor when determining the criminal liability of the bribe taker. According to Article 277, persons holding positions as mentioned above are those who have been appointed, elected, contracted or recruited in other forms, paid or unpaid, are assigned to perform certain public services, and possess certain powers while performing official duties.
133. Regarding statistics of first instance judgments of the courts of the offence of receiving bribes from 2005-2010, Vietnam provided the following: 2005: 24 cases/62 accused persons; 2006: 34 cases/85 accused persons; 2007: 46 cases/113 accused persons; 2008: 32 cases/127 accused persons; 2009: 25 cases/55 accused persons and 2010 16 cases/36 accused persons (source: General Statistic Department, Supreme People's Court).
134. To more fully implement the provision under review, Vietnam explained that comprehensive amendments to the Penal Code have been scheduled in the Law-making programme of the National Assembly in its tenure XIII.

**(b) Observations on the implementation of the article**

135. Vietnam has partially addressed the obligations of this provision, although the reviewers noted that statistics are limited to first instance judgments of the courts through 2010.
136. During the teleconference and the country visit it was clarified that the concept of "people" as used in the penal code includes public officials.
137. The process to fully implement the bribery provisions through amendments to the Penal Code is a long-term process in Vietnam, with some measures being implemented

through 2015 and others through 2020. As of the date of finalization of the country review report, the revision process for the Penal Code had begun, and a stock-taking review of its implementation at the national level was being carried out with an aim to fully implement the Convention.

138. The reviewers recommended that it is necessary to broaden the definition of bribery in the Vietnamese law, since it is limited to material benefits only. Therefore, they suggested that legal assistance might be useful, i.e. regarding intangible benefits. This should be considered a priority area during the revision of the Penal Code.

**(c) Challenges related to article 15**

139. Vietnam has identified the following challenge in fully implementing article 15:

1. Inadequacy of existing normative measures (constitution, laws, regulations, etc.). Vietnamese law only stipulates bribes in the form of material benefits, and criminal liabilities as well as the frame for penalties are decided corresponding to the value of the bribe. Thus, if the bribes are intangible benefits, the definition and determination of criminal liability will encounter certain difficulties. For example, business owner A promises to find a job for the son/daughter of official B, so that official B approves a real estate project for business A. In this case, the determination of criminal liability of the business owner A would lack a legal basis under existing Vietnamese law. In addition, in trial practices difficulties also occur in gathering evidence when the bribery giver has made only a promise or suggestion, and it is difficult to prove the relationship between that objective behavior and the act or refrain from acting in the exercise of official duties of persons holding public office. This issue draws the attention of many legal scientists and practitioners of Vietnam, who desire to integrate into the amended Penal Code a regulation on bribes, including intangible benefits, in order to facilitate the charges of criminal liability and ensure a consensus with the 2005 Law on Prevention and Combating of Corruption.

In addition, the Penal Code of Vietnam does not regulate the act of a person promising or offering a bribe to a person holding position and power in cases where less serious offences or serious offences are involved. Article 8, paragraph 3 stipulates that less serious offences are offences which generate a not very great danger for society and the maximum sanction for these offences is less than 3 years of imprisonment; serious offences are those which generate a great danger for society and the maximum sanction for these offences is 7 years of imprisonment.

**(e) Technical assistance needs related to article 15**

140. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Model legislation
2. Summary of good practices/lessons learned

None of these forms of technical assistance have been provided to date.

141. The reviewers suggested that legal assistance might be useful to broaden the definition of bribery in the Vietnamese law, so as to cover also intangible benefits and not only material benefits.

## **Article 16 Bribery of foreign public officials and officials of public international organizations**

### **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

142. The Penal Code of Vietnam has provisions on the offence of giving bribes but only covers bribes given to persons holding positions and powers in the State apparatus. The Code does not provide for the application to foreign public officials or officials of public international organizations. Article 277 of the Penal Code provides that “position-related offences are acts that violate proper functioning of agencies and organizations, conducted by persons holding position in their performance of public duties”. Thus, the object protected by the provisions on bribery is normally understood as only the proper functioning of agencies and organizations within the State apparatus of Vietnam. However, as indicated, Vietnam’s Penal Code stipulates the offence of giving bribes in Article 289. Vietnam’s Penal Code also stipulates in Article 5 that the Penal Code is applied to any offences committed within the territory of the Socialist Republic of Vietnam. For foreigners committing crimes in the territory of the Socialist Republic of Vietnam who enjoy diplomatic immunity or consular privileges and immunities under the laws of Vietnam, according to international treaties that the Socialist Republic of Vietnam has signed or joined, or according to international practice, the matter of their criminal liability is settled through diplomatic channels. Article 6 of the Penal Code of Vietnam also stipulates that foreigners who commit crimes outside the territory of the Socialist Republic of Vietnam can be prosecuted criminally under the Penal Code of Vietnam in the circumstances set out in the international agreements which the Socialist Republic of Vietnam has signed or acceded to. As specified in Article 277 of the Penal Code, the object of offering bribes is the proper functioning of the agencies and organizations.

143. Currently, the term “agency or organization” has not been explained in detail, but can be understood to include agencies and foreign organizations in Vietnam or international organizations, unless the international treaties that the Socialist Republic of Vietnam has signed or participates in have other stipulations. Thus, Vietnamese officials stated that Vietnam has met, to a certain extent, the requirements specified in paragraph 1, article 16 of the Convention.

144. To more fully implement the provision under review, Vietnam explained that comprehensive amendments of the Penal Code have been scheduled in the Law-making Programme of the National Assembly in its tenure XIII.

#### **(b) Observations on the implementation of the article**

145. There is partial compliance with the obligations of this provision. However, the relevant provision of the Penal Code should clarify that the term “agency or organization” includes foreign agencies and organizations.

146. The reviewers observed the need to have an explicit provision in the Penal Code to address corruption by foreign officials and officials of public international organizations.

## **Article 16 Bribery of foreign public officials and officials of public international organizations**

### **Paragraph 2**

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

147. The Penal Code of Vietnam has provisions on the offence of giving bribes but only covers bribes given to persons holding positions and powers in the State apparatus. Article 277 of the Penal Code provides that “position-related offences are acts that violate proper functioning of agencies and organizations, conducted by persons holding position in their performance of public duties”. Thus, the object protected by the provisions on bribery is normally only the proper functioning of agencies and organizations within the State apparatus of Vietnam. However, as indicated, the Penal Code of Vietnam has provisions on receiving bribes in Article 279. It is also stipulated in Article 5 of the same Code that the Code applies to all acts of criminal offences committed in the territory of the Socialist Republic of Vietnam. For foreigners committing crimes in the territory of the Socialist Republic of Vietnam who enjoy diplomatic immunity or consular privileges and immunities under the laws of Vietnam, according to international treaties that the Socialist Republic of Vietnam has signed or joined, or according to international practice, the matter of their criminal liability is settled through diplomatic channels. Article 6 of the Penal Code of Vietnam also stipulates that foreigners who commit crimes outside the territory of the Socialist Republic of Vietnam can be prosecuted criminally under the Penal Code of Vietnam in the circumstances set out in the international agreements which the Socialist Republic of Vietnam has signed or acceded to. Thus, by reference to Article 279 of the Penal Code, the acceptance of bribes by a foreign public official or an official of a public international organization is subject to criminal liabilities. Pursuant to Article 277, the object of bribery acceptance is the legitimate activities of agencies and/or organizations. At present, the term “agencies, organizations” has not been defined; however, they can be construed to include foreign agencies and organizations in Vietnam or public international organizations, unless otherwise set forth in the international treaties which the Socialist Republic of Vietnam has signed or acceded to. Thus, Vietnamese officials stated that Vietnam has met, to a certain extent, the requirements specified in paragraph 2, article 16 of the Convention.

148. To more fully implement the provision under review, Vietnam explained that comprehensive amendments of the Penal Code have been scheduled in the Law-making Programme of the National Assembly in its tenure XIII.

**(b) Observations on the implementation of the article**

149. There is partial compliance with the obligations of this provision.

150. During the teleconference and the country visit it was observed that the concept of acceptance of bribes by a foreign public official or an official of a public international organization pursuant to Article 279 of the Penal Code does not encompass the solicitation of bribes as required by the Convention.

151. The reviewers observed the need to have an explicit provision in the Penal Code to address corruption by foreign officials and officials of public international organizations. This should be considered a priority area during the revision of the Penal Code.

**(c) Challenges related to article 16**

152. Vietnam has identified the following challenge in fully implementing article 16:

1. Inadequacy of existing normative measures (constitution, laws, regulations, etc.). As analyzed in regard to article 15 of the Convention, Vietnamese law only stipulates bribes in the form of material benefits, and criminal liabilities as well as the frame for penalties are decided corresponding to the value of the bribe. Thus, in the case where bribes are intangible, it would be difficult to determine and impose criminal liabilities. In trial practices, difficulties also occur when the alleged offender has agreed only to receive the bribe in collecting evidence for conviction and verifying the relation between that objective behavior and the act or refrain from acting in the exercise of official duties of persons holding public office.

**(e) Technical assistance needs related article 16**

153. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Other assistance: Conducting surveys and developing thematic reports on this issue.
2. Model legislation
3. Summary of good practices/lessons learned.

None of these forms of technical assistance have been provided to date.

**Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

**(a) Summary of information relevant to reviewing the implementation of the article**

154. Embezzlement, misappropriation or other diversion of property by a public official is stipulated in Articles 278 and 280 of the Penal Code of Vietnam. In accordance with Article 278, those who abuse their positions and/or powers to appropriate property that they have the responsibility to manage and that is valued at not less than two million VND, or less than 2 million Dong but causing serious consequences, as well as offenders who have been disciplined for such acts but continue to commit them and those committing the offence more than once shall be subject to criminal liability. As far as the subject is concerned, the mental element for this offence is direct intent. Similarly, pursuant to Article 280, those who abuse their positions and/or powers to appropriate the property of other persons which is valued at not less than two million Dong, or less than two million Dong but causing serious consequences, as well as offenders who have been disciplined for such acts or convicted of corruption charges but continue to commit them shall be subject to criminal liability. As far as the subject is concerned, the mental element for this offence is also direct intent. Thus, Vietnamese officials stated that Vietnam's criminal laws have a broader scope in terms of the objective aspect of the offence than required by article 17 of the Convention. Accordingly, the object of infringement can be property directly or indirectly under the management of the person committing the criminal act.

155. Regarding statistics of first instance judgments by courts of all levels for the offence of abuse of positions and powers to appropriate assets pursuant to Article 280 of the Penal Code from 2005-2010, Vietnam provided the following: 2005: 163 cases/263 accused persons; 2006: 227 cases/450 accused persons; 2007: 56 cases/97 accused persons; 2008: 39 cases/69 accused persons; 2009: 66 cases/99 accused persons and 2010: 49 cases/75 accused persons (source: General Statistic Department, Supreme People's Court).

**(b) Observations on the implementation of the article**

156. There is adequate compliance with the provisions of this article.

157. During the country visit it was clarified that the term "those" is defined in Article 277 of the Penal Code and includes people holding positions and power, that is persons elected, assigned, contracted, paid or unpaid, holding some position or power during their term of office.

**Article 18 Trading in influence**

**Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

**(a) Summary of information relevant to reviewing the implementation of the article**

158. Vietnamese officials explained that Article 289 of the Penal Code on bribe offering partially implements the requirements of subparagraph (a) of article 18 of the Convention.

The limitations are that Article 289 does not describe the act of “bribe giving” as subparagraph (a) of article 15 of the Convention does, but only provides general provisions on “who gives the bribes”. Therefore, when applying Article 289 of the Penal Code of Vietnam, the proceeding agencies have to refer to the elements determining the offence of receiving bribes described in Article 277 of the Penal Code to determine the elements of the offence of giving bribes. Moreover, bribes only include money, assets or other material benefits (i.e., monetary equivalent benefits) and do not cover any other “undue advantage”, as required by the Convention. Furthermore, the act of promising or offering the briber is only considered complete when the person holding an office agrees to receive the bribe.

159. To more fully implement the provision under review, Vietnam explained that comprehensive amendments of the Penal Code have been scheduled in the Legislation Development Plan of the National Assembly tenure XIII.

**(b) Observations on the implementation of the article**

160. There is insufficient compliance with the obligations under this article, since the current applicable law does not entirely cover all aspects related to the subject of trading in influence.

**Article 18 Trading in influence**

**Subparagraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

**(a) Summary of information relevant to reviewing the implementation of the article**

161. Article 283 (Abusing positions and/or powers to influence other persons for personal benefits) and Article 291 (Taking advantage of one’s influence over persons holding offices and powers for personal benefits) of the Penal Code. Vietnamese officials explained that these articles have certain limitations as compared with the provision under review in that they only cover money, assets or material benefits, and not non- material benefits.

162. Regarding statistics of first instance judgments by courts of all levels for the offence of taking advantage of positions and powers when conducting public duties from 2005-2010, Vietnam provided the following: 2005: 10 cases/32 accused persons; 2006: 23 cases/69 accused persons; 2007: 25 cases/132 accused persons; 2008: 43 cases/128 accused persons; 2009: 44 cases/199 accused persons and 2010: 39 cases/165 accused persons.

163. Regarding statistics of first instance judgments by courts of all levels for the offence of abuse of positions and powers when conducting public duties from 2005-2010,

Vietnam provided the following: 2005: 1 case/1 accused person; 2006: 0 cases/0 accused persons; 2007: 3 cases/6 accused persons; 2008: 4 cases/8 accused persons; 2009: 4 cases/12 accused persons; 2010: 17 cases/39 accused persons (source: General Statistic Department, Supreme People's Court).

**(b) Observations on the implementation of the article**

164. There is insufficient compliance with the obligations under this article, since the current applicable law does not entirely cover all aspects related to the subject of trading in influence.

**(c) Technical assistance needs related to article 18**

165. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Other assistance: Assistance in conducting research to perfect the provisions of the Penal Code regarding this offence is needed.

None of these forms of technical assistance have been provided to date.

**Article 19 Abuse of Functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

**(a) Summary of information relevant to reviewing the implementation of the article**

166. Article 282 of Penal Code on Abusing powers while performing official duties partially implements the provision under review. The act of “performing acts unaccordant with official duties” corresponds to the performance of or failure to perform an act, as required by the Convention, while the purpose of this act is “for undue benefits or personal motivation”.

**(b) Observations on the implementation of the article**

167. There is sufficient compliance with this article.

168. During the country visit it was clarified that the provision “for undue benefits or personal motivation” as used in Article 282 the Penal Code also encompasses third party benefits, as required by the Convention.

**Article 20 Illicit Enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

**(a) Summary of information relevant to reviewing the implementation of the article**

169. Vietnam indicated that it has not implemented the article. In summarizing its efforts to date to implement the article, Vietnam explained that research was conducted on the need to amend and supplement corruption offences in the next comprehensive amendment of the Penal Code. Further, Vietnam is studying to amend and supplement corruption offences to the Penal Code in its coming revision.

170. To fully implement the article, Vietnam explained that it would be necessary to develop a specific roadmap to supplement and include this offence in the Penal Code. Vietnamese officials indicated that the criminalization of acts of illicit enrichment is necessary to effectively prevent and combat crimes of corruption and money laundering for the purpose of asset recovery.

171. Vietnam indicated that the laws of Vietnam contain preventive measures that contribute to detecting illicit enrichment as follows:

- Article 2, paragraph 3 of the 2005 Law on Prevention and Combating of Corruption stipulates that “Transparency of assets and income is the declaration of assets and income of the persons subjected to obligations to declare and when it is necessary to verify and conclude”.
- Item 4, Chapter II of the 2005 Law on Prevention and Combating of Corruption clearly provides for the subjects of declaration, types of assets to be declared, procedures to declare and verify declared assets, conclusions on transparency in the declaration of assets as well as publicity of those conclusions, and handling of untrue declarations.
- Chapter II, Article 53, paragraph 4 of the 2005 Law on Prevention and Combating of Corruption stipulates that the Government is assigned to submit to the National Assembly for approval the enactment of legal normative documents on the controlling income of persons holding positions and powers.
- Article 52 of the Law on Prevention and Combating of Corruption contains regulations on charging persons who provide untrue asset declarations: “Persons providing untrue assets declarations will be punished according to the laws. Decision to punish persons providing untrue assets declarations must be made public in the agencies, organizations where they are working; Persons in candidature of National Assembly deputies, People’s Councils providing untrue assets declarations will be taken out of the list of candidates; persons, who are tentatively assigned, approved to certain positions, providing untrue assets declarations will not be assigned, approved to those tentative positions”.
- Decree No. 37/2007/NĐ-CP dated 9/3/2007 on the transparency of assets and income establishes four administrative sanctions in Article 33, Chapter IV for those who provide false, non-transparent asset declarations, namely: reprimanding, warning, salary degrading and degrading.

172. Vietnam explained that the administrative sanctions available against those who provide untrue and non-transparent asset declarations indicate the viewpoints and attitudes of the State towards acts of illicit enrichment. However, in order to criminalize illicit enrichment and fully implement article 20 of the Convention, Vietnam indicated that this issue needs to be further studied by the legal science branch of Vietnam and to be considered by authorized agencies of Vietnam with a view to criminalize it in appropriate time.

173. During the country visit and the telephone conference it was clarified that Vietnam's asset and income declaration system only applies to public officials, their spouses and minor children.

**(b) Observations on the implementation of the article**

174. The reviewing experts observed that Vietnam has not criminalized illicit enrichment but has taken concrete steps in considering the adoption of such measures. Given the non-mandatory nature of this UNCAC provision, it may not be a priority area for legal reform.

175. While Vietnam does not at present have illicit enrichment legislation in place and the Government has expressed an intention to enact relevant legislation, consideration could be given to enhancing the application and scope of the asset and income declaration system to achieve a similar result.

**(c) Challenges related to article 20**

176. Vietnam has identified the following challenge in fully implementing article 20:

1. Specificities in its legal system

Vietnamese officials stated that this is a non-mandatory provision that States parties are required to consider implementing, subject to the fundamental principles of their legal system. Moreover, this provision would require public servants to "reasonably explain" a significant increase in their assets in relation to their lawful income.

Vietnam stated that, when ratifying the Convention, it declared itself not to be bound by the provisions of article 20 of the Convention: "Pursuant to principles of the Vietnamese law, the Socialist Republic of Vietnam declares that it does not consider itself bound by the provisions with regard to the criminalization of illicit enrichment set forth in Article 20 and the criminal liability of legal persons set forth in Article 26 of the United Nations Convention Against Corruption".

Vietnam explained that the challenges and difficulties for the criminalization of illicit enrichment in Vietnam result from the following points:

- The act of illicit enrichment has not been established as criminal offence in the 1999 Penal Code. It is not considered a violation of law and has not been considered as a criminal act.
- Requiring public servants to prove the origin and reasons of their income is at this stage considered infeasible and inappropriate in view of historical practices as well as material and technical conditions in Vietnam. At present, Vietnam has not developed systems to monitor and control the income of citizens.
- The requirement for public servants to prove the origins of their incomes is contradictory to the criminal burden of proof stipulated in the criminal proceedings of Vietnam. According to the Criminal Proceedings Laws of Vietnam, proceeding agencies bear the obligation to prove criminal cases, and citizens do not have the obligation to prove themselves innocent.

In discussing the possibility of criminalizing illicit enrichment in Vietnam, officials explained that, while the policies of the Party and laws of the State of Vietnam encourage the legal and proper enrichment of citizens, acts of illicit enrichment are viewed critically and considered contrary to the interests of the nation, community and general morality.

**(d) Technical assistance needs related to article 20**

177. Vietnam has identified the following technical assistance needs to fully implement the article.

1. Summary of good practices/lessons learned
2. Model legislation
3. Other assistance: Assistance to conduct research to perfect the Penal Code regarding this offence is needed.

None of these forms of technical assistance have been provided to date.

**Article 21 Bribery in the private sector**

**Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

**(a) Summary of information relevant to reviewing the implementation of the article**

178. Vietnam indicated that it has not implemented the provision under review. To fully implement the provision, Vietnam explained that it would be necessary to conduct research to amend and supplement provisions on corruption offences in the Penal Code in its coming revision.

**(b) Observations on the implementation of the article**

179. The reviewing experts observed that there is no compliance with the obligations imposed by this article in terms of criminalizing mentioned activities, in addition to bribery in the private sector.

**Article 21 Bribery in the private sector**

**Subparagraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

**(a) Summary of information relevant to reviewing the implementation of the article**

180. Vietnam indicated that it has not implemented the provision under review. Vietnam explained that it is studying to amend and supplement provisions on corruption offences in the Penal Code in its coming revision.

**(b) Observations on the implementation of the article**

181. The reviewing experts observed that there is no compliance with the obligations imposed by this article in terms of criminalizing mentioned activities, in addition to bribery in the private sector. The reviewing experts noted the need to enact relevant legislation as a priority area for Vietnam, despite the non-mandatory nature of this provision. During the country visit, the officials repeatedly noted the absence of relevant measures as a priority challenge in the fight against corruption in Vietnam.

**(c) Challenges related to article 21**

182. Vietnam has identified the following challenge in fully implementing article 21.

1. Inadequacy of existing normative measures (constitution, laws, regulations, etc.).

The Penal Code of Vietnam does not cover bribe offering and receiving in the private sector. Only acts infringing the legitimate operations of agencies and organizations committed by people holding office while performing a public duty are regarded as corruption offences. Moreover, according to Article 1 of the 2005 Law on Prevention and Combating of Corruption, corruption is an act committed by a person holding a position and having power who has abused his or her position and/or power for undue benefits. People holding positions and powers include: a) cadres, public officials and servants; b) military officers, professional military personnel, military workers in agencies and/or units under the People's army; operational commissioned and non-commissioned officers, technical-professional commissioned and non-commissioned officers in agencies and units under the People's Public Security; c) leaders and managers in State-owned enterprises; leaders and managers who represent the contributed capital of the State in enterprises; and d) persons who are assigned to perform a task or an official duty and have power in performing that task or official duty. Thus, at present, the Law on Prevention and Combating of Corruption of Vietnam does not specifically provide for bribery of entities in the private sector.

Vietnam explained that the Government has instructed relevant authorities to conduct further studies and consolidations in order to propose amendments of policies and criminal and anti-corruption laws in Vietnam in order to: (i) expand the subjects of corrupt acts in anti-corruption laws to cover the private sector; and (ii) add the offences of receiving bribes and embezzlement in the private sector into the Penal Code. In addition, the Penal Code of Vietnam does not cover bribe offering and receiving in private sector. Only acts infringing proper operations of agencies and organizations committed by people holding an office while performing a public duty are regarded as corruption offences.

2. Specificities in its legal system.

According to the laws of Vietnam, the concept of positions and power is closely linked to State powers. Therefore, bribery is normally understood as bribery (giving, acting as intermediary, or receiving) in the public sector, not the private sector. Also, deriving from social-economic conditions and legal provisions in the past (centralized subsidized economy with few private sector resources), it is very difficult to have bribery in the private sector.

**(e) Technical assistance needs related to article 21**

183. Vietnam has identified the following technical assistance needs to fully implement the article.

1. Summary of good practices/lessons learned
  2. Model legislation
  3. Other assistance: conducting surveys and developing thematic reports on this issue.
- None of these forms of technical assistance have been provided to date.

**Article 22 Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

**(a) Summary of information relevant to reviewing the implementation of the article**

184. Vietnam indicated that it has partially implemented the article under review.

185. Article 140 of Vietnam's Penal Code stipulates the abuse of trust in order to appropriate property. However, the scope of application of this Article is rather narrow in comparison with the provisions of article 22 of the Convention. According to Article 140, criminal liability is only charged on persons conducting the acts of embezzling assets of others in two circumstances: (i) loaning, borrowing, hiring property from others or receiving property of others by means of contracting and then using bad tricks to commit fraud or run away to appropriate that property; and (ii) loaning, borrowing, hiring property from others or receiving property of others by means of contracting and then using that property for illegal purposes which lead to an impossibility to return the property.

186. Vietnamese officials explained that offence of asset appropriation according to Article 140 of the Penal Code of Vietnam is very different from the elements of article 22 of the Convention. As a result, Vietnam needs to continue to study the establishment of separate offences when amending and supplementing the existing Penal Code.

187. To fully implement the article, officials explained that Vietnam is studying to amend and supplement provisions on corruption offences to the Penal Code in its coming revision.

**(b) Observations on the implementation of the article**

188. There is partial compliance with the obligations of the article. Additional legislative provisions are required for full compliance and should be considered a priority area together with the implementation of UNCAC article 21.

**(c) Technical assistance needs related to article 22**

189. Vietnam has identified the following technical assistance needs to fully implement the article.

1. Summary of good practices/lessons learned
  2. Model legislation
  3. Other assistance: conducting surveys and developing thematic reports on this issue.
- None of these forms of technical assistance have been provided to date.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (a) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

190. Article 251 of the Penal Code (revised in 2009) stipulates the offence of money laundering, which is defined as:

- a) Directly or indirectly participating in financial or banking transactions or other transactions related to money or property which they clearly know are gained from the commission of a crime in order to conceal the illegal origin of such money or property;
- b) Using money or property which they clearly know are gained from the commission of a crime in conducting business or other activities;
- c) Concealing information on the origin, true nature, location, process of movement or ownership of money or property which they clearly know are gained from the commission of a crime, or obstructing the verification of such information;
- d) Committing one of acts specified at Points a, b and c of this Clause with regard to money or property which they clearly know are gained from the movement, transfer or conversion of money or property gained from the commission of a crime.

191. Regarding statistics of first instance judgments by courts of all levels for the offence of money laundering from 2005-2010, Vietnam provided the following: 2005: 5 cases/6 accused persons; 2006: 2 cases/2 accused persons; 2008: 3 cases/3 accused persons; 2007, 2009 and 2010: 0 cases on money laundering (previously called acts of legalizing proceeds of crime according to Article 251 of the Penal Code).

192. Regarding statistics of first instance judgments by courts of all levels for the offence of harboring or consuming proceeds of crime (article 250 of the Penal Code) from 2005-2010, Vietnam provided the following: 2005: 263 cases/526 accused persons; 2006: 333cases/597 accused persons; 2007: 338 cases/607 accused persons; 2008: 321 cases/502 accused persons; 2009: 315 cases/510 accused persons; 2010: 210 cases/389 accused persons (source: General Statistic Department, Supreme People's Court).

### **(b) Observations on the implementation of the article**

193. The reviewing experts observed that there is partial compliance with this provision.
194. It was noted during the country visit that there are some gaps in the anti-money laundering legislation in comparison with the relevant UNCAC provisions. Although the authorities at the State Bank of Vietnam clarified that the concepts in Articles 250 and 251 of the Penal Code encompass, for example, the transfer and conversion of property, as required by the provision under review, a need to more clearly define and describe the prohibited acts in the legislation was noted by the reviewers.
195. Interministerial Circular 09/2011, which provides guidance on the application of the provisions of the Penal Code on money laundering, specifies the definition of money laundering in a way that appears to cover transfer and conversion of property. More specifically, article 3 of the Interministerial Circular provides as follows:

Interministerial Circular 09/2011:

Article 3. Money Laundering offence (Article 251 of the Penal Code)

1. Engaging, directly or indirectly, in a financial or banking transaction or other transactions related to money, property in order to conceal illegal origin of the money or properties means directly engaging in, assisting to conduct one of the following activities in order to conceal the illicit origins of such money or properties:

- a. Deposit and open accounts in banking institutions;
- b. Mortgage, hypothecation property;
- c. Lending, leasing, financial leasing;
- d. Money exchange or value transfer;
- e. Issuing securities;
- f. Issuing payment methods;
- g. Guarantee and financial commitments, monetary market instruments and transferrable securities;
- h. Managing portfolios of individuals and collectives;
- i. Managing cash or liquid securities on behalf of other individuals and collectives;
- j. Investing capital or money for individuals, collectives;
- k. Providing life insurances and other investment related insurances
- l. Activities to create the transferring, movable or change of ownership for money, property of individuals, agencies, organizations;

2. Using money, assets with the full knowledge that those money, assets obtained from criminal activities to do business or other activities means using money, properties in obtained from criminal activities to conduct trading, service activities, establishing companies, building schools, hospitals, trading properties in different ways or using in different purpose such as charity support or finance aid...

196. The predicate offence for money laundering under Vietnamese law includes all offences under the Penal Code. Specifically, the FIU advised that they report on 68 predicate offences for money laundering, which include corruption and terrorist financing. There was no evidence during the review that self-laundering is covered by the relevant legislation or the Interministerial Circular 09/2011.

197. Penalties under Article 250 of the Penal Code range from fines and non-custodial reform to imprisonment from 6 months to up to 15 years, with confiscation of property. The fines for Article 251 are 1 to 15 years of imprisonment and confiscation of property.
198. The reviewers noted that legislation on anti-money laundering was expected to come into force in the near future, which would more fully address the obligations of this article.
199. A need for capacity building of the FIU and other relevant law enforcement authorities to detect and investigate money laundering cases was observed. The FIU currently has a staff of 29 focused on anti-money laundering.
200. In 2010 the FIU received 326 suspicious transaction reports (STRs) and transferred 17 cases relating to 99 STRs to law enforcement on suspicions of criminal activity. In 2011, the FIU received 419 STRs and referred 4 cases related to 7 STRs for investigation. All of the referred cases were still under investigation at the time of the country visit. Overall, the reviewers were of the impression that the STR reporting ratio for financial institutions in Vietnam is relatively low.
201. The reviewing experts noted a lack of statistics in the area of money laundering, in particular, and recommend that the FIU and other institutions take appropriate measures to identify and track money laundering cases. The State Bank, for example, explained during the country visit that statistics on AML cases are kept by inspection agencies like the Supreme People's Procuracy and not the FIU.
202. Vietnam is a member of the Asia Pacific Group on Money Laundering and an associate member of the Financial Action Task Force (FATF), though as of October 2011 it had been placed on the list of jurisdictions with strategic AML/CFT deficiencies by the FATF.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (a) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

203. Article 251 of the Penal Code (revised in 2009) stipulates the offence of money laundering, which is defined as:
- a) Directly or indirectly participating in financial or banking transactions or other transactions related to money or property which they clearly know are gained from the commission of a crime in order to conceal the illegal origin of such money or property;
  - b) Using money or property which they clearly know are gained from the commission of a crime in conducting business or other activities;

- c) Concealing information on the origin, true nature, location, process of movement or ownership of money or property which they clearly know are gained from the commission of a crime, or obstructing the verification of such information;
- d) Committing one of acts specified at Points a, b and c of this Clause with regard to money or property which they clearly know are gained from the movement, transfer or conversion of money or property gained from the commission of a crime.

**(b) Observations on the implementation of the article**

204. The reviewing experts observed that there is adequate compliance with this provision.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 1 (b) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

**(a) Summary of information relevant to reviewing the implementation of the article**

205. Article 250 of the Penal Code on harboring or consuming property acquired through the commission of crime by other persons and paragraph 1 (b) of Article 251 on money laundering are the relevant laws. Article 250 provides that those who, without prior promise, harbor or consume property with the full knowledge that it was acquired through the commission of crime by other persons, shall be guilty of an offence. Article 251(1)(b) criminalizes using money or property which is clearly known to be gained from the commission of a crime in conducting business or other activities. In regard to Article 250, Government officials explained that persons who of harbor or consume property, *with a prior promise*, with the full knowledge that it was acquired through the commission of crime by other persons, are charged according to the predicate offence as accomplices.

**(b) Observations on the implementation of the article**

206. The reviewing experts observed that there is partial compliance with this provision. It was noted during the country visit that there are some gaps in the anti-money laundering legislation in comparison with the relevant UNCAC provisions.

207. It was clarified during the country visit that the offence of money laundering is separate from the predicate offence and can be charged separately. Where the predicate offence and the offence of money laundering are committed by the same person, he or she can be prosecuted on both charges.

**Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (b) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

208. Article 20 on complicity, Article 18 on incomplete commission of a crime and Article 17 on preparation for commission of crime of the Penal Code are the relevant laws. The provisions are reproduced below.

##### **Article 20. Complicity**

1. Complicity is where two or more persons intentionally commit a crime.

2. The organizers, executors, instigators and helpers are all accomplices.

The executors are those who actually carry out the crimes.

The organizers are those who mastermind, lead and direct the execution of crimes.

The instigators are those who incite, induce and encourage other persons to commit crimes.

The helpers are those who create spiritual or material conditions for the commission of crimes.

3. The organized commission of a crime is a form of complicity with close collusion among persons who jointly commit the crime.

##### **Article 18. Incompleted commission of a crime**

Incompleted commission of a crime is an intentional commission of a crime which cannot be carried out to the end due to causes beyond the control of the offender.

Persons who commit incompleted crimes shall bear penal liability therefor.

##### **Article 17. Preparation for crime commission**

Preparation for crime commission is to search for, prepare instruments or create other conditions for committing crimes.

Persons who prepare for the commission of a very serious crime or a particularly serious crime shall bear penal liability for their attempted crime.

#### **(b) Observations on the implementation of the article**

209. The reviewing experts observed that there is partial compliance with this provision. The relevant law on complicity does not cover the concept of association, as required by the provision under review. However, it was explained that associates could be charged as accomplices to money laundering under the laws on complicity. Also, it was noted during the country visit that there are some gaps in the anti-money laundering legislation in comparison with the relevant UNCAC provisions.

210. It is recommended that a comprehensive review of the anti-money laundering legislation be conducted in order to fully implement the article.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraphs 2 (a) and 2 (b) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

211. Vietnam indicated that it has partially implemented the provision under review.
212. Vietnam explained that the Penal Code does not provide a list of offences which are established as predicate offences of money laundering. In principle, offences, the commission of which brings material benefits to a perpetrator shall be regarded as predicate offences of money laundering.
213. The majority of offences stipulated in the Convention have been established as criminal offences in the Penal Code of Vietnam. Moreover, all offences of corruption stipulated in the Penal Code of Vietnam are considered as predicate offences of money laundering. However, there are still several acts stipulated in the Convention that have not been established as crimes in the Penal Code, such as embezzlement or corrupt acts in the private sector.
214. To fully implement the provision under review, Vietnam indicated that it is studying to amend and supplement provisions on corruption offences to the Penal Code in its coming revision.

#### **(b) Observations on the implementation of the article**

215. There is partial compliance with subparagraphs 2 (a) and 2 (b). It was observed that the Penal Code must criminalize corrupt acts in the private sector as well as acts of embezzlement.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (c)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

**(a) Summary of information relevant to reviewing the implementation of the article**

216. The Vietnamese anti-money laundering framework is also applicable to offences committed outside of Vietnam. The Vietnamese authorities explained that the procedures to deal with money-laundering offences committed outside the territory of Vietnam have not been provided for in a separate legal document, and have cited Article 6 of the Penal Code, according to which the Penal Code also applies to criminal acts committed outside the territory of the Socialist Republic of Vietnam.

Article 6. The effect of the Penal Code on criminal acts committed outside the territory of the Socialist Republic of Vietnam

1. Vietnamese citizens who commit offenses outside the territory of the Socialist Republic of Vietnam may be examined for penal liability in Vietnam according to this Code.

This provision also applies to stateless persons who permanently reside in the Socialist Republic of Vietnam.

2. Foreigners who commit offenses outside the territory of the Socialist Republic of Vietnam may be examined for penal liability according to the Penal Code of Vietnam in circumstances provided for in the international treaties which the Socialist Republic of Vietnam has signed or acceded to.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

**(a) Summary of information relevant to reviewing the implementation of the article**

217. Vietnam has not furnished copies of the relevant laws to the United Nations.

**(b) Observations on the implementation of the article**

218. It was recommended that Vietnam provide copies of the relevant laws to the United Nations.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

219. Vietnam explained that, pursuant to Vietnamese laws, a person committing offences can be charged for both predicate offence and money laundering because these are separate acts composing different crimes.

**(b) Observations on the implementation of the article**

220. The reviewing experts observed that there is adequate compliance with this provision.

221. It was clarified during the country visit that the offence of money laundering is separate from the predicate offence and can be charged separately. Where the predicate offence and the offence of money laundering are committed by the same person, he or she can be prosecuted twice on both charges.

**(c) Technical assistance needs related to article 23**

222. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Summary of good practices/lessons learned
2. Other assistance: Training, educating staff of judicial agencies and banks.

None of these forms of technical assistance have been provided to date.

223. A need for capacity building of the FIU and other relevant law enforcement authorities to detect and investigate money laundering cases was observed. The FIU currently has a staff of 29 focused on anti-money laundering.

**Article 24 Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

224. Article 250 of the Penal Code on “Harboring or consuming property acquired through the commission of crime by other persons” stipulates that “those who, without prior promise, harbor or consume property with the full knowledge that it was acquired through the commission of crime by other persons, shall be sentenced to a fine of between five million dong and fifty million dong, non-custodial reform for up to three years or a prison term of between six months and three years”. Pursuant to Articles 21 and 313 of the Penal Code, persons who conceal offences, including corruption offences, shall be subject to criminal liability as stipulated in the Penal Code. Vietnamese officials explained that the acts of harboring proceeds of offences in general, and proceeds of corruption in particular, constitute acts of concealment of proceeds of crime, and persons committing this crime shall be subject to criminal liability in accordance with Article 313 of the Penal Code for concealing offences.

**(b) Observations on the implementation of the article**

225. There is sufficient compliance with this article.

**(c) Technical assistance needs related to article 24**

226. Vietnam has identified the following technical assistance needs to fully implement the article.

1. Summary of good practices/lessons learned
  2. Other assistance: training for public officials of judicial agencies.
- None of these forms of technical assistance have been provided to date.

**Article 25 Obstruction of Justice**

**Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

227. The Penal Code 1999 (amended and supplemented in 2009) of Vietnam has several provisions that can be applied to handle acts of obstructing justice by interfering with testimony of witnesses and other persons. These include bribing or coercing other persons to make false declarations or to supply untrue documents (Article 309). In addition, the offence of offering bribes (Article 289) to people holding positions and powers will be applied to the act of bribing judicial officials to intervene in their activities as legal officials.

228. Bribing or coercing other persons to make false declarations or to supply untrue documents (Article 309) is the act of using material benefits, threatening, or using force to compel an untrue declaration or provide false documents. The subject of this crime may be persons holding positions and powers, judicial officials or others related to the case.

229. In comparing the Vietnamese legislation with article 25 of the Convention, Vietnamese officials explained that Article 309 does not criminalize acts of bribing or forcing witnesses or victims to prevent them from giving testimony or providing evidence.

230. According to the reports and crimes statistics of the Supreme People's Procuracy, from 2006 to 2010 law enforcement agencies have discovered and prosecuted 718 cases involving 1,275 charged persons for crimes of infringing upon judicial activities. This includes the offences of abuse of assigned authorities and tasks or making unlawful decisions; inexact execution of the contents of a judgment; offering bribes; and violating the body or health of citizens in conducting judicial activities.

**(b) Observations on the implementation of the article**

231. There is adequate compliance with this provision. During the country visit, the officials of the Supreme People's Court explained that there have been no cases to date in Vietnam applying either Articles 309 or 289 of the Penal Code.

## **Article 25 Obstruction of Justice**

### **Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

232. The Penal Code of 1999 and the Laws amending and supplementing several articles of the Penal Code of 2009 of Vietnam contain provisions which criminalize the offences mentioned in article 25 of the Convention. Specifically, Article 257 stipulates the offence of acting against persons conducting official duties and Article 297 stipulates the offence of forcing judicial officials to act against laws.

233. The act of coercing judicial personnel to act against laws (Article 297) is manifested through the act of coercing judicial officials to act against laws, thus causing serious consequences. It can be manifested through a direct impact on legal officials, such as the issuance of directives and orders, or indirectly affect them in different forms, such as "signaling information" or "suggesting" to show a forcing attitude. This forcing impact can be in the name of individuals, or on behalf of the collective leadership of the government, the Party or social organizations in order that directives and orders will be issued, but those directives and orders are entirely the personal will of the person having the impact. Acts of forcing target particular persons, such as investigators, prosecutors, judges and others. The subject of the crime are persons holding positions and powers of the State apparatus, the Party or social organizations who have certain powers over judiciary staff and have taken advantage of their positions and powers to force judicial officials to act against laws, thus causing serious consequences.

234. In comparing the Vietnamese legislation with article 25 of the Convention, Vietnamese officials explained that Article 297 stipulates that only persons who abuse their positions and powers to force judicial officials to act against laws during the process of an investigation, prosecution, adjudication or execution of judgment, thus causing serious consequences, will be charged criminally.

#### **(b) Observations on the implementation of the article**

235. There is adequate compliance with this provision. During the country visit, the officials of the Supreme People's Court explained that there have been no cases to date in Vietnam applying either Articles 309 or 289 of the Penal Code.

#### **(c) Technical assistance needs related to article 25**

236. Vietnam has identified the following technical assistance needs to fully implement the article.

1. Summary of good practices/lessons learned

None of these forms of technical assistance have been provided to date.

## **Article 26 Liability of legal persons**

### **Paragraphs 1 and 2**

*1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

*2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

237. Vietnam has not implemented the provision under review. Although legal entities may be subject to administrative and civil (but not criminal) liability pursuant to relevant laws and regulations (Article 93 of the Civil Code and Articles 1 and 6 of the 2002 Ordinance on handling administrative violations), this liability does not cover the offences established under the Convention. As noted below in regard to paragraph 4 of article 26, administrative liability for money laundering is possible in accordance with Decree 74/2005/ND-CP.

238. Legal persons may be subject to administrative or civil liability according to the laws on handling administrative and civil violations of Vietnam. Article 6 of the Ordinance on handling administrative violations states that, “The agency shall be subject to administrative sanctions for all violations it commits”. However, corrupt acts by legal persons, as stipulated in the Convention, have not been established as administrative violations.

239. Regarding civil liability, according to Article 622 of the Civil Code, legal persons have to pay compensation for the damages caused by their people when conducting the tasks assigned to the legal person. However, similar to administrative liability, the existing civil laws of Vietnam do not provide for the civil liability of legal persons participating in corruption offences. As a result, the existing laws and regulations of Vietnam do not meet this requirement of the Convention.

240. Vietnamese officials indicated that, in order to ensure synchronization on the issue of criminal liability of legal persons and compliance with the Convention, it is necessary to conduct further studies to provide stipulations on administrative and civil liabilities of legal persons when participating in corruption offences. In addition, to more fully implement the provision under review, Vietnam explained that research on the possibility of establishing criminal liability of legal entities in the coming revised Penal Code will be conducted.

**(b) Observations on the implementation of the article**

241. Article 26 of UNCAC is not implemented in Vietnam. It was recommended that provisions regarding the criminal liability of legal persons or entities in corruption offences be elaborated. This should be considered a priority for Vietnam in order to avoid issues of impunity for legal persons engaged in corruption. The lack of relevant measures was also noted to affect the ability of Vietnam to fully provide mutual legal assistance in cases involving legal persons (UNCAC article 46, paragraph 2). The Vietnamese officials repeatedly indicated an intention by the Government to prioritize the enactment of criminal liability measures for legal persons, though the experts noted that alternative forms of civil and administrative liability would also satisfy the requirements of the Convention.

**Article 26 Liability of legal persons**

**Paragraph 3**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

242. Pursuant to Articles 72 and 2 of the Penal Code of Vietnam, only natural persons are subject to criminal liability. Thus, individuals of a legal entity who are directly involved in the commission of a crime shall be subject to criminal liability. In addition, Vietnamese laws do not stipulate the liability of legal persons in cases of their participation in the commission of corruption offences. Therefore, there is no connection between the liability of legal persons and the criminal liability of natural persons having committed offences.

243. Moreover, it is noted that, according to Vietnamese law (Article 8 of the Penal Code of Vietnam), natural persons have to bear criminal liability for the offences that they committed. Therefore, if natural persons of the legal entity are directly involved in the commission of crimes, they will be charged with criminal liability.

244. Vietnamese officials further indicated that Vietnam is striving to conduct studies to amend and supplement corruption offences in the next revision of the Penal Code. The Bill of Penal Code (amended) has been incorporated into the law-making agenda of the National Assembly of Vietnam at its tenure XIII.

**Article 26 Liability of legal persons**

**Paragraph 4**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

245. Vietnam has not implemented this provision.

246. Vietnamese officials explained that, as analyzed earlier in regard to article 26, it will be necessary in the future to establish criminal liability for legal persons in the criminal laws of Vietnam. Only by doing so can Vietnam allow for the effective punishment of offences, supplement shortcomings in criminal sanctions and at the same time ensure fairness in allocating responsibility among legal persons, organizations and individuals committing crimes for their own benefits.

**(b) Observations on the implementation of the article**

247. It was observed that the stipulated sanctions under Vietnamese law are not sufficient.

**(c) Challenges related to article 26**

248. Vietnam has identified the following challenge in fully implementing article 26:

1. Inadequacy of existing normative measures (constitution, laws, regulations, etc.).

A. Criminal Liability

Under Vietnamese laws, a legal entity is not considered the actor of crime (Article 72 of the Constitution, Article 2 of the Penal Code). A legal entity only bears administrative or civil liabilities for violation acts, which do not cover corruption offences. In addition, according to paragraph 1 of Article 8 of the Penal Code of Vietnam, crimes are acts endangering the society stipulated in the Penal Code and are “committed by persons with criminal capacity”. Therefore, subjects of crimes are only natural persons, not legal persons. If legal persons participate in the commission of crimes, they will not have to bear criminal liability, because legal persons are not subjects of crimes. In this case, natural persons working in that legal entity shall bear criminal liability if they participate in the commission of the offences (such as making orders, instructions or inducements).

During the drafting of the 1999 Penal Code, the drafting team developed several articles related to criminal liability of legal persons, but they were not approved by the National Assembly of Vietnam. After that, the National Assembly’s Judicial Committee requested the Ministry of Justice to take the lead role, in coordination with related line ministries, to continue studying the issue of criminal liability of legal persons to introduce it in the Penal Code of Vietnam in appropriate time. At present, the Administrative-Criminal Department of the Ministry of Justice is conducting research on the criminal liability of legal persons and will propose the incorporation of these provisions into the Penal Code in the coming revision.

Although the liability of legal persons has been established in various sectors of laws, such as economic and administrative laws, in the area of criminal law, during the enactment process of the Penal Code in 1985 and 1999, and most recently in the Law on amending and supplementing several articles of the 1999 Penal Code (which was enacted on 19 June 2009 and came into force on 1 January 2010), the National Assembly has not accepted the principle of charging criminal liability on legal persons. The report on adjustment of the draft Law on amending, supplementing several articles of the 1999 Penal Code provides,

“regarding proposals to supplement criminal liability of legal persons in offences related to some areas such as taxation, environment, securities, the National Assembly’s Standing Committee found this as a big issue which needed thorough studies to look for enough theoretical and practical basis for defining the criminal liability of legal persons in the Penal Code, as well as the concepts of offences, sanctions system, application principles, rights and

obligations of legal persons in criminal proceedings. Therefore, the National Assembly was requested to continue study for the purposes of basic and comprehensive amendments of the Penal Code in the coming time”.

#### B. Corruption and other criminal offences

Vietnamese officials explained that theoretical difficulties led to the fact that Vietnam has not accepted the criminal liability of legal persons for corruption offences in particular, and other criminal offences in general. The obstacles are as follows:

- First, the criminal laws of Vietnam provide that criminal fault is the fault of the person committing an offence and that no fault can be blamed on legal persons, as abstract entities. Only individual persons through whom legal persons are formed and operated are fully subject to criminal liability and can be punished.

- Second, it is not easy to impose criminal sanctions on legal persons (especially certain kinds of sanctions, like imprisonment and non-custodial reform). If there is any applicable sanction, it is not necessary or effective for a legal person, an abstract entity with an artificial and intangible nature.

- Third, punishing legal persons with penalties would violate the principle of individualized criminal liability, and the final purpose of the penalties in educating and reforming offenders would not be obtained.

Officials noted that the principle of criminal liability of legal persons has been applied in several countries following common and civil law cultures, including some Asian countries. In practice, faced with an increased number and seriousness of offences committed by legal persons, the Vietnamese public has strongly favored charging legal persons criminally for those offences. Officials further noted that charging only natural persons criminally leaves some criminals untried, which is contradictory to the principle of impartiality in the criminal laws and leads to obstacles in the fight against crime due to the absence of a deterring effect. In light of the increasing sophistication and complication of illegal conduct by legal persons and Vietnam’s recent entry into the market economy, it is very difficult for Vietnam to understand how best to overcome shortcomings generated by the market economy, though appropriate regulations are needed.

Officials stated that, in light of the theoretical and practical considerations, in the future, it is necessary to amend and supplement the Penal Code to provide stipulations on criminal liability of legal persons for corruption offences and other crimes.

#### **(d) Technical assistance needs related to article 26**

249. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Other assistance: conducting surveys and thematic reports on this issue.
2. Summary of good practices/lessons learned
3. Model legislation.

None of these forms of technical assistance have been provided to date.

#### **Article 27 Participation and attempt**

##### **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity*

*such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

250. Article 20 of the Penal Code stipulates that complicity is where two or more persons intentionally commit a crime. The organizers, executors, instigators and helpers are all accomplices.

**(b) Observations on the implementation of the article**

251. There is sufficient compliance with the obligations of this provision.

252. During the country visit officials at the Supreme People's Court clarified the application of Article 20 (Complicity) of the Penal Code. It was explained that the four types of complicity enumerated in the Article are the exclusive forms of complicity recognized in Vietnamese law, and that other forms (such as association which is mentioned in UNCAC article 23) are not directly covered. The officials explained that judges decide complicity cases on the basis of the facts of each case.

## **Article 27 Participation and attempt**

### **Paragraph 2**

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

253. The Penal Code contains provisions on incomplete acts of a crime, according to which an incomplete act of crime is an intentional criminal act which cannot be carried out to the end due to causes beyond the control of the offender. The person committing an incomplete crime shall be subject to criminal liability for the incomplete crime.

**(b) Observations on the implementation of the article**

254. There is sufficient compliance with the obligations of this provision.

## **Article 27 Participation and attempt**

### **Paragraph 3**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

255. It is stipulated in Article 17 of the Penal Code on the preparation for crime commission that preparation for crime commission is to search for or prepare instruments or create other conditions for committing crimes. Persons who prepare for the commission of a very serious or an extremely serious crime shall bear criminal liability for their attempted crime.

**(b) Observations on the implementation of the article**

256. There is sufficient compliance with the obligations of this provision.

**(c) Technical assistance needs related to article 27**

257. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Summary of good practices/lessons learned

None of these forms of technical assistance have been provided to date.

**Article 28 Knowledge, intent and purpose as elements of an offence**

*Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.*

**(a) Summary of information relevant to reviewing the implementation of the article**

258. The intentional and unintentional commission of crimes is stipulated in Articles 9 and 10 of the Penal Code. To verify whether the commission of crime by an offender is intentional or unintentional, proceeding agencies will take evidence and objective factual circumstances into consideration (see Article 64 of the Criminal Proceedings Code). In practice, investigations, prosecutions and judgments have to be based on objective circumstances and acts to verify the criminal intent, motivation and purpose of a defendant/accused person. The corruption offences stipulated in the Penal Code are all offences committed by direct intent. Intent and purposes of the offences are mandatory elements constituting the offences. The above subjective signals of the offences are clearly defined, distinct from the objective signals. In practical investigations, prosecutions, and proceedings, subjective elements may be inferred from the objective signals of the offences.

**(b) Observations on the implementation of the article**

259. There is adequate compliance with the obligations of this article.

**(c) Technical assistance needs related to article 28**

260. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Summary of good practices/lessons learned

2. Other assistance: developing thematic reports on this issue.

None of these forms of technical assistance have been provided to date.

## **Article 29 Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

261. The relevant sections of the 1999 Penal Code of Vietnam are Articles 23 on statute of limitations for penal liability examination and Article 24 on non-application of the statute of limitations for penal liability examination. Pursuant to Article 23, the provisions on statute of limitations for penal liability examination shall be applied to most crimes established in the Penal Code, including corruption crimes established under the Convention. According to the nature and extent of danger to society of the crimes prescribed in Article 8, paragraph 3 of the Penal Code, regulations were promulgated that set the statute of limitations period corresponding to the nature and extent of danger to society of each crime.

262. According to Article 23 of the Penal Code of Vietnam, the statute of limitations for penal liability examination applied to corruption crimes shall be between 10 and 20 years. These provisions further stipulate the statute of limitations for penal liability examination where the alleged offender deliberately flees and is being sought by warrant, and provide that the time of fleeing must not be counted and the statute of limitations shall be re-calculated from such time as the person gives him/herself up or is arrested.

263. Article 24 of the Penal Code further provides that that the statute of limitations for penal liability examination prescribed in Article 23 of this Code shall not apply to crimes provided for in Chapters XI on crimes infringing upon national security and XXIV on crimes undermining peace, crimes against humanity and war crimes as prescribed in the Penal Code.

264. During the country visit, officials at the Supreme People's Procuracy confirmed that in the last 2-3 years there have been no criminal cases that have been barred by the statute of limitations, and that the statute is sufficiently long in their opinion to not present any issues in practice.

### **(b) Observations on the implementation of the article**

265. This article is fully implemented in Vietnam.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 1**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

266. The Penal Code 1999 of Vietnam and the Revised Penal Code 2009 provide for principles in handling all crimes, including corruption crimes. Specifically, the applicable provisions are Article 3 on handling principles, Article 8 on definition of crime, Article 45 on bases for deciding penalties in Chapter I on fundamental provisions, and Articles 278 to 284 on specific corruption crimes and penalties corresponding to nature and gravity of each crime in Chapter XXI on crimes relating to positions. In addition, the Penal Code also provides for crimes corresponding to acts of laundering proceeds of crime, concealing assets and obstructing justice prescribed in articles 23, 24 and 25 of UNCAC.

267. The provisions on crimes and bases for deciding penalties in Articles 3, 8 and 45 of the Penal Code 1999 and the Revised Penal Code 2009 of Vietnam as well as the provisions on corruption in the Penal Code relatively correspond to the requirements of paragraph 1, article 30 of the Convention. However, as noted earlier, the Penal Code does not cover all of the offences required to be established under the Convention.

268. For statistics on penalties imposed in last three years in corruption cases, please see Annex II.

269. Defendants and accused persons were prosecuted, judged and sanctioned corresponding to the gravity of the crime. For example, the former Director of the Management Unit of the East-West Boulevard project in Ho Chi Minh City was sentenced to imprisonment.

**(b) Observations on the implementation of the article**

270. There is partial compliance with this provision.

271. During the country visit, the officials clarified that statistics provided in the self-assessment on the number of prosecutions and investigations of corruption were not accurate and agreed to provide updated figures.

272. Regarding the application of penalties by the criminal courts pursuant to Articles 278-284 on sanctions for corruption, officials at the Supreme People’s Court explained that Guidelines were issued in 2004 that guide courts at the lower levels on the sanctions to be imposed. They further explained that the imposition of sanctions depended on the circumstances of each case, including aggravating and mitigating circumstances, and that no general observations could be made as to whether corruption penalties tended to fall on the lower or higher end of the spectrum of possible penalties.

273. It was explained during the country visit that a range of possible penalties is applicable in corruption cases. As summarized in the table of possible penalties below, penalties for corruption range from one year to up to 20 years of imprisonment, death penalty, plus fines ranging from VND 3 million-VND 50 million or from 1 to 5 times the value of the bribe, partial or full confiscation of assets and loss of position.

Crime	Possible Major Penalties	Additional Penalties
Article 278 on embezzlement of property	2 - 20 years of imprisonment; life imprisonment or capital punishment	- Being banned from holding certain posts for 1 to 5 years; - Being subject to a fine of between 10 million dong and 50 million dong;

<b>Crime</b>	<b>Possible Major Penalties</b>	<b>Additional Penalties</b>
		- Being confiscated part or whole of property.
Article 279 on receiving a bribe	2- 20 years of imprisonment, life imprisonment or capital punishment	- Being banned from holding certain posts for 1 to 5 years; - Being subject to a fine between 1 and 5 times the value of the bribe; - Being confiscated part or whole of property
Article 280 on abusing positions and/or powers to appropriate property	1 - 20 years of imprisonment or life imprisonment	- Being banned from holding certain posts for 1 to 5 years; - Being subject to a fine of between 10 million to 50 million dong
Article 281 on abusing positions and/or powers while performing official duties	1 - 20 years of imprisonment or life imprisonment	- Being banned from holding certain posts for 1 to 5 years; - Being subject to a fine of between 3 million to 30 million dong
Article 282 on abusing powers while performing official duties	1 - 20 years of imprisonment	- Being banned from holding certain posts for 1 to 5 years; - Being subject to a fine of between 3 million to 30 million dong
Article 283 on abusing positions and/or powers to influence other persons for personal profits	1 - 20 years of imprisonment or life imprisonment	- Being banned from holding certain posts for 1 to 5 years; - Being subject to a fine of from 1 to 5 times the amount of money or the value of the property they have earned for their personal profits.
Article 284 on forgery in the course of employment	1 - 20 years of imprisonment	- Being banned from holding certain posts for 1 to 5 years; - Being subject to a fine of between 3 million to 30 million dong

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

274. Vietnam explained that there are no functional immunities in Vietnamese law for public officials, including elected and appointed officials, at any level.

#### **(b) Observations on the implementation of the article**

275. This provision is fully implemented in Vietnam.

## Article 30 Prosecution, adjudication and sanctions

### Paragraph 3

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

#### (a) Summary of information relevant to reviewing the implementation of the article

276. Current laws of Vietnam related to Article 30, section 3, include:

- Provisions of the Criminal Proceedings Code on exercising the right to prosecute and supervise law observance in the criminal procedure;
- Regulations on the tasks, powers and responsibilities of chairmen, vice-chairmen of procuracies and procurators, in Articles 23, 36, 37, 181, 195, 196, 232 of the Criminal Proceedings Code;
- Article 297 of the Penal Code, which prescribes coercing judicial personnel to act against laws in investigating, prosecuting, adjudicating and/or executing judgments;
- Articles 13 and 17 of the Law on the Organization of the People's procuracies, which prescribe the functions, tasks and powers of procuracies in exercising the right to prosecute and supervise law observance in criminal procedure.

277. Officials explained that Vietnamese laws provide regulations on preventing and handling arbitrary, abusive and partial acts, or other faults during the process of investigating, prosecuting and adjudicating crimes in order to ensure that all crimes are detected timely and settled in a prompt and fair manner in accordance with law. According to the Vietnamese Criminal Proceedings Code, procuracies are procedure-conducting bodies with authority to exercise the right of prosecution and supervise judicial activities, to ensure strict and uniform legal compliance. There are also comprehensive and specific regulations on the functions, tasks and powers of procuracies in criminal procedure in general, and in the process of investigation, prosecution and adjudication in particular, in order to prevent and detect crimes, to settle cases in a prompt and fair manner, and to ensure that crimes and offenders are punished and innocent people are not convicted.

278. Officials indicated that the application and enforcement of law in handling corruption-related crimes have revealed certain shortcomings. One of the reasons is that the principle of independence in the operation of procuracies has not been guaranteed. In the process of investigation, prosecution and adjudication of several cases, some agencies or individuals have found illegal ways to interfere in the independence, objectiveness and compliance of judicial staff in the investigation, prosecution and adjudication of crimes and corruption offences. Officials explained that it is of great importance to amend and supplement some provisions of the Criminal Proceedings Code, the Penal Code and the Law on Organization of the People's Procuracy to be more specific and clear about the independence of proceeding bodies and meanwhile to prescribe strict sanctions on agencies, organizations and individuals who interfere with or prevent the performance of judicial agencies and procuracies.

279. According to statistics provided by Vietnam, from 01/10/2006 to 31/8/2007, for the whole country, 441 cases of corruption were discovered, in which 406 criminal cases and 826 charged persons were prosecuted for involved offences and 306 persons were charged with administrative penalties. Procuracies at all levels prosecuted 397 cases with 1,030 charged persons (including the cases and charged persons of the previous period being moved forward). The court at all levels tried in the first instance 345 cases with 785 accused persons.
280. From 01/10/2007 to 31/08/2008, ministries, branches and localities discovered 379 corruption cases (the number of cases was reduced by 14% compared with the same period the previous year), in which 284 cases with 622 charged persons were instituted for investigation on corruption charges (the number of cases was reduced by 30% and the number of charged persons by 25% compared with the same period the previous year) and 51 cases involving 125 persons were charged with administrative discipline and sanction (the number of persons so charged was reduced by 59% compared with the same period the previous year). Procuracies at all levels prosecuted 362 cases with 921 charged persons on corruption (the number of cases was reduced by 9% and the number of charged persons by 11% compared with the previous year). Court of First Instance levels conducted trials in 286 cases with 692 accused persons on charges of corruption (the number of cases was reduced by 17.1% and the number of accused persons by 11.8% compared with the previous year).
281. Among the cases prosecuted, the offence of embezzlement accounted for a high percentage, in 52.4% of cases and 45.1% of charged persons. The offence of receiving bribes accounted for 11.5% of cases and 16.8% of the charged persons. Abuse of positions and powers accounted for 15.5% of cases and 13% of the charged persons. The offence of taking advantage of positions and powers while conducting official duties accounted for 17.6% of cases and 23% of the charged persons, and other offences of corruption accounted for 2.8% of the cases and 1.9% of the charged persons. QQQ: General statistics, break down only 176 and 178 relate to confiscation
282. According to report on the work of preventing and combating corruption submitted to the 10th Congress of the Central Steering Committee on Preventing and Combating Corruption, in 4 years (2007-2010), statistics on investigation, prosecution and adjudication of corruption cases for the whole country were as follows:
- In 2007: instituted 427 cases with 960 charged persons (number of cases increased by 14.46% and number of charged persons increased by 30.8% compared to 2006); prosecuted 391 cases with 1,030 charged persons; tried 350 cases with 843 accused persons.
  - In 2008: instituted 282 cases with 622 charged persons (number of cases reduced by 44% compared with 2007); prosecuted 394 cases with 914 charged persons; tried 336 cases with 785 accused persons.
  - In 2009: instituted 289 cases with 631 charged persons (number of cases increased by 2.48% compared to 2008); prosecuted 321 cases with 819 charged persons; tried 308 cases with 718 accused persons.
  - In the 9 months of 2010: instituted 188 cases with 373 charged persons (number of cases reduced by 23% over the same period last year); prosecuted 253 cases with 631 charged persons; first instance trials of 211 cases with 479 accused persons.

**(b) Observations on the implementation of the article**

283. Vietnam follows the civil law system of discretionary prosecution. The power to make a decision whether to prosecute rests with prosecutors at all levels of procuracy. This includes the right to request detention and to apply other measures in criminal cases. The right to prosecution covers both executive and criminal prosecution. The former is limited to senior public officials, which can include deterring measures.
284. The Supreme People's Procuracy is an independent judicial body. Vietnamese officials reported that the Supreme People's Procuracy is independent insofar as it reports only to the National Assembly and not to the Executive. The Prosecutor General is appointed by the National Assembly, and his Deputy and senior prosecutors are appointed by the President of the State.
285. There is adequate compliance with this provision.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 4**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

286. Current Vietnamese regulations related to the provision under review include: Article 71 of the 1992 Constitution, which provides that citizens have the right to physical inviolability and to have their lives, health, honor and dignity protected by law, and Articles 6, 88, 91, 92, 93, 129, 161, 166, 177, 187, 228 and 243 of the Criminal Proceedings Code, which, inter alia, provide for the application of deterrent measures, summoning of the accused and pursuit of the accused. The Criminal Proceedings Code also provides specific and strict regulations on the grounds for application of temporary detention and other deterrent measures, as well as provisions on bail for accused defendants, such as a ban from traveling outside one's residence and guaranty and deposits of money or valuable property as bail. Accordingly, the application of deterrent measures is taken into consideration in order to prevent crimes, when there are grounds proving that an accused or defendant would continue committing an offence or destroy evidence, to ensure his or her presence in response to the summons of an investigating agency, procuracy or court, and to secure a judgment execution. If an accused or defendant is intentionally absent without plausible reasons, he or she will be escorted; if the defendant has escaped, the trial panel shall suspend the case and request the investigating body to pursue it. Pursuant to regulations on the application of temporary detention under the Criminal Proceedings Code, in general, defendants who are prosecuted and adjudicated on corruption-related crimes may bear deterrent measures; meanwhile, other measures may be applied to them by decision of the proceeding bodies, such as a ban from traveling outside their residence and guaranty and deposit of money or

valuable property as bail instead of temporary detention, based on the nature and extent of danger to society of the acts, personal details, and other factors.

287. Vietnamese officials explained that Vietnam's laws on deterrent measures, including temporary detention, ban from travel outside one's residence, guaranty, deposit of money or valuable property as bail, and regulations on the order, procedure and authority for the application, replacement and cancellation of deterrent measures are relevant to the implementation of the provision under review. However, they noted that some regulations on guaranty, deposit of money or valuable property as bail are vague and unspecific, which causes difficulties in their implementation. It is necessary to develop decrees and circulars to guide the implementation of these regulations.

**(b) Observations on the implementation of the article**

288. There is adequate compliance with this provision.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

289. Vietnam's laws related to this issue include:

- Article 57, 58 and 59 of the Penal Code, which prescribe exemptions from penalty execution, reduction of declared penalties, reduction of penalty terms in special cases and regulations on suspended sentences.
- Articles 268 and 269 of the Criminal Proceedings Code, which prescribe conditions and procedures for a reduction of penalty terms or exemption from serving penalties.
- Articles 6,10,11 and 21 of the Law on Amnesty, which stipulate the policies of the State of Vietnam on amnesty, conditions for amnesty and circumstances which are not subject to amnesty.

290. Vietnamese laws also prescribe specifically the conditions for reduction of penalty terms, exemption from serving penalties or replacement of imprisonment terms with suspended sentences based on a number of strict conditions. These include the type of penalties and level of imprisonment term pronounced by the court, the period in which the convict has served, personal details of the convicts as well as the attitude of repentance about the crimes and the process of serving penalties. Persons may be exempt from serving penalties if they are subject to non-custodial reform penalty or termed imprisonment, have not executed their judgments but have recorded great achievements or suffered from dangerous disease, and if such persons are no longer dangerous to the society; in these cases, they may be exempted from the execution of the entire penalty or granted a special parole or general amnesty.

291. Vietnamese officials explained that, according to Vietnamese laws the grounds for a reduction of declared penalties mainly include the following factors: the nature and extent

of danger of the crimes committed, the actual duration of the penalty served, the attitude of repentance, and the sense of law observance of the convict.

292. According to the report on statistical data on crimes of the Supreme People's Procuracy, from 2006 to 2010 the total numbers of offenders with termed imprisonment exempted from penal execution is 44, and the number of convicts suspended from serving imprisonment penalties is 5,200 persons. Only in 2010, competent agencies have appraised and considered reducing penalty terms for more than 25,400 convicts and granted special parole for 17,500 convicts. These numbers could not be limited to corruption cases.

293. According to the report on statistical data on crimes of the Supreme People's Procuracy, from 2006 to 2010 the total number of termed imprisonment cases completely served is more than 230,000 inmates, the number of persons convicted of crimes whose penalty execution was temporarily suspended is more than 5,200 persons, and the number of case files which were examined, assessed and considered for a reduction of penalty terms is more than 280,000 inmates. These numbers could not be limited to corruption cases.

294. The Central Parole Consulting Council has submitted to the State President application for granting parole to 46,165 persons who are serving imprisonment penalties. These numbers could not be limited to corruption cases.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 6**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

295. Vietnam has implemented the provision under review. Vietnamese regulations on this issue include Articles 9 and 128 of the Criminal Proceedings Code and provisions under the Ordinance on officials and public employees. Accordingly, if a public official is accused of corruption-related crimes, the decision on removing, suspending or reassigning the public official will be implemented by a court judgment. A public official accused of corruption-related crimes can be investigated and criminal proceedings can be instituted, but according to the principle of the presumption of innocence the person is not considered guilty until a court judgment on his or her criminality takes legal effect. Nonetheless, competent procedure-conducting bodies have the right to propose to the agencies or organizations competent to manage the accused to suspend them from their positions when it is deemed that their continued retention of their positions would cause difficulties to the investigation. After instituting criminal proceedings against those accused with position and powers, investigating agencies and procuracies may propose to remove, suspend or reassign them. After investigating, prosecuting and adjudicating corruption offenders, if the offenders are considered guilty and convicted of imprisonment

by a court, those offenders who are public servants holding positions and powers will be forced to quit their jobs from the day the conviction or court decision comes into force.

## **Article 30 Prosecution, adjudication and sanctions**

### **Subparagraph 7 (a)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office; and*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

296. The issue of disqualification of persons convicted of corruption-related crimes from holding public office are reflected in Vietnam's laws on this issue, which include:

- Article 36 of the Penal Code, which ban from holding certain posts, bans from practicing certain occupations or doing certain jobs; Articles 278 to 284 of the Penal Code prescribe additional penalties for persons convicted of crimes of corruption.
- Article 78 of the Law on cadres and civil servants 2008, which prescribes that cadres who commit a criminal offence, are convicted by a court and their sentences or rulings have taken will be automatically disallowed to continue their elected, approved or appointed posts; if they are subjected to a prison sentence which is not suspended, they will be automatically terminated.
- Article 28 of the Ordinance on Procurators of the People's Procuracies; Article 30 of the Ordinance on Judges and Jurors of the People's Courts; and Article 34 of the Ordinance on Organization of Criminal Investigations, which prescribe the removal of procurators, judges and investigators who are convicted by legally valid court judgments and decisions.

297. According to Vietnamese laws, persons convicted of corruption-related crimes, in addition to principal penalties, may be subject to additional penalties, such as a ban from holding certain posts, practicing certain occupations or doing certain jobs from between one and five years, counting from the date of full execution of the prison term or counting from the date the court judgment takes effect if the principal penalty is a warning, fine, non-custodial reform or suspended sentence. The disqualification of persons convicted of corruption crimes from holding office is implemented in accordance with legally valid court judgments and decisions and additional penalties may also be instituted. After the convicts have completely served their prison penalties and remised of criminal records, in principle, they may be reassigned to hold certain positions and occupations.

## **Article 30 Prosecution, adjudication and sanctions**

### **Subparagraph 7 (b)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined*

*by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(b) Holding office in an enterprise owned in whole or in part by the State.*

**(a) Summary of information relevant to reviewing the implementation of the article**

298. The issue of disqualification of persons convicted of corruption-related crimes from holding office in an enterprise owned by the State is reflected in Vietnam's laws on this issue, which include:

- Article 36 of the Penal Code, which ban from holding certain posts, bans from practicing certain occupations or doing certain jobs; Articles 278 to 284 of the Penal Code prescribe additional penalties for persons convicted of crimes of corruption.
- Article 78 of the Law on cadres and civil servants 2008, which prescribes that cadres who commit a criminal offence, are convicted by a court and their sentences or rulings have taken will be automatically disallowed to continue their elected, approved or appointed posts; if they are subjected to a prison sentence which is not suspended, they will be automatically terminated.
- Article 28 of the Ordinance on Procurators of the People's Procuracies; Article 30 of the Ordinance on Judges and Jurors of the People's Courts; and Article 34 of the Ordinance on Organization of Criminal Investigations, which prescribe the removal of procurators, judges and investigators who are convicted by legally valid court judgments and decisions.

299. According to Vietnamese laws, persons convicted of corruption-related crimes, in addition to principal penalties, may be subject to additional penalties, such as a ban from holding certain posts, practicing certain occupations or doing certain jobs from between one and five years, counting from the date of full execution of the prison term or counting from the date the court judgment takes effect if the principal penalty is a warning, fine, non-custodial reform or suspended sentence. The disqualification of persons convicted of corruption crimes from holding office is implemented in accordance with legally valid court judgments and decisions and additional penalties may also be instituted. After the convicts have completely served their prison penalties and remised of criminal records, in principle, they may be reassigned to hold certain positions and occupations.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 8**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

**(a) Summary of information relevant to reviewing the implementation of the article**

300. Disciplinary measures for civil servants are summarized above in regard to Article 30, paragraphs 6 and 7 of the Convention. According to Vietnamese laws, in cases where criminal proceedings are instituted against persons accused of corruption-related crimes, extremely strict penalty terms may be imposed based on a legally valid court judgment and decision. In addition to principal penalties, such persons shall be subject to additional penalties, including a ban from holding certain posts, practicing certain occupations or doing certain jobs from between one and five years.

301. The removal, suspension and disqualification of civil servants convicted of corruption-related crimes from holding office is implemented by legally valid court judgments and decisions. Therefore, they will not be subject to any other disciplinary penalties for the same criminal acts. In case their acts are not subject to criminal measures, procedure-conducting bodies shall take responsibility to transfer their case files to competent authorities for consideration and decision on the disciplinary action.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 10**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

302. Vietnamese laws on the reintegration into society of convicted persons include Article 3 of the Penal Code on handling principles for offenses and offender, as well as the Law on execution of criminal judgments in Article 4, which prescribes principles of execution of criminal judgments, Article 40 on release of inmates, Article 179 on tasks and powers of the People's Committee at provincial level in execution of criminal judgment, and Article 180 on tasks and powers of the People's Committee at district level in execution of criminal judgments.

303. The Law on execution of criminal judgments prescribes that the People's Committee at provincial and district levels holds responsibility for providing appropriate policies to facilitate persons who have completely served their penalty terms and are prevented from committing further crimes to find jobs and be reintegrated into society. However, Vietnamese officials explained that these policies are still vague and unspecific, especially regarding the responsibilities of agencies, organizations and individuals in supporting convicts to reintegrate into the society and the specific mechanism or measures for its implementation. It is therefore of importance to develop and/or amend existing regulations and guiding documents and to ensure that they are specific enough and able to be implemented.

304. Practice in the past few years has shown that the number of persons who have completely served their penal terms and committed repeated crimes has reduced. Manuals on citizen education and reintegration into society have been developed and are taught in prison for inmates granted parole or persons who have served their completed imprisonment terms.

#### **(b) Observations on the implementation of the article**

305. The provision is partially implemented. It was observed that technical assistance is needed especially on technical and financial matters related to the implementation of paragraph 10 of the Convention on the reintegration of persons convicted of corruption.

#### **(c) Technical assistance needs related to article 30**

306. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Other assistance: Vietnam has requested technical and financial assistance to conduct effective assessments on measures related to the implementation of article 30, paragraph 10 of the Convention on the reintegration into society of convicted persons.

None of these forms of technical assistance have been provided to date.

307. It was observed that technical assistance is needed especially on technical and financial matters related to the implementation of paragraph 10 of the Convention on the reintegration of persons convicted of corruption.

## **Article 31 Freezing, seizure and confiscation**

### **Subparagraph 1 (a)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

308. Vietnam's Penal Code has provisions on this issue in Article 28 (Penalties), Article 40 (Confiscation of property), Article 41 (Confiscation of objects and money directly related to the crime), Article 278 (Embezzling property) and Article 279 (Receiving bribery). Accordingly, confiscation of property is the deprivation of some or all assets owned by convicted persons into the State fund and is an additional penalty. Confiscation of property is only applicable to persons convicted of serious, very serious or particularly serious crimes in the cases prescribed in the Penal Code. The confiscation into the State fund applies to tools and means used in the crime, proceeds or benefits acquired by crimes or things owned by purchase.

309. In addition, the Law on Prevention and Combating of Corruption of 2005 of Vietnam has clear provisions on the issue of recovery and confiscation of corrupt assets in Articles 70 and 71. Accordingly, corrupt assets are recovered to their owners, legal managers or confiscated to State funds. The Criminal Proceedings Code also contains provisions on asset confiscation in Article 146.

310. Currently, 44 cases of asset confiscation are being considered and handled.

311. According to statistics provided by Vietnam, from 01/10/2006 to 31/08/2007, the defined initial total value of losses caused by corruption was 286 billion VND, in which 70 billion VND was seized. From 01/10/2007 to 31/08/2008, total corrupted assets were 132.2 billion VND and 48.3 ha of land; 46.4 billion VND was seized or frozen and 48.3 ha of land was recovered; corrupted money or property which could not be recovered was 25.21 billion VND, the rest are being further investigated and clarified.

312. Regarding asset recovery: In 4 years (2007-2010), the total value of losses caused by corruption was 1.9 trillion VND. The total value recovered is 674 billion VND and 19,500 USD.

**(b) Observations on the implementation of the article**

313. Partial compliance with the obligations of this article was noted.

314. The principal measures on asset freezing, seizure and confiscation can be found in the Penal Code, the Criminal Procedure Code, the Anti-Money Laundering Law, Decree 74 and Decree 64. Some gaps in the relevant legislation compared to the provisions of UNCAC were noted. For example, the Penal Code does not provide for confiscation of property intended for use in the commission of an offence. Further, FIU officials explained that the property corresponding to the equivalent value of proceeds of crime can only be confiscated before the crime has been committed, to avoid the commission of an offence, and not afterwards. The officials further explained that Vietnamese agencies have sufficient authority to provisionally freeze and seize assets under their powers to investigate and take evidence.

315. During the country visit, officials at the FIU explained that all inspection, investigation, prosecuting and adjudicating agencies in Vietnam have the authority to apply confiscation and freezing measures if warranted. These measures can be imposed without a court order. The reviewing experts observed that these measures should be exercised so as to ensure the rights of due process of persons. They noted Article 40 of the Penal Code, which provides that “property confiscation shall apply only to persons sentenced for serious crimes, very serious crimes or particularly serious crimes prescribed by this Code.”

**Article 31 Freezing, seizure and confiscation**

**Subparagraph 1 (b)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

316. According to the laws of Vietnam, the confiscation of property, equipment or tools used or destined for use in corruption offences is governed by the provisions on confiscation of assets related to crimes. Vietnam’s Penal Code has provisions on this issue in Article 28 (Penalties), Article 40 (Confiscation of property), Article 41 (Confiscation of objects and money directly related to the crime), Article 278 (Embezzling property) and Article 279 (Receiving bribery). Accordingly, confiscation of property is the deprivation of some or all assets owned by convicted persons into the State fund and is an additional penalty. Confiscation of property is only applicable to persons convicted of serious, very serious or particularly serious crimes in the cases prescribed in the Penal Code. The confiscation into the State fund applies to tools and means used in the crime, proceeds or materials acquired by crimes or things owned by purchase.

**(b) Observations on the implementation of the article**

317. Partial compliance with the obligations of this article. The Penal Code does not provide for confiscation of property intended for use in the commission of an offence.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

318. The provisions on identification, tracing, freezing or seizure of assets are found in various laws of Vietnam, such as the Penal Code (Article 40 on Confiscation of property and Article 41 on Confiscation of objects and money directly related to the crime), the Criminal Proceedings Code (Article 74 on Material evidence, Article 76 on Dealing with material evidences, Article 139 on Identification, Article 142 on Strip search, Article 143 on Search of premises, Article 144 on Seizure of correspondence, telegrams, postal parcels and matters at post offices, Article 145 on Seizure of things or documents during search, Article 146 on Inventory of property, and Article 267 on Execution of a fine or confiscation of property), the Law on Credit Institutions, and Decree No. 64 dated 20/09/2001 on Payment activities through organizations providing payment services.

319. As stipulated in Article 41 of the Penal Code in 1999, property acquired from criminal activity will be confiscated. Before conducting a confiscation, temporary and emergency measures will be carried out, such as distraining and freezing of accounts to restrict the use, disposal or dispersal of assets.

320. Article 140 of the Criminal Proceedings Code of 2003 allows investigating agencies to strip search or search accommodations, locations, mail, parcels and mail items to seize items or property acquired from criminal activity. As stipulated in Article 146 of the Criminal Proceedings Code, for assets that can later be confiscated under the provisions of the Penal Code, the investigating authorities will distrain such items.

321. The Law on Credit Institutions also contains provisions on the prevention and suppression of transactions related to illegal payments. Article 19 of this Law stipulates that credit institutions and other organizations and individuals engaged in banking must not conceal, or perform any services related to, deposits with evidence of illegal origins. In case signs of illegal deposits are discovered, the credit institutions and other banking organizations shall immediately notify the competent State agency. Article 115 of this Law stipulates that one of the measures to manage banking activity is to take steps to prevent transactions of money of illegal origin. Search, seizure and freezing are activities to collect and seize evidence and materials to help resolve the case impartially and accurately.

322. The Criminal Proceedings Code of 2003 stipulates regulations on search, seizure and freezing activities in Articles 140, 145, 146, 147 and 148. Accordingly, Vietnam's competent proceeding agencies may search people, houses, work places, places, objects, letters, telegrams, parcels, and mail items to find tools and means of crime, materials and assets derived from crime, or objects and documents related to the case. Upon searching, investigators are allowed to temporarily keep things and documents which are directly related to the case. For items which are prohibited from keeping or distributing, investigators must seize and transfer such items to competent management agencies. Where necessary, the items shall be sealed in front of the owner or family representatives, government representatives and witnesses. To ensure the objectiveness and accuracy of procedural activities, the conducting of searches and seizure of objects, documents, letters, telegraphs, postal parcels and items must be documented according to provisions of the Code. In addition, competent persons in charge of the proceedings have the right to distraint assets corresponding to the possible value of confiscation, fines or damages.
323. The freezing of assets is also stipulated in the Civil Proceedings Code of Vietnam, which includes: Freezing of accounts in banks, credit institutions, the State treasury if during the process of handling the case there are grounds that the obligor has an account in a bank, other credit institutions, and the State Treasury (Article 112); Freezing assets deposited in places of deposit if in the process of handling the case there is evidence that the obligor has deposited property (Article 113); Freezing the assets of the obligor if in the process of handling the case there is evidence that the obligor has property (Article 114) and the application of these measures are necessary to ensure the handling of the case or the enforcement of judgments.
324. Decree No. 74/2005/ND-CP dated 07/06/2005 on anti-money laundering stipulates in Article 11 the provisional measures applied in preventing and combating money laundering, which include freezing accounts and sealing or seizing property.

**(b) Observations on the implementation of the article**

325. Partial compliance with the obligations of this article. See the general observations under paragraph 1.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 3**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

326. This issue is stipulated in the Criminal Proceedings Code of Vietnam in Article 75 (Collecting and preserving material evidence), Article 76 (Dealing with material evidence) and Article 147 (Duty to preserve of collected, seized and sealed things, documents, correspondence, telegram, postal parcel and matters). Accordingly, collected, seized and sealed objects, documents, letters, telegraphs, postal parcels and items as prescribed in Articles 75, 144 and 145 of this Code must be wholly preserved. Persons assigned to

maintain them who destroy the seals, use, change, hide or destroy the property they are assigned to maintain will bear criminal liability. Exhibits must be collected promptly and fully and the situation must be correctly described in the minutes and case file. Exhibits must be preserved wholly, with no loss, mixture or damage. Persons responsible for preserving the evidence in case of loss, damage or destroying seals, using, transferring, exchanging, concealing or destroying physical evidence of the case, depending on the nature and extent of violations, are disciplined or subject to criminal prosecution. Persons who add, delete, modify, exchange, remove or damage physical evidence of the case to falsify the case file shall be subject to criminal liability and payment of compensation in accordance with the law for causing damage. The Criminal Proceedings Code also stipulates specific authority and procedures for implementation of these measures.

327. In addition, Decree No. 18/2002/ND-CP dated 18/02/2002 of the Government and Circular No. 06/2003/TT-BCA-V19 dated 12/03/2003 guiding the implementation of some articles of the Regulation on management of material evidence storehouses in the People's Public security force (issued together with Decree No. 18/2002/ND-CP dated 18/02/2002 of the Government) provides specific instructions on the related procedures.

328. Chapter III of the Criminal Proceedings Code has provisions on asset confiscation in Articles 146, 147, 148 and 149. Among these, Article 146 contains stipulations on asset confiscation as follows:

Article 146.- Distraintment of property

1. Distraintment of property shall only apply to the accused or defendants charged with offenses which, as prescribed by the Penal Code, may be subject to property confiscation or fine penalty as well as to persons liable to pay damage compensation according to law provisions.

The competent persons defined in Clause 1, Article 80 of this Code shall have the right to issue property distraintment warrants. Distraintment warrants of persons defined at Point d, Clause 1, Article 80 of this Code must be immediately notified to the procuracies of the same level before they are executed.

2. Distraintment shall be made only of a portion of property corresponding to the amount likely to be confiscated, to the pecuniary fine or the damage compensation.

Distrainted property shall be assigned to their owners or their relatives for preservation. If the persons assigned to preserve such property commit acts of consuming, transferring, fraudulently swapping, concealing or destroying the distrainted property, they shall bear penal liability under the provisions of Article 310 of the Penal Code.

3. Property distraintment must be witnessed by the involved persons or their families' adult members, representatives of the commune, ward or township administrations and neighbors. The distrainting persons must make the minutes, clearly stating the name and condition of each distrainted property item. Such minutes must be made according to Articles 95 and 125 of this Code, read to the involved persons and other present persons, and signed by these persons. Any complaints of the involved persons shall be recorded in the minutes, with the signatures for certification of such persons and the distrainting persons.

A distraintment minutes shall be made in three copies, one to be handed to the involved person immediately after the distraintment is completed, one to be sent to the procuracy of the same level, and one to be put in the case file.

4. When deeming that distraintment is no longer necessary, the competent persons defined in Clause 1, Article 80 of this Code must issue in time decisions to cancel distraintment warrants.

329. Articles 70 and 71 of the 2005 Law on Prevention and Combating of Corruption stipulate the handling of proceeds of corruption as follows:

- According to Article 70 on Principles of dealing with proceeds of corruption, competent agencies and organizations must take measures necessary to recover and confiscate proceeds of corruption. Proceeds of corruption must be returned to their lawful owners or managers or shall go to the State budget. Persons who have given bribes but have voluntarily reported the bribe before being detected shall be returned the assets used as the bribes. The confiscation and recovery of proceeds of corruption shall be carried out under decisions of the competent State authorities in accordance with the provisions of law.
- According to Article 71 on Recovery of proceeds of corruption related to foreigners, the Government of Vietnam shall, subject to the international treaties to which Vietnam is a contracting party and in accordance with the fundamental principles of Vietnamese law, cooperate with foreign governments in recovering property and assets of Vietnam or of foreign countries which have been corrupted, and in returning those property and assets to their legitimate owners.

**(b) Observations on the implementation of the article**

330. Substantial compliance with the obligations of this article.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 4**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

331. Article 2 of the Law on Prevention and Combating of Corruption stipulates in paragraph 1 that proceeds of corruption are proceeds derived or originating from corrupt acts. Therefore, all assets which originated from corrupt acts, including yields, profits, mixed, transformed and transferred assets, are proceeds of corruption and subject to the application of measures to identify, verify and handle them according to the provisions of law.

332. Vietnam's Penal Code 1999 (amended and supplemented in 2009) contains provisions on keeping or consuming property acquired from crime (Article 250) and the offence of money laundering (Article 251). Accordingly, a person is deemed guilty of money laundering while performing one of the following acts:

- “a) Directly or indirectly participating in financial or banking transactions or other transactions related to money or property which they clearly know are gained from the commission of a crime in order to conceal the illegal origin of such money or property; b) Using money or property which they clearly know are gained from the

commission of a crime in conducting business or other activities; c) Concealing information on the origin, true nature, location, process of movement or ownership of money or property which they clearly know are gained from the commission of a crime, or obstructing the verification of such information; d) Committing one of acts specified at Points a, b and c of this Clause with regard to money or property which they clearly know are gained from the movement, transfer or conversion of money or property gained from the commission of a crime”.

333. In addition, the Law on Prevention and Combating of Corruption in Article 2, paragraph 1 stipulates that corrupt property is property acquired from corrupt acts or derived from corruption. Thus, all subjects of property, including yields, income, mixed, changed and transformed assets deriving from acts of corruption, are corrupt property and measures to identify, define and handle must be applied according to the provisions of law.

**(b) Observations on the implementation of the article**

334. Substantial compliance with the obligations of this article.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 5**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

335. The Penal Code of Vietnam has provisions on this issue in the articles on keeping or consuming property acquired through the commission of crime (Article 250) and money laundering (Article 251). Accordingly, those who, without prior promises, keep or consume assets which are clearly known to have been acquired by other people through the commission of crimes, or by other people through financial, banking or other transactions to legalize money or property acquired from criminal activity, or by use of money or property in the conduct of business or other economic activities, shall be prosecuted criminally. Article 2 of the Law on Prevention and Combating of Corruption stipulates in paragraph 1 that proceeds of corruption are proceeds derived or originating from corrupt acts. Therefore, all assets which originated from corrupt acts, including yields, profits, mixed, transformed and transferred assets, are proceeds of corruption and subject to the application of measures to confiscate them according to the provisions of law.

**(b) Observations on the implementation of the article**

336. Substantial compliance with the obligations of this article.

**Article 31 Freezing, seizure and confiscation**

## **Paragraph 6**

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

337. The Penal Code of Vietnam has provisions on this issue in the articles on keeping or consuming property acquired through the commission of crime (Article 250) and money laundering (Article 251). Accordingly, those who, without prior promises, keep or consume assets which are clearly known as being acquired by other people through the commission of crimes, or by other people through financial, banking or other transactions to legalize money or property acquired from criminal activity, or by use of money or property in the conduct of business or other economic activities, shall be prosecuted for criminally. Article 2 of the Law on Prevention and Combating of Corruption stipulates in paragraph 1 that proceeds of corruption are proceeds derived or originating from corrupt acts. Therefore, all assets which originated from corrupt acts, including yields, profits, mixed, transformed and transferred assets, are proceeds of corruption and subject to the application of measures to identify, verify and handle them according to the provisions of law.

### **(b) Observations on the implementation of the article**

338. Substantial compliance with the obligations of this article was noted.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 7**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

339. Vietnamese law has provisions on this matter in Decree No. 74/2005/ND-CP dated 07/06/2005 of the Government on preventing and combating money laundering. Accordingly, Articles 11 (Provisional measures to be applied to prevent and combat money laundering) and 12 (Forms and contents of reporting and information provision) of the Decree stipulate that suspicious banking and credit transactions must be reported to competent authorities (i.e., the anti-money laundering information centre or investigation agency) as stipulated by laws. Agencies, institutions and individuals reporting or providing information related to these transactions shall not be considered to have violated the provisions of law on ensuring the secrecy of customer deposits and assets or other provisions on confidentiality of customer information. Investigation agencies have authority to apply such measures as blocking accounts, sealing or seizing property, applying temporary custody to violators and other preventive measures prescribed by law.

**(b) Observations on the implementation of the article**

340. Substantial compliance with the obligations of this article was noted.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 8**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

341. Pursuant to the Criminal Proceedings Code of 2003, persons in custody, charged persons and the accused have the fundamental rights stipulated in Articles 48, 49 and 50, including rights related to the ability to prove the legal origin of assets attributed to either property acquired through the commission of crimes or other property subject to confiscation, as follows:

- Article 48: Persons in custody have the rights to present testimony (paragraph 1.c) and defend themselves (paragraph 1.d);
- Article 49: Charged persons have the rights to present testimony (paragraph 1.) and defend themselves (paragraph 1.e);
- Article 50: Accused persons have the rights to provide materials, objects and requests (paragraph 1.d), defend themselves (paragraph 1.e), and present ideas and arguments at trial (paragraph 1.g).

342. According to Article 10 of the Criminal Proceedings Code 2003, investigating agencies, procuracies and courts shall adopt all lawful measures to determine the facts of a case impartially, comprehensively and fully and to clarify evidence of guilt or innocence and circumstances tending to aggravate and/or extenuate the criminal liability of the charged person and the accused.

343. However, as discussed above in regard to the questions on illicit enrichment, the laws of Vietnam do not provide for an obligation of seized persons, defendants or accused persons to prove the legal origin of assets which are being considered as proceeds of crimes or other assets subject to confiscation because of difficulties in criminalizing these acts.

**(b) Observations on the implementation of the article**

344. Substantial compliance with the obligations of this article was noted.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 9**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

345. There are two types of bona fide third persons covered by Vietnamese laws: a) persons who have rights and benefits related to properties acquired through the commission of crimes and b) legal owners or managers of assets used to perform criminal acts. Regarding a), Vietnam explained that this case refers to third persons involved in civil transactions of property who do not know or cannot know that the property was acquired through criminal acts. Pursuant to Articles 122, 127 and 128 of the Civil Code of Vietnam of 2005, such transactions are declared invalid in court. To protect the interests of bona fide third parties in cases of invalid transactions, Article 137 of the Civil Code 2005 stipulates that invalid civil transactions do not create, change or terminate the civil rights and obligations of the parties from the beginning. Concurrently, the parties to the transaction must restore the initial situation and return to each other what they have received, or, in case they cannot return the artifact, they must replace it with cash, unless the transacted property, yields and profits are confiscated by law. The party causing damage must provide compensation. Therefore, in this case, if it is a monetary contract, the bona fide third party has the right to request a court to force those who commit acts of corruption to compensate for damages. For non-monetary contracts, such as contracts to transfer property as a gift or to lend assets, the bona fide third party does not have such right to request compensation for damages (pursuant to Articles 138 and 257 of Vietnam's Civil Code of 2005).

346. Regarding b), the rights of the bona fide third parties are stipulated clearly in Vietnam's Penal Code in Article 41. If a person can prove that the materials or money were appropriated or used illegally, they will be returned to their legal owners or managers, pursuant to paragraph 2 of Article 41 of the Penal Code of Vietnam. If the materials or money belong to another person who had responsibility for allowing the offender to use the property in the commission of crimes, that property may be confiscated into State funds, pursuant to paragraph 3, Article 41 of the Penal Code of Vietnam.

**(b) Observations on the implementation of the article**

347. Substantial compliance with the obligations of this article was noted.

**(c) Technical assistance needs related to article 31**

348. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Other assistance: conducting surveys and developing thematic reports on this issue.
2. Summary of good practices/lessons learned.
3. Legal advice.

None of these forms of technical assistance have been provided to date.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 1**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or*

*intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

**(a) Summary of information relevant to reviewing the implementation of the article**

349. According to Vietnamese laws, citizens have inviolable rights of the body and State laws protect their lives, health, honor and dignity (Article 71 Constitution 1992). Citizens further have the right to seek the protection of laws with respect to their life, health, honor, dignity and property (paragraph 1 of Article 7 of the Criminal Proceedings Code 2003). The lives, health, honor and dignity of victims as well as their relatives or people with close ties to them are also protected by laws (Article 69 of the Constitution 1992, Article 7 of the Criminal Proceedings Code 2003).
350. When the lives, health, honor or dignity of witnesses, victims or their relatives are threatened, they shall notify the investigating bodies, procuracy, courts or other agencies about the threat and ask for help and protection. In cases where witnesses or victims report crimes orally, the competent authorities must record the information in writing with their signatures. Agencies and organizations receiving the information must immediately notify the investigating agency about such information (Article 101 of the Criminal Proceedings Code 2003).
351. Witnesses may request investigating authorities summoning them to protect their lives, health, honor, dignity, property and other legal rights and interests when taking part in legal proceedings and when filing complaints on the decisions and acts of competent authorities conducting proceedings. Their travel expenses and other costs prescribed by law are paid by competent agencies summoning them. In cases where the lives or health of witnesses and their relatives are threatened or their honor, dignity or property are infringed upon, the competent agency has to adopt necessary measures to protect them according to the provisions of law (paragraph 3, Article 55 of the Criminal Proceedings Code 2003). In case of necessity to ensure the safety of witnesses and their relatives, the trial council must decide to implement protection measures in accordance with the provisions of laws.
352. The Law on Prevention and Combating of Corruption 2005 stipulates that “Heads of authorized agencies receiving reports on acts of corruption must consider and handle according to their mandated authority, keep secret the names, addresses, autographs and other information under request by the reporting people; simultaneously, apply the necessary measures to protect the reporting people when there is threat, revenge against the them or upon the request of the whistle-blowers; inform the reporting people about the results of the settlement of denunciations upon request” (Paragraph 2, Article 65).

In addition, Decree No.120/2006/NĐ-CP dated 20 October 2006 of the Government, which provides detailed guidance on the implementation of certain articles of the Law on Prevention and Combating of Corruption 2005, devotes the entire Chapter V to mandates, procedures for receiving, processing and settling denunciations of corruption, and protection and rewards of people reporting corruption.

353. The Law on Complaints and Denunciations 1998 (Article 72) stipulates that agencies, organizations or individuals receiving and handling denunciations must keep secret the

reporting persons' names, addresses, autographs and other information that may harm them. Further, Joint Circular No. 03/2011/TTLT-BNV-TTTP of the Ministry of Home Affairs and the Government Inspectorate on 06/05/2011 regulates rewards for individuals who have made outstanding achievements in the detection and reporting of corruption.

354. Neither the 1998 Law on Complaints and Denunciations nor the 2005 Law on Prevention and Combating of Corruption specifically provide for the acceptance of anonymous petitions. However, according to Article 42, paragraph 4 of the above-referenced Decree No. 120/2006/NĐ-CP dated 20 October 2006 of the Government, "For petitions of which names and address of the whistleblowers are not clear but the contents of the reports are clear with specific evidences and can be grounds for verification, authorized persons, agencies shall consider the provided information for the purposes of anti-corruption work".
355. Vietnam explained that the recognition of provisions on anonymous reporting was considered by authorized agencies of Vietnam in order to supplement the Law on Reportings, which will be adopted by the National Assembly at the beginning of its term of tenure XIII.
356. In addition, a Regulation on the Protection of Witnesses and Persons Reporting Information on Criminals will come into force on 1 July 2012.

**(b) Observations on the implementation of the article**

357. There is partial compliance with the obligations of this provision.
358. During the country visit, officials at the Supreme People's Procuracy, the Supreme People's Court and the Ministry of Public Security described various protection measures that are in place in Vietnam and can be afforded to witnesses, experts and victims in criminal cases. They explained that protections are frequently given, ranging from physical security and maintaining the confidentiality of the person to, in serious cases, the issuance of new identification cards, use of safe houses for them and their family and home surveillance. During court sessions, judicial security can include the ability to testify by teleconference. A proposal has been made to increase the available protections to also include relocation and reassignment of positions, where necessary.
359. It was noted that the available protection measures are fairly standard witness protection measures. Consideration could be given to the establishment of witness protection programmes and other enhanced protection measures.

**Article 32 Protection of witnesses, experts and victims**

**Subparagraph 2 (a)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

**(a) Summary of information relevant to reviewing the implementation of the article**

360. Vietnam indicated that it has partially implemented the provision under review. As mentioned above in regard to paragraph 1 of article 32, Vietnamese laws contain provisions to safeguard and protect the civil rights of victims, witnesses and reporting people. Competent agencies shall adopt necessary measures to protect the lives, health, honor, dignity and property of victims, witnesses and other people participating in proceedings as well as their relatives (Article 7 of the Criminal Proceedings Code). The names, addresses, autographs and other information of reporting people are kept secret as required, and necessary measures to protect them from threats, retaliation and revenge shall be applied. In case of necessity to ensure the safety of witnesses and their relatives, the trial council must decide to implement protection measures in accordance with the provisions of laws.

361. Vietnam indicated that, to more fully implement the provision under review, the Ministry of Public Security has drafted a joint circular among the Ministry of Public Security, the Ministry of Defense, the Supreme People's Procuracy and the Supreme People's Court to give detailed guidance on the protection of witnesses, people reporting crimes and victims in the investigation of criminal cases (expected to be completed in 2011).

**(b) Observations on the implementation of the article**

362. There is partial compliance with the provisions of this article. See observations in paragraph 1.

**Article 32 Protection of witnesses, experts and victims**

**Subparagraph 2 (b)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

**(a) Summary of information relevant to reviewing the implementation of the article**

363. Vietnam has not implemented the provision under review. Although Vietnamese laws contain provisions to protect and ensure the safety of witnesses, at present there are no specific regulations on the use of communication means, such as video or other appropriate means during the process of collecting evidence. These measures are being piloted and their implementation is being consolidated in various legal documents for upcoming institutionalization. In addition, the agreement on mutual legal assistance in criminal matters with the United Kingdom and the Northern Ireland contains provisions on providing mutual assistance through online and teleconferences, including taking the testimony or statements of persons by videoconference or television. Vietnam indicated that the Criminal Proceedings Code 2003 has no stipulations on the taking of testimony through online conversation or teleconference because of technical difficulties in Vietnam.

364. Regarding its efforts to date to implement the provision under review, Vietnam indicated that, in recent years, with the assistance of UNICEF in Vietnam, judicial agencies (led by the Supreme People's Procuracy) conducted studies and drafted a joint circular guiding the investigation, prosecution and trial of charged juveniles and accused persons, children victims and witnesses, which mention the protection of children victims and witnesses in the form of video testimony (paragraph 5 of Article 16 of the draft joint circular among the Supreme People's Procuracy, the Supreme People's Court, the Ministry of Public Security, the Ministry of Justice, the Ministry of Labour, Invalids and Social Affairs in guiding the implementation of some provisions of the Criminal Proceedings Code for juvenile persons taking part in the proceedings). In addition, UNICEF Vietnam has helped a number of investigating agencies (in Hai Phong, Ho Chi Minh City and Dong Thap) conduct pilot use of investigation-friendly rooms to better safeguard the rights of charged juveniles and accused persons and to better protect children victims and witnesses.

**(b) Observations on the implementation of the article**

365. There is partial compliance especially with the absence of specific regulations on the use of communication means in testimonies, video behind screen, protective technology, on-line conversation, and teleconference. See observations in paragraph 1 related to the ability to provide testimony by teleconference. Consideration could be given to the adoption of measures to more fully implement the provision under review.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 3**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

366. Vietnam has not implemented the provision under review. In international treaties or agreements that Vietnam has signed or acceded to, there are no stipulations on measures to relocate protected persons. This issue is also not stipulated in the national laws of Vietnam.. The main difficulty is the lack of experience and material conditions to ensure for the implementation of this provision.

367. Vietnam indicated that relocation agreements with other countries in order to resettle this group of people or change their personal information, identity, workplace or working positions have not been concluded. However, noting that this provision of the Convention is not mandatory, officials explained that the issue will be considered in the process of perfecting policies and institutions in the future.

**(b) Observations on the implementation of the article**

368. There is partial compliance in the absence of the required law, lack of experience and material conditions to ensure the full implementation of this provision.

## Article 32 Protection of witnesses, experts and victims

### Paragraph 4

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

#### (a) Summary of information relevant to reviewing the implementation of the article

369. As mentioned in above, the laws of Vietnam stipulate the protection of reporting people, witnesses and victims in different documents, including the Criminal Proceedings Law and the Law on Prevention and Combating of Corruption.

## Article 32 Protection of witnesses, experts and victims

### Paragraph 5

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

#### (a) Summary of information relevant to reviewing the implementation of the article

370. To help the legal representatives of victims participate fully in the proceedings, contribute to clarifying the facts of the case, and to give evidence of the crime and losses the victim has suffered, the laws stipulate that during the investigation process, the representative has the right (Article 51 of the Criminal Proceedings Code in 2003) to provide documents, objects, and requests; to be informed of investigation results; to propose a change of investigators, examiners, and interpreters; to request compensation and other measures to ensure compensation; and to complain about decisions and acts of proceeding agencies or persons in charge of the proceedings. In addition, victims may ask other persons to protect their rights, including lawyers, public defenders or other persons accepted by the investigating bodies, the Procuracy or the court (paragraph 1 of Article 59 of the Criminal Proceedings Code 2003). During the investigation, the protectors of the rights of victims have the rights to provide requested documents and items; read, take notes and copy documents in the case file related to the protection of the interests of the victim; and complain about the decisions and acts of proceeding agencies or competent authorities conducting the proceedings (paragraph 3 of Article 59 of the Criminal Proceedings Code).

#### (b) Challenges related to article 32

371. Vietnam has identified the following challenge in fully implementing article 32:

1. Inadequacy of existing normative measures (laws, regulations, etc.).

*Difficulties in implementing paragraph 1 of article 32:*

Vietnam indicated that there is an insufficiency and lack of compatibility of existing laws and regulations. Accordingly, a number of measures to protect experts and witnesses or victims have not or rarely been implemented. Further, there is a lack of implementing resources (e.g. human and financial) for the protection of experts, witnesses and victims. As a result, the establishment of witness protection

programmes, such as resettlement or changing of work or personal identity remain challenges for Vietnam.

*Difficulties in implementing paragraph 2(a) of article 32:*

The provisions of law on the protection of reporting people, witnesses and victims, while clearly defining the rights of protection and responsibility of concerned agencies, lack specific guidance. Specific protection measures have not been established to cover protections during the processes of investigation and trial or within a certain period of time; equipping reporting people, witnesses and victims with weapons and personal protection means; providing funding to protectors; temporary evacuation of witnesses, reporting persons and victims or their relatives; change of residence, workplace or place of study for witnesses, reporting persons, and victims; and change of personal identification papers and keeping confidential their personal information. At the same time, there is no provision for which specific cases should afford protection to reporting persons, witnesses, victims and those involved in legal proceedings and relatives, or how to solve cases where they refuse to be protected or violate the protection agreement.

*Difficulties in implementing paragraph 2(b) of article 32:*

The Criminal Proceedings Code 2003 has no stipulations on the taking of testimony through online conversation or teleconference because of technical difficulties in Vietnam.

*Difficulties in implementing paragraph 3 of article 32:*

In international treaties or agreements that Vietnam has signed or acceded to, there are no stipulations on measures to relocate protected persons. This issue is also not stipulated in the national laws of Vietnam.

**(c) Technical assistance needs related to article 32**

372. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Summary of good practices/lessons learned
2. Legal advice
3. Other assistance: Financial support to implement pilot programmes on protecting witnesses, experts and victims.

None of these forms of technical assistance have been provided to date.

**Article 33 Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

373. According to Article 74 of the 1992 Constitution, “All acts of threatening, ill-treating, revenging against the reporting persons are prohibited”. Further, Article 76 of the Law on Complaints and Denunciations prohibits “all acts to obstruct the implementation of rights

of complaining and reporting, threaten, revenge, retaliate against the reporting persons; disclosure of names, addresses, autographs of the reporting persons; not handling complaints and denunciations by intention or handling cases in violations of laws; cover reported persons; illegal interference on the handling of complaints and denunciations; agitating, forcing, inducing, bribing others to initiate untrue reportings; threatening, insulting persons responsible for handling complaints and denunciations; taking advantages of handling complaints and denunciations to distort, slander and disturb social order”.

374. Article 132 of the 1999 Penal Code on infringement upon the rights to complain and/or denounce stipulates that,

“1. Those who commit one of the following acts shall be subject to warning, non-custodial reform for up to one year or a prison term of between three months and three years:

a) Abusing positions and/or powers to obstruct the lodging of complaints and/or denunciations, the settlement of complaints and/or denunciations or the handling of those who are the subject of complaints or denunciations;

b) Having the responsibility but refusing to abide by the decision of the agencies competent to consider and settle complaints and denunciations, thus causing damage to the complainants and the denunciators.

2. Those who take revenge on the complainants and/or denunciators shall be subject to non-custodial reform for up to three years or a prison term of between six months and five years.

3. The offenders may also be banned from holding certain posts for one to five years.”

375. In this regard, Article 74 of the Constitution of 1992 stipulates that, “Citizens have the rights to appeal, denounce to the competent state agencies of illegal acts of state agencies, economic organizations, social organizations, units of armed forces or any individuals. The handling of complaints and denunciations must be considered and resolved by authorized state agencies within the timeframe as stipulated by laws”.

376. In addition, the State also provides a system of laws on complaints and denunciations to ensure the rights of citizens to lodge complaints and denunciations in all areas. As described further below, provisions on complaints and denunciations are included in the Criminal Proceedings Code 2003, the Law on Complaints and Denunciations 1998 (amended in 2004 and 2005), the Penal Code 1999 (amended and supplemented in 2009), the Civil Code, the Law on the Enforcement of Criminal Judgments, the Ordinance on the Enforcement of Civil Judgments, the Ordinance on Organization of Criminal Investigations 2004, and the Decree No. 89/1998/ND-CP of the Government stipulating on temporary custody and detention (amended and supplemented by the Decree No. 98/2002/ND-CP dated 27/11/2002 ).

377. State law prohibits retribution against reporting persons or abuse of rights in lodging complaints and denunciations to slander and harm others.

378. The Law on Complaints and Denunciations 1998 (amended in 2004 and 2005) gives a fairly complete legal framework with specific provisions on the rights and obligations of persons lodging complaints and denunciations; persons being complained and denounced against; organizations handling complaints and denunciations; and the management and supervision of the settlement of complaints and denunciations. The complaints and denunciations can be lodged in writing, by direct contact with responsible persons or

through a representative. Complainants must first send complaints to persons issuing administrative decisions or officials and employees of administrative agencies whose acts are considered unlawful or violating the complainant’s rights and interests. The statute for complaints is 90 days. The first person handling the complaint is responsible for sending a written decision on settling the complaint to the complainant and the persons with related rights and benefits. Within 30 days after receiving the first written decision on settling the complaint, if the complainant disagrees, they may appeal to the next competent person. Complaints and denunciations must be settled within 10 days from the date of receiving the complaint. The Law on Complaints and Denunciations prescribes that the authorities who receive, consider and resolve complaints are the heads of the People’s Committees of communes, wards, towns, districts, provinces, cities, and the Prime Minister, heads of agencies, departments, ministers, heads of ministries and ministerial-level agencies. In addition, the chief inspectors of the district, provinces, ministries, ministerial-level agencies, and the government inspector general are authorized to receive, resolve, verify, conclude and propose recommendations on complaints depending on their degree and nature (regulations of Articles 19-29).

379. To facilitate access to competent bodies by complainants and reporting persons, the Law on Complaints and Denunciations stipulates specific provisions for receiving citizens. Accordingly, the head of the agency is responsible for creating conditions for receiving complaints, denunciations and petitions of citizens. All acts of threatening, abuse or revenge on complainants and reporting persons are prohibited (Article 74 of Constitution 1992).

380. Article 76 of the Law on Complaints and Denunciations strictly prohibits “all acts of obstructing the exercise of complaints and denunciations rights, threatening, retaliating, revenging against complainants and reporting persons, disclosing names, addresses, autographs of reporting persons, unlawful or intentionally not solving complaints and denunciations; illegal covering of complained persons, illegal interference in the settlement of complaints; inciting, coercing, seducing, bribing others to claim or report false statements; threatening, insulting persons responsible for settling complaints and denunciations, taking advantage of the complaints and denunciations to distort, slander, disrupt public order”.

Vietnam provided the following statistics on complaints and denunciation cases handled by the Inspectorate sector in the last three years (2009 - 2011).

Year	Handled Cases	Recommended to be recovered to the State		Returned to Citizens		Persons to be recovered interests	Persons to be exculpated	Persons to be recommended to handle by administrative sanctions	Transferred to investigation	
		Money (million dong)	Land (m2)	Money (million dong)	Land (m2)				Case	Person
2009	43,046	345,756	1,174,693	25,848	1,036,289	N/A	199	340	42	42
2010	69,698	48,187	633,532	50,982	1,229,311	1,524	251	754	46	89
2011	66,174	24,587	849,463	141,027	768,636	2,262	208	503	116	131

**(b) Observations on the implementation of the article**

381. There is partial compliance. A regulation on the protection of whistleblowers will come into force on 1 July 2012. It was observed that a distinct law which protects private

and public sector whistleblowers from reprisals, adverse consequences and other risks must be clearly incorporated into the expected new law. This should be treated as a priority measure for Vietnam,

382. There seems to be some misunderstanding by Vietnamese officials as to the concept of protections for reporting persons. Many of the cited measures provide for the right to make complaints or reports by citizens and denunciators, but do not afford any corresponding protections to reporting persons. Basic measures like anonymous reporting are not generally afforded by inspection agencies like the Government Inspectorate and could be implemented without significant procedural effort. Vietnam is encouraged to adopt effective measures for the protection of reporting persons, such as the possibility of anonymous reporting, and to establish witness protection programmes.

**(c) Challenges related to article 33**

383. Vietnam has identified the following challenge in fully implementing article 33:  
1. Specificities in its legal system

**(d) Technical assistance needs related to article 33**

384. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Model legislation
2. Summary of good practices/lessons learned
3. Other assistance: Financial support to implement pilot programmes on protecting whistleblowers.

None of these forms of technical assistance have been provided to date.

**Article 34 Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

**(a) Summary of information relevant to reviewing the implementation of the article**

385. Vietnam's law stipulates relevant provisions on this issue in the Civil Code of 2005 in Article 122 on the conditions of validity of civil transactions; Article 127 on invalid civil transactions; Article 128 on civil transactions which are invalid due to violation of prohibitory provisions of law or contravention of social ethics; and Article 137 on the legal consequences of invalid civil transactions. Under these provisions, transactions with corrupted subjects or involving property or money that originated from corruption are prohibited. Meanwhile, the parties will resume the status of rights and obligations they had before participating in the civil transactions.

386. Vietnam indicated that its law enforcement agencies have implemented the above-referenced provisions of the Civil Code to settle legal proceedings to annul or rescind a contract related to criminal acts of corruption.

**(b) Observations on the implementation of the article**

387. There is sufficient compliance with the obligations of this article.

388. During the country visit, officials of the Government Inspectorate explained that there are procedures in place for the Government Inspectorate to refer the results of its investigations to relevant ministries for their appropriate action, and that results of investigations are also published by the Government Inspectorate. For example, in a case involving collusion among three transportation companies in a tender, the results of the investigation were sent to the Ministry of Transport and published on the e-portal of tendering agencies. The reviewing experts observed that consideration could be given to giving the recommendations and referrals of inspection agencies like the Government Inspectorate a binding effect with regard to their implementation by concerned ministries.

**(c) Challenges related to article 34**

389. Vietnam has identified the following challenge in fully implementing article 34:  
1. Limited resources for implementation (e.g. human/financial/other).

**(d) Technical assistance needs related to article 34**

390. Vietnam has identified the following technical assistance needs to more fully implement the article.  
1. Summary of good practices/lessons learned  
2. Other assistance: conducting surveys and developing thematic reports on this issue.  
None of these forms of technical assistance have been provided to date.

**Article 35 Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

391. With regard to the responsibility to compensate damages in criminal proceedings, victims may request the agency responsible for compensation for a settlement of compensation either when there is written document of the competent State agency determining that the behavior of the person conducting the official duty was illegal; when there is a document of the competent authorities in criminal proceedings which identifies that the victim of such cases has a reason to cancel the decision of custody because the person in custody did not commit unlawful acts; or when the person in custody has completely served or is serving a term of imprisonment, life imprisonment, or has been convicted of the death penalty, and the people who implement the death penalty judgment receive a decision of the competent authorities in criminal proceedings to determine that the person did not commit criminal acts.

392. In the course of a complaint or administrative lawsuit, victims may request the competent person or the Court to settle the compensation (Articles 4 and 26 of the Law on the Liability of State Compensation). The Criminal Proceedings Code ensures the right to compensation and restoration of the rights and honor of victims of injustice (Article 29 of the Criminal Proceedings Code 2003). Victims of damages caused by a competent agency or criminal defendant have a right to compensation. Thus, the agencies with jurisdiction to compensate victims in criminal proceedings and those who have caused damages are required to compensate the competent authorities in accordance with the law. Article 30 of the Criminal Proceedings Code 2003 stipulates regulations to ensure the compensation of victims of damages caused by authorized agencies or persons in criminal proceedings.

**(b) Observations on the implementation of the article**

393. There is sufficient compliance with the obligations of this article, although Vietnam did not provide any statistics as to the number of civil corruption cases.

**(c) Challenges related to article 35**

394. Vietnam has identified the following challenge in fully implementing article 35:  
1. Limited resources for implementation (e.g. human/financial/other).

**(d) Technical assistance needs related to article 35**

395. Vietnam has identified the following technical assistance needs to more fully implement the article.  
1. Summary of good practices/lessons learned  
2. Other assistance: conducting surveys and developing thematic reports on this issue.  
None of these forms of technical assistance have been provided to date.

**Article 36 Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

**(a) Summary of information relevant to reviewing the implementation of the article**

396. The Law on Prevention and Combating of Corruption 2005 (revised in 2007) requires that all agencies, organizations, units and citizens are responsible for preventing and combating corruption (Articles 5 and 6). The Law further provides that “agencies, organizations and units include state agencies, political organizations, socio-political organizations, units, armed forces units, state enterprises and agencies, organizations and other entities using the budget and property of the State” (Paragraph 6, Article 2). Paragraph 1 of Article 72 further stipulates that “The heads of agencies, organizations and units shall apply the provisions of this Law and other provisions of law relating to prevent and combat corruption in the agencies, organizations and units under their management”.

397. After the Law on Prevention and Combating of Corruption came into effect, the agencies or units responsible for anti-corruption work in Vietnam were established. These are:

- The Central Steering Committee on Preventing and Combating Corruption (defined in paragraph 1, Article 73 of the Law and in Resolution 1039/2006/NQ-UBTVQH11 on the organization, responsibilities and mandates of the Central Steering Committee on Preventing and Combating Corruption);
- The Provincial Steering Committees on Preventing and Combating Corruption (defined in paragraph 2, Article 73 of the Law and in Resolution 294A/2007/UBTVQH12, dated 27/9/2007 on the organization, responsibilities, mandates and operational regulations of the Steering Committees of provinces and cities under central authority on preventing and combating corruption);
- The Office of the Central Steering Committee on Preventing and Combating Corruption (defined in paragraph 1, Article 73 of the Law and in Decision No. 13/2007 /QD-TTg, dated 24/01/2007 of the Prime Minister on the establishment, functions, duties, powers, organization and operation regulations of the Office of the Central Steering Committee on Preventing and Combating Corruption);
- The Offices of the Provincial Steering Committee on Preventing and Combating Corruption (defined in paragraph 2, Article 73 of the Law and in Decision No. 138/2009/QD-TTg, dated 9/12/2009 by the Prime Minister on the organization, name, mission and operation regulations of the assisting department to the Steering Committee of provinces and cities under central authority on preventing and combating corruption);
- The Anti-Corruption Bureau under the Government Inspectorate (defined in paragraph 1, Article 75 of the Law, in Decision 1424/2006/QD-TTg, dated 31/10/2006 of the Prime Minister on the establishment of the Anti-Corruption Bureau of the Government Inspectorate, in Decree No. 65/2008/ND-CP, dated 20/05/2008 of the Government on functions, tasks, powers and organizational structure of the Government Inspectorate, and in Decision No. 1592/2008/QD-TTg, dated 06/8/2008 of the Inspector General issuing regulations on functions, tasks, powers, organizational structure and activities of the Anti-Corruption Bureau);
- The Corruption Criminal Investigation Police Department under the Ministry of Public Security (defined in Paragraph 1, Article 75 of the Law and in Decision 01/2007/QD-BCA (X13), dated 02/01/2007 of the Minister of Public Security on functions, tasks, powers and organizational apparatus of the Corruption Criminal Investigation Police Department);
- The Department on Prosecution Practice and Control of Investigation of Corruption Cases under the Supreme People's Procuracy (defined in Paragraph 1, Article 75 of the Law and in Decision 121/QD-VKSTC-V9, dated 26/09/2006 of the Chief Prosecutor of the Supreme People's Procuracy on the establishment of several departmental units under the apparatus of the Supreme People's Procuracy, including the Department on Prosecution Practice and Control of Investigation of Corruption Cases).

**(b) Observations on the implementation of the article**

398. There is partial compliance with this article.

399. Regarding the independence of anti-corruption bodies, it was observed that Vietnamese authorities tended to equate operational independence of functioning of

agencies with their operation in accordance with law. There are no directly applicable measures or procedures to guarantee the independence of inspection agencies. Vietnamese officials noted that the Supreme People's Procuracy is considered to be independent due to its reporting lines to the National Assembly rather than the Executive.

400. Regarding the reporting structure of the Government Inspectorate, the 2001 Law on the Organization of the Government of Vietnam provides that the Inspector General is a member of the Government, and as other ministers is appointed through the following procedure, which involves a National Assembly resolution and appointment by the President of the State:

- First, the Prime Minister will propose the ministers, including the Inspector General, to the National Assembly for approval. In case the National Assembly is not convened, the Standing Committee of the National Assembly will approve the ministers and the Inspector General as proposed by the Prime Minister;
- Second, the National Assembly will consider and approve the list of ministers by its Resolution;
- Third, according to the Resolution of the National Assembly, the President of the State will appoint the ministers by his or her decisions.

This procedure is also applied to ministers who are relieved from duty, resign, dismissed or removed.

401. The Inspector General shall report to the Government and the Prime Minister in all areas of State management, including inspections, complaint and denunciation settlement and anti-corruption. All ministers and the Inspector General shall also report to the National Assembly, including to committees and councils established by it.

402. The reporting structure of the Government Inspectorate to the Prime Minister and National Assembly, rather than the Executive, appears to be adequate to ensure its operational independence.

403. During the country visit the officials of several investigative agencies underscored the need for additional resources and training of their staff to enhance operational capacities, including the Government Inspectorate and inspection staff in the Ministry of Public Security, especially in the area of financial investigations and asset confiscation or recovery.

404. The full implementation of article 36 should be considered a priority for Vietnam.

**(c) Challenges related to article 36**

405. Vietnam has identified the following challenge in fully implementing article 36:  
1. Limited resources for implementation (e.g. human/financial/other).

**(d) Technical assistance needs related to article 36**

406. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Summary of good practices/lessons learned

2. Other assistance: Training activities and courses for full-time specialized public officials.

None of these forms of technical assistance have been provided to date.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 1**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

407. The Penal Code 1999 (revised in 2009) contains provisions on this matter in Article 3 (Handling principles), Article 25 (Criminal liability exemption), Article 46 (Circumstances of extenuating criminal liability), Article 47 (Deciding lighter penalties than those prescribed by the Penal Code), Article 54 (Penalty exemption), Article 57 (Exemption from penalty execution), Article 58 (Reduction of the declared penalty) and Article 59 (Extenuation of penalty term in special cases). These measures encourage people who committed crimes to cooperate with investigating agencies, procuracies and courts in the process of criminal investigations, prosecution and adjudication as well as in the recovery of property that offenders have appropriated or property derived from the commission of crimes. These measures include:

- clemency for voluntary confessions, honest declarations and denunciations of culprits, as well as having atonement, repentance and voluntary reparation of damages;
- offenders actively support the responsible agency in detecting and investigating crimes;
- regulations on extenuating circumstances and exemptions from criminal liability due to changes of situation as a result of which the offense of the offender is no longer dangerous to society; persons may also be exempt from criminal liability in cases where they clearly confess the crime, contribute effectively to its detection and criminal investigation, and try to limit the consequences to the lowest level of crime before the crime was discovered; and
- exempting or extenuating penalties because of full cooperation with the agencies and persons conducting proceedings in the process of settling the case.

408. Article 25 (Penal liability exemption) provides as follows:

1. An offender shall be exempt from penal liability if during the investigation, prosecution or trial, due to a change of situation, the act of criminal offense of the offender is no longer dangerous to the society.
2. If before the act of criminal offense is detected, the offender gives him/herself up and clearly declares and reports facts, thus effectively contributing to the detection and investigation of the crime and trying to minimize the consequences of the crime, he/she may also be exempt from penal liability.
3. Offenders shall be exempt from penal liability when there are decisions on general amnesties.

Article 46 (Circumstances extenuating penal liability) provides as follows:

1. The following circumstances are considered as extenuating the penal liability:

- a) Offenders have prevented and/or reduced the harm caused by their offenses;
- b) Offenders volunteer to repair, compensate for the damage or overcome the consequences;
- c) Crimes are committed in cases where it is beyond the limit of legitimate defense;
- d) Crimes are committed in cases where it is beyond the requirements of the urgent situation;
- e) Crimes are committed in cases where offenders are mentally incited by the illegal acts of the victims or other persons;
- f) Crimes are committed due to particular difficulty plights not caused by themselves;
- g) Crimes are committed but no damage or minor damage is caused;
- h) Crimes are committed by first time offenders and in cases of less serious crimes;
- i) Crimes are committed due to threats and/or coercion by other persons;
- j) Crimes are committed due to ignorance;
- k) Offenders are pregnant women;
- l) Offenders are aged persons;
- m) Offenders are persons suffering from illnesses that restrict their cognitive capability or the capability to control their acts;
- n) Offenders give themselves up;
- o) Offenders make honest declarations and reports and show their repentance;
- p) Offenders who actively help responsible bodies detect and investigate the crimes;
- q) The offenders have redeemed their faults with achievements;
- r) The offenders are persons who have recorded outstanding achievements in production, combat, study or work.

2. When deciding penalties, the court may also consider other circumstances as extenuating, but must clearly inscribe them in the judgment. 3. The extenuating circumstances which have been prescribed by the Penal Code as signs for determining crimes or determining the penalty bracket shall not be considered extenuating circumstances for the purpose of deciding penalties.

Article 47 (Deciding penalties lighter than those prescribed by the Penal Code) provides as follows:

Where there exist at least two extenuating circumstances as provided in Clause 1, Article 46 of this Code, the courts may decide a penalty under the lowest level of the penalty bracket stipulated by the law, which, however, must lie within the adjacent lighter penalty bracket of the law; where the law contains only one penalty bracket or such penalty bracket is the highest penalty bracket of the law, the courts may decide a penalty below the lowest level of the bracket or move to another penalty of lighter category. The reasons for such reduction must be clearly inscribed in the judgment.

Article 54 (Penalty exemption) provides as follows:

Persons who commit crime may be exempt from penalties in case where the crime commission involves many extenuating circumstances as provided by Clause 1, Article 46 of this Code, deserving special leniency, but not to the extent of penal liability exemption.

Article 57 (Exemption from penalty execution) provides as follows:

1. For persons sentenced to non-custodial reform, termed imprisonment, who have not executed their judgements but have recorded great achievements or suffered from

dangerous disease and if such persons are no longer dangerous to the society, the court may decide, at the proposal of the Procuracy director, to exempt the person from the execution of the entire penalty.

2. Sentenced persons shall be exempt from penalty execution when they are granted a special parole or general amnesty.

3. For persons sentenced to imprisonment for less serious crimes who have been entitled to a reprieve as provided for in Article 61 of this Code, if during the period of reprieve they have recorded great achievements, the court, at the proposal of the Procuracy director, may decide to exempt them from penalty execution.

4. For persons sentenced for less serious crimes who have been entitled to a temporary suspension as provided for in Article 62 of this Code, if during the period of temporary suspension they have recorded great achievements, the court, at the proposal of the Procuracy director, may decide to exempt them from the execution of the remainder of their penalties.

5. For persons who are penalized with a ban on residence or probation, if they have served half of their penalties term and re-habilitated themselves, the court, at the proposal of the administration of the localities where such persons serve their penalties, may decide to exempt them from the execution of the remaining half of their penalties.

Article 58 (Reduction of the declared penalties) provides as follows:

1. For persons sentenced to non-custodial reform, if having served the penalty for a given period and made progress, the court, at the proposal of the agencies, organizations or local administration which have been assigned the responsibility to directly supervise and educate them, may decide to reduce the penalty term.

For persons sentenced to imprisonment, if having served the penalty for a given period and made progress, the courts, at the proposal of the imprisonment enforcement agencies, may decide to reduce the penalty term.

The time for which the penalty has been served in order to be considered for the first reduction shall represent one-third of the term for the non-custodial reform, for imprisonment of thirty years or under, and twelve years for life imprisonment.

2. For persons sentenced to pecuniary penalty who have served a part of their respective penalties but fell into a prolonged particularly difficult economic situation due to natural calamities, fires, accidents or ailments which render them unable to continue serving the remainder of the penalties, or who have recorded great achievements, the courts, at the proposal of the directors of the procuracies, may decide to exempt them from the execution of the remainder of their pecuniary penalties.

3. A person may be entitled to many reductions but have to execute half of the declared penalty. For persons sentenced to life imprisonment, the sentence shall be commuted for the first time to thirty years of imprisonment and despite many reductions, the actual duration of penalty served must be a minimum of twenty years.

4. For persons who have enjoyed partial reduction of their penalty but again committed new serious, very serious or particularly serious crimes, the courts shall consider the reduction for the first time after such persons have already served two-thirds of their common penalty or twenty years if it is life imprisonment.

Article 59 (Reduction of penalty term in special cases) provides as follows:

For convicted persons who deserve additional leniency for reasons such as recording achievements, being too old and weak or suffering from dangerous diseases, the courts

may consider the reduction at an earlier time or with higher levels compared with the time and levels prescribed in Article 58 of this Code.

409. The Law on Prevention and Combating of Corruption also provides for the mitigation of criminal responsibility or punishment for these people.

**(b) Observations on the implementation of the article**

410. There is adequate compliance with this provision. The framework is relatively complete.

411. During the country visit, officials at the Supreme People's Procuracy, the Supreme People's Court and the Ministry of Public Security described various protection measures that can be afforded to cooperating persons in criminal cases. These can include physical security and maintaining the confidentiality of the person.

412. The Ministry of Public Security explained that persons who "self-report" would not be punished or proceedings would not be instituted against them, and they could also qualify for reduced penalty terms or mitigated punishment. Article 3 of the Penal Code sets out principles to deal with offenders and includes factors to be considered, such as honest testimony, denunciation of the crime, and adequate compensation for damages caused. Law enforcement authorities explained that they tend to concentrate on heads of criminal groups, rather than followers who cooperate in investigations.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 2**

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

413. The provisions stated above on encouraging cooperation of participating offenders also apply to persons accused of corruption. The reviewing experts noted Article 25 of the Penal Code, which provides for an exemption from penal liability where an offender provides substantial cooperation prior to the detection of an offence.

414. Article 25 of the Penal Code provides as follows:

1. An offender shall be exempt from penal liability if during the investigation, prosecution or trial, due to a change of situation, the act of criminal offense of the offender is no longer dangerous to the society.
2. If before the act of criminal offense is detected, the offender gives him/herself up and clearly declares and reports facts, thus effectively contributing to the detection and investigation of the crime and trying to minimize the consequences of the crime, he/she may also be exempt from penal liability.
3. Offenders shall be exempt from penal liability when there are decisions on general amnesties.

**(b) Observations on the implementation of the article**

415. There is adequate compliance with this provision.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 3**

*3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

416. Article 25 paragraph 2 of the Penal Code provides for exemption from penal liability for offenders who effectively contribute to the detection and investigation of the crime. The reviewing experts noted that this measure appears to cover the same concept as prosecutorial immunity.

417. Article 25 of the Penal Code provides as follows:

Article 25 (Penal liability exemption) provides as follows:

1. An offender shall be exempt from penal liability if during the investigation, prosecution or trial, due to a change of situation, the act of criminal offense of the offender is no longer dangerous to the society.
2. If before the act of criminal offense is detected, the offender gives him/herself up and clearly declares and reports facts, thus effectively contributing to the detection and investigation of the crime and trying to minimize the consequences of the crime, he/she may also be exempt from penal liability.
3. Offenders shall be exempt from penal liability when there are decisions on general amnesties.

**(b) Observations on the implementation of the article**

418. There is adequate compliance with this provision.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 4**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

419. As mentioned above, Vietnamese laws have provisions to safeguard and protect the civil rights of victims, witnesses and people reporting crime, including perpetrators who are cooperating actively with the proceeding agency. All competent agencies shall adopt

necessary measures to protect the lives, health, honor, dignity and property of victims, witnesses and other people participating in the proceedings as well as their relatives (Article 7 of the Criminal Proceedings Code). The name, address, autographs and other information of the reporting people are kept secret as required, and necessary measures to protect them from threats, retaliation and revenge shall be applied.

420. Currently, the draft joint circular (referred to above) among the Ministry of Public Security, the Ministry of Defense, the Supreme People's Procuracy and the Supreme People's Court in guiding the implementation of the protection of witnesses, people reporting crimes and victims in the investigation of criminal cases would more fully implement the provision under review. In addition, a draft decision of the Prime Minister defining a regulation on the protection of whistleblowers and detecting acts of corruption was prepared and submitted to the Prime Minister for approval.

**(b) Observations on the implementation of the article**

421. There is partial compliance with this provision. The reviewing experts noted the limited protection measures in place for cooperating persons.

422. Vietnamese authorities indicated that statistics on the number of cooperating persons who received physical or other protections were not available.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 5**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

423. Vietnam indicated that it has partially implemented the provision under review. There are no regulations directly related to the ability to consider mitigating the penalty or an exemption for those who live in another State and have actively cooperated with competent agencies in the investigation or prosecution of an offense defined in Penal Code. Further, the practice of mutual legal assistance in criminal matters of Vietnam has not recorded a similar case. However, according to the laws of Vietnam, designated agencies may optionally enter into arrangements with other States as follows: The Supreme People's Procuracy, appointed as the focal point for mutual legal assistance in criminal matters pursuant to the Law on Mutual Legal Assistance 2007, as well as the Ministry of Public Security, appointed as the focal point for matters of extradition and transfer of sentenced persons, may within the provisions of law and their functions, duties and powers as agencies designated as focal point, directly contact foreign agencies.

**(b) Observations on the implementation of the article**

424. There is partial compliance with this provision. No evidence of implementation or examples of cases where protections were afforded through cooperation with other States were provided during the country visit.

**(c) Challenges related to article 37**

425. Vietnam has identified the following challenge in fully implementing article 37:  
1. Limited resources for implementation (e.g. human/financial/other).

**(d) Technical assistance needs related to article 37**

426. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Development of an action plan for implementation
2. Other assistance: developing thematic reports on this issue.

None of these forms of technical assistance have been provided to date.

**Article 38 Cooperation between national authorities**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

*(b) Providing, upon request, to the latter authorities all necessary information.*

**(a) Summary of information relevant to reviewing the implementation of the article**

427. Vietnamese law contains provisions on coordination between agencies, organizations and employees of these agencies with the national authorities handling criminal cases in the Criminal Proceedings Code (Articles 25, 26, 101 and 102), the Ordinance on Organization of Criminal Investigation (Article 4) and the Law on Prevention and Combating of Corruption (Articles 80, 81 and 82). Accordingly, agencies, organizations, officials and public servants (especially the Inspection Agency and the State Audit) shall coordinate and provide information to the competent authorities conducting criminal proceedings. Specifically, coordination among State agencies and the proceeding agency is a fundamental principle of criminal procedure. It is the responsibility of agencies, organizations, officials and public servants when detecting illegal acts or receiving citizen denunciations to immediately report the crimes to the investigating agencies and the Procuracy, and to provide the necessary information relating to crime and criminals. Further, investigating agencies and the procuracy are responsible for handling the information received and for coordinating with the investigation agencies, procuracy and the courts in the detection and handling of crime. Upon detection of cases with criminal signs, they must immediately transfer documents to the relevant agencies and propose the investigating agencies and the Procuracy to consider criminal prosecution.

428. There are regulations on certain issues concerning the relationship among agencies, organizations and employees of agencies with the authorities conducting criminal proceedings. These prescribe, inter alia, that one of the fundamental principles of criminal procedure is the cooperation of State agencies with the agencies conducting the proceedings. They regulate the responsibilities of agencies and organizations when detecting crime or receiving citizen denunciations to immediately report the crimes to the investigating agencies and the procuracy. They further prescribe the responsibilities of agencies and organizations in providing the necessary information relating to crime and criminals; the responsibility of investigating agencies and the procuracy to handle information received and inform about the results of handling of cases for agencies which have provided notification or recommendations; and the responsibilities of the inspection bodies to coordinate with the investigation agencies, procuracy and the courts in detecting and handling criminal cases when detecting signs of crime.

429. More specifically, Article 26 of the Criminal Proceedings Code 2003 (Coordination between bodies conducting criminal proceedings and other State bodies) provides as follows:

1. State bodies, within the limit of their responsibility, shall adopt measures of prevention from crimes; coordinate with Investigating Body, Procuracy, Court in the prevention from and the combat against crimes.

State bodies shall examine, inspect the performance of their assigned functions and duties regularly; promptly find out criminal acts and inform all criminal acts in their office or in the field of their management to Investigating Body, Procuracy; have the right to petition and send related documents to Investigating Body, Procuracy for examination, initiation for legal proceedings to the offenders.

Head of State agencies shall be responsible for their un-notification of criminal acts taken place in their office or in the field of their management to Investigating Body, Procuracy. State agencies are responsible for satisfying requirements of bodies or persons conducting proceedings and creating favorable conditions for them to perform their duty.

Every acts to obstruct activities of bodies or persons conducting proceeding shall be banned.

2. Inspection body shall be responsible for coordinating with Investigating Body, Procuracy, Court in the finding and handling crimes. A case when be found any criminal acts shall be transferred it's documents and petition Investigating Body, Procuracy for review and institute criminal proceedings.

3. Investigating Body, Procuracy, within their scope, shall review, handle notification of crimes, petition the institution of criminal proceedings and respond the out-come thereof to state agencies who gave the notification or petition.

**(b) Observations on the implementation of the article**

430. There is partial compliance with the article. During the country visit, no examples were given where information was provided by public authorities on their own initiative to inspection and law enforcement. Such sharing of information generally proceeds upon request to the public agencies.

431. It was observed that there is a difficulty in gathering statistics and information on corruption cases among competent authorities. Due to the parallel mandates on anti-corruption and weak statistical capacity of institutions like the Supreme People's Procuracy, the Ministry of Public Security and the Government Inspectorate, each agency

collects statistics and data on its own operations, and this information is not frequently shared. Vietnam explained that the agencies face many challenges to having comprehensive and consolidated statistics and data on anti-corruption, even in view of an inter-agency regulation regarding their cooperation on information exchange and management of national shared anti-corruption data.

**(c) Challenges related to article 38**

432. Vietnam has identified the following challenge in fully implementing article 38:
1. Limited resources for implementation (e.g. human/financial/other).

**(d) Technical assistance needs related to article 38**

433. Vietnam has identified the following technical assistance needs to more fully implement the article.
1. Summary of good practices/lessons learned
  2. Development of an action plan for implementation
  3. Other assistance: conducting surveys and developing thematic reports on this issue.
- None of these forms of technical assistance have been provided to date.

**Article 39 Cooperation between national authorities and the private sector**

**Paragraph 1**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

434. Relevant provisions are found in Article 4 of the Penal Code on the responsibility to prevent and fight against crime, Article 25 of the Criminal Proceedings Code on the responsibility of organizations and citizens in preventing and fighting against crime, and Article 115 of the Criminal Proceedings Code on the responsibility of agencies, organizations and citizens to implement the requests and decisions of investigating bodies and the People's Procuracy.
435. Regulations were promulgated on the cooperation among investigating and prosecuting agencies, the People's Procuracy and organizations in the private sector, including financial institutions, on issues relating to corruption offences and money-laundering.
436. Based on regulations of the Criminal Proceedings Code and the Law on Prevention and Combating of Corruption, law enforcement agencies developed a Circular and regulations defining the cooperation among investigating and prosecuting agencies, the People's Procuracy and organizations in private sector, including financial institutions, on receiving and handling citizens' denunciations.

437. In practice, in the recent time, proceeding agencies cooperated with organizations, private enterprises, and financial institutions such as audit companies to find and prosecute a number of corruption cases and offences. For example, in one case involving a bank loan for business and production of a private enterprise in the textile and garment industry in Hai Phong, a bank official took advantage of his position and power in loan-making to seek a profit of billions of Vietnam Dong. The private enterprise denounced the offence and functional agencies investigated, verified and prosecuted the case and the bank official.

**(b) Observations on the implementation of the article**

438. There is partial compliance.

439. Although the authorities report that in practice, private sector entities and financial institutions cooperated with proceeding agencies, they reported that no aggregate statistics are available. The Vietnamese authorities indicated that they would revisit the measures that are in place to encourage cooperation with the private sector. It is recommended that Vietnam consider adopting relevant measures, as appropriate, to fully implement the provision.

**Article 39 Cooperation between national authorities and the private sector**

**Paragraph 2**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

440. Vietnamese laws contain provisions on this issue in Article 4 of the Penal Code on the responsibility to prevent and fight against crime; Article 25 of the Criminal Proceedings Code on the responsibility of organizations and citizens in preventing and fighting against crime, and Article 101 of the Criminal Proceedings Code on the denunciation of offences by citizens.

441. Article 6 of the Law on Prevention and Combating of Corruption prescribes citizens' rights and duties in the fight against corruption and Article 7 of the Ordinance on Organization of Criminal Investigation defines the responsibilities of agencies, organizations and citizens in the investigation.

442. The relevant provisions cover the rights and obligations of citizens (both Vietnamese citizens and foreigners having residence in Vietnam) in the detection and denunciation of illegal behavior. In addition, in guiding the implementation of the Penal Code and the Law on Prevention and Combating of Corruption, relevant State agencies developed implementing circulars and regulations on receiving and handling citizens' denunciations. For statistics on the number of complaints and denunciation cases handled by the Inspectorate sector in the last three years (2009 – 2011), please refer to UNCAC article 33 above.

443. In order to encourage citizens to provide information on corruption cases, Vietnam initially compensated individuals for information provided in anti-corruption cases (according to Circular No. 20/2008/TT-BTC date 19 February 2008 of the Ministry of Finance guiding budget use for operations of the provincial Steering Committees on Preventing and Combating corruption and the supporting offices). Point II.2.a of the Circular regulates a rate of up to 10 million VND for each information (cases exceeding that rate are decided by the Head of the Steering Committee). On 6 May 2011, the Ministry of Home Affairs and the Government Inspectorate of Vietnam issued Joint Circular No. 03/2011/TTLT-BNV-TTCP regulating rewards for individuals who demonstrated good performance in recognizing and denouncing corrupt acts.

**(b) Observations on the implementation of the article**

444. There is sufficient compliance.

445. It was noted that multiple agencies receive citizens' complaints, including the Fatherland Front, the Lawyers' Association, the Government Inspectorate, the Ministry of Public Security, the Supreme People's Procuracy and local authorities. There is also an award system in place where citizens can be recognized for exemplary efforts on anti-corruption, in addition to receiving financial rewards. The reviewing experts noted that whistleblower protections would ensure greater protections and cooperation of citizens.

**(c) Challenges related to article 39**

446. Vietnam has identified the following challenge in fully implementing article 39:  
1. Limited awareness of state-of-the-art reporting programmes and mechanisms.

**(d) Technical assistance needs related to article 39**

447. Vietnam has identified the following technical assistance needs to more fully implement the article.  
1. Summary of good practices/lessons learned  
2. Development of an action plan for implementation  
3. Other assistance: conducting surveys and developing thematic reports on this issue.  
None of these forms of technical assistance have been provided to date.

**Article 40 Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

**(a) Summary of information relevant to reviewing the implementation of the article**

448. The following laws relate to the implementation of the provision under review:

- Decree No. 70/2000/ND-CP of the Government, dated 21 November 2000 on keeping secret, storing and providing information relating to customers' deposits and assets. This Decree regulates customer deposits and assets in credit entities and entities

without credit activities but having banking operations according to the Law on Credit Entities.

- Circular No. 02/2001/TT-NHNN, dated 04 April 2001 guiding implementation of Decree No. 70/2000/ND-CP of the Government, dated 21 November 2000 on keeping secret, storing and proving information relating to customers' deposits and assets.
- Decision No. 15/2003/QD-TTg, dated 20 January 2003 of the Prime Minister on the list of State secrets classified as strictly confidential and top secret the banking sector.
- Joint Circular No. 01/2006/TTLT-BTC-NHNN, dated 4 January 2006 guiding the exchange and provision of information between tax administration, banks and credit entities. This Circular guides the cooperation between tax administration and customs agencies with banks and credit entities.
- Decision No. 45/2007/QD-NHNN, dated 17 December 2007 on the secret level of each document and information in the country's secret in the bank sector. This Decision regulates the secret level of each document and information in the banking sector drafted, issued, designed, developed, received and handled by units within the State Bank, the national money-printing factory, credit entities, payment service providers and other organizations having banking operations.
- Decree No. 74/2005/ND-CP, dated 07 June 2005 of the Government on anti-money laundering. This Decree helps to implement objectives on anti-money laundering, contribute to national security protection, social safeguarding, and protecting the legitimate rights and interests of individuals, agencies and organizations.
- Circular No. 22/2009/TT-NHNN, dated 17 November 2009 of the State Bank guiding the implementation of anti-money laundering measures.

449. Vietnam indicated that, as a result of the above-mentioned provisions, there are not any difficulties or obstacles in the application of banking secret regulations during the criminal investigation of corruption offences.

450. Vietnam further indicated that the regulations on the financial-banking sector indicated above were recently adjusted to harmonize the protection of bank secrecy information and requirements for access to information by State agencies, especially investigating and prosecuting agencies in criminal cases in general, and corruption cases in particular. Noting that the provision under review is not mandatory, Vietnam indicated that it has not in practice faced significant difficulties or obstacles in obtaining bank records. Some typical examples where the requested information was provided are as follows:

- On 27 June 2005, the State Bank Inspectorate (now the bank monitoring and inspection agency) sent official Document No. 14/CV-TTr.m to directors of credit institutions to request information about individuals and organizations related to the Al-Qaida network.
- On 27 June 2005, the State Bank Inspectorate (now the bank monitoring and inspection agency) sent official Document No. 556/CV-TTr.m to directors of credit institutions to request information relating to defendant Ha Thi Dung, who was prosecuted by the police for taking advantage of her functions to defraud and sign contracts to purchase goods and make a loan from individuals and enterprises.
- On 8 November 2007, the State Bank sent official Document No. 495/NHNN-TTr.m to chairmen of the board of directors and general directors of certain credit institutions to call for their cooperation in blocking the accounts of 68 related persons in a case of swindling and appropriating assets of Dang Thanh Hai and his accomplices (Colony company) who created a website for their financial investment on the Internet in

Hanoi, Ho Chi Minh City and other provinces and cities. The account blockade supported the investigation and blocking accounts of related persons in the case of currency trading on the Internet.

- On 25 October 2007, the State Bank Inspectorate (now bank monitoring and inspection agency) sent the official Document No. 32/CV-TTr5.m to State banks at provincial levels and credit institutions to obtain information on offences and cooperation activities in managing account owners relating to the case of asset swindle and misappropriation named Dang Van Luyen which is being investigated by the investigating police unit of Hue's Police Station.
- On 14 January 2008, the State Bank sent official Document No. 19/NHNN-TTr.m to general directors of credit entities on providing lending transaction information of customer Nguyen Thi Kim Thoa, Director of Quang Dai Incorporated Company at 14 Lang Ha, Hanoi.
- On 14 February 2008, the State Bank Inspectorate (now bank monitoring and inspection agency) sent official Document No. 191/TTr5 on cooperation with the crime-investigating police bureau on social security of the Ministry of Public Security to provide information and warn about the case of impersonated staff of the lottery company defrauding and appropriating citizens' assets through automated teller machines.
- On 16 November 2008, the bank monitoring and inspection agency sent official Document No. 29/TTGSNH3.m to general directors of credit institutions to obtain account information on the General Director of Tan Gia Hao Incorporated Company, a production and import-export business, who committed an offence of swindling and appropriation.
- On 23 July 2009, the State Bank sent official Document No. 369/NHNN-TTr.m to general directors of joint-stock commercial banks to provide information on the opening of individual and term-deposit accounts used to deposit and withdraw Vietnamese and United States currency from 2008 to present, concerning nine subjects related to a case of influence peddling to misappropriate assets in SANYO Vietnam Ltd., Bien Hoa 2 industrial zone, Dong Nai province.
- On 20 October 2009, the bank monitoring and inspection agency sent official Document No. 578/TTGSNH3 to the director of State bank, Ho Chi Minh City branch for cooperation with the investigating police unit to review the accounts of subjects related to the case of Pham Ngoc Van who swindled and misappropriated assets by trading foreign currency, gold and goods on the Internet at Viet Tin Investment and Consultation company.
- On 16 April 2010 the bank monitoring and inspection agency sent official Document No. 821/TTGSNH3 to general directors of credit entities to provide information of bank deposits of 8 persons in a case of swindling and appropriating assets headed by Nguyen Thi Kim Hoa and Dang Dinh Tien for investigation.
- On 6 May 2010, the bank monitoring and inspection agency sent official Document No. 968/TTGSNH3 to the director of State bank, Ho Chi Minh City branch to verify account information of two individuals relating to a civil offence execution.

**(b) Observations on the implementation of the article**

451. Sufficient compliance with the obligations of this article was observed.
452. During the country visit, officials at the State Bank reported that all State Bank requests for information to reporting institutions are generally complied with. Several

governmental institutions reported that bank secrecy does not present any impediments in practice.

**(c) Challenges related to article 40**

453. Vietnam has identified the following challenge in fully implementing article 40:

1. Limited resources for implementation (e.g. human/financial/other).

**(d) Technical assistance needs related to article 40**

454. Vietnam has identified the following technical assistance needs to more fully implement the article.

1. Summary of good practices/lessons learned
2. Other assistance: Training for public officials.

None of these forms of technical assistance have been provided to date.

**Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

455. Vietnam indicated that it has partially implemented the provision under review. The recognition and enforcement of foreign criminal judgments are not stipulated in the laws of Vietnam, based on the principle that the Socialist Republic of Vietnam takes sovereign jurisdiction over all criminal proceedings. Thus, relevant information about judgments and decisions rendered by foreign courts shall be used only for reference or to obtain information about the offender's history, including related personal information of the offender, during the process of criminal investigation, prosecution and judgment.

456. Vietnam indicated that statistics on cases where an alleged offender's previous conviction in another State was taken into consideration for the purpose of using such information in criminal proceedings relating to corruption were not available.

457. To fully implement the provision under review, Vietnam indicated that a study to strengthen international cooperation in law enforcement would need to be conducted in the future, in accordance with the Plan on Implementation of the Convention (issued together with Decision No. 445/QĐ-TTg dated 7 April 2010 of the Prime Minister).

**(b) Observations on the implementation of the article**

458. There is sufficient compliance with this article.

459. There are no specific regulations or provisions on the consideration of previous convictions in another country. Officials at the Supreme People's Court indicated that

normally foreign convictions will be considered by the courts for reference purposes during a trial, including as mitigating or aggravating circumstances during sentencing.

**(c) Challenges related to article 41**

460. Vietnam has identified the following challenge in fully implementing article 41:
1. Specificities in its legal system. Vietnamese laws prescribe that Vietnam take sovereign jurisdiction over all criminal proceedings. Thus, relevant information about judgments and decisions rendered by foreign courts shall be used only for reference or to obtain information about the offender's history during the process of criminal investigation, prosecution and judgment. Although there are a number of international treaties on mutual legal assistance in place, Vietnamese criminal proceeding laws and regulations do not provide detailed provisions on the use or exchange of information with foreign proceeding agencies about criminal convictions and judgments.

**(d) Technical assistance needs related to article 41**

461. Vietnam has identified the following technical assistance needs to more fully implement the article.
1. Summary of good practices/lessons learned
  2. Other assistance: Provide training courses for public officials of criminal proceeding agencies to enhance professional skills.
- None of these forms of technical assistance have been provided to date.
462. The absence of clear international cooperation in law enforcement was observed. Therefore, training relevant officers was recommended as a priority.

**Article 42 Jurisdiction**

**Subparagraphs 1 (a) and (b)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

**(a) Summary of information relevant to reviewing the implementation of the article**

463. Subparagraphs 1(a) and 1(b) of article 42 of the Convention are regulated in Article 5 of the Penal Code on the effect of the Penal Code on criminal acts committed in the territory of Vietnam, as well as Articles 171 and 172 of the Criminal Proceedings Code on territorial jurisdiction of the Court and jurisdiction over crimes committed on board of aircraft or vessels of Vietnam while operating outside the air and sea boundaries of Vietnam.
464. Pursuant to Articles 171 and 172 of Criminal Proceedings Code, the territorial jurisdiction of a court shall be the place where an offence was committed. In case the

offence was undertaken in different places or the place cannot be identified, the Court which completes the investigation shall have jurisdiction. Regarding offences committed on Vietnamese vessels or aircraft operating outside its airspace or territorial waters, the jurisdiction belongs to the court of the location of the airport or seaport where such aircraft or vessel would make its first arrival or the court where those aircraft or vessel are registered

465. According to criminal statistics of the Supreme People's Procuracy, in 2010 proceeding agencies investigated and prosecuted 288 cases involving 455 defendants for corruption offences where the offence was committed inside Vietnam or aboard a Vietnamese vessel or aircraft.

**(b) Observations on the implementation of the article**

466. There is adequate compliance with this article.

**Article 42 Jurisdiction**

**Subparagraph 2 (a)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

*(d) The offence is committed against the State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

467. Vietnam explained that subparagraphs 2(a), 2(b), 2(c) and 2(d) of article 42 of the Convention are regulated in Article 6 of the Penal Code on the effect of the Penal Code on criminal acts committed outside the territory of Vietnam and Article 171 of the Criminal Proceedings Code on territorial jurisdiction of the Court.

468. Vietnam's law establishes jurisdiction for acts committed outside the territory. Accordingly, in accordance with Vietnam's treaties, Vietnam has jurisdiction over offences committed outside Vietnam in cases where the victims of the offence are Vietnamese. In addition, in case Vietnamese citizens or stateless persons who have their habitual residence in its territory committed an offence outside Vietnam, they shall be investigated for criminal responsibility in Vietnam according to Article 6 of the Penal Code. Vietnam also has jurisdiction over offences of money-laundering undertaken outside Vietnam with a view to laundering money in Vietnam. In those cases, the Provincial People's courts where the defendants had their last residence in the country

shall have the jurisdiction, or the People's Court in Hanoi or Ho Chi Minh City shall have jurisdiction according to decisions of the Chairman of the Supreme People's Court.

469. In practice, proceeding agencies have implemented the regulations on jurisdiction over offences committed outside Vietnam to prosecute, investigate and adjudicate criminal cases and corruption offences in particular. In 2009 and 2010, the investigating unit of the Ministry of Public Security investigated and prosecuted networks of drug smuggling involving African persons living in Ho Chi Minh City who hired Vietnamese persons to receive the drugs in India and Pakistan and transfer them to Vietnam.

**(b) Observations on the implementation of the article**

470. There is adequate compliance with this article.

471. Article 6 of the Penal Code does not explicitly address the subject person of offences over which Vietnam has jurisdiction. However, the authorities explained that the issue of jurisdiction over cases where victims of an offence are Vietnamese, or the offence is committed against Vietnam, is generally regulated in its treaties.

**Article 42 Jurisdiction**

**Paragraph 3**

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

**(a) Summary of information relevant to reviewing the implementation of the article**

472. Vietnam explained that jurisdiction over citizens who have committed an offence and are not extradited from Vietnam due to their nationality is regulated in Article 6 of the Penal Code on the effect of the Penal Code on criminal acts committed outside the territory of Vietnam, Articles 341 and 344 of the Criminal Proceedings Code on execution of a request for mutual legal assistance and refusal of extradition, and in Articles 29 and 35 of the Law on Mutual Legal Assistance on dealing with foreign requests for prosecution of a Vietnamese citizen in Vietnam and refusal of extradition.

473. Accordingly, in cases where Vietnamese citizens commit offences outside its territory but are present in Vietnam, the request to extradite them by a foreign State will be refused based on the principle of nationality. Competent State agencies of Vietnam will investigate, prosecute and adjudicate the criminal case if relevant evidence and foundations in Vietnamese laws exist.

474. In the past 4 years, the Supreme People's Procuracy has received and handled over 400 requests for mutual legal assistance from other countries. There were many cases where other countries requested Vietnam to provide mutual legal assistance, investigate and prosecute Vietnamese offenders who committed offences outside its territory.

**(b) Observations on the implementation of the article**

475. There is adequate compliance with this article.

## **Article 42 Jurisdiction**

### **Paragraph 4**

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

476. Vietnam explained that paragraph 4 of article 42 of the Convention is regulated in Article 6 of the Penal Code in the effect of the Penal Code on criminal acts committed outside the territory of Vietnam; Articles 341 and Article 344 of the Criminal Proceedings Code on execution of a request for mutual legal assistance and refusal of extradition; and in Articles 30 and 35 of the Law on Mutual Legal Assistance on execution of foreign requests for investigation against foreign citizens in Vietnam and refusal of extradition.

477. Vietnam explained that its proceeding agencies would carry out necessary measures to establish jurisdiction and investigate or prosecute the offence in cases where the extradition of the alleged offender from Vietnam is refused and the person is not a national.

478. Vietnam explained that its proceeding agencies and the Supreme People's Procuracy received and handled requests for mutual legal assistance from other countries, investigated and arrested many foreigners who committed crimes outside Vietnam and were present in its territory but not extradited.

#### **(b) Observations on the implementation of the article**

479. There is adequate compliance with this article.

## **Article 42 Jurisdiction**

### **Paragraph 5**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

480. Vietnam explained that the provision under review is implemented in Article 340 of the Criminal Proceedings Code on the principle of international cooperation in criminal proceedings and in the Law on Mutual Legal Assistance in Article 4 on principles of mutual legal assistance; Article 17 on the scope of mutual legal assistance in criminal

matters; and Article 20 on foreign requests for legal assistance in criminal matters. These laws provide for cooperation with other States in criminal proceedings through sharing relevant information on investigations and prosecutions based on the principles of mutual respect for national independence, sovereignty and territorial integrity, non-intervention, equality and mutual benefit, as well as on the grounds of compliance with international treaties that each party has signed or acceded to.

481. Accordingly, in case Vietnam has learned that another State party is conducting an investigation, prosecution or judicial proceeding of the same case or defendant, it could discuss and share information or results of the investigation or provide documents, evidence and other legal assistance based on the requirements of Vietnam for international cooperation. Moreover, in some cases, coordination and cooperation for legal assistance in criminal matters may help Vietnam or another State party to investigate or prosecute criminal cases based on provided documents, evidence or investigating results. States parties related to the same offence may have particular interests in the cooperation, information sharing as well as investigating results collected.

482. For example, in 2010, Vietnam's proceeding agencies cooperated and implemented mutual legal assistance requests from Japan in a case involving the former director of the project management unit on traffic and water treatment of Ho Chi Minh City, who was a defendant in a case prosecuted by Vietnam. Vietnam implemented Japan's request for mutual legal assistance, and conducted investigation activities to collect documents and evidence to help Vietnam's proceeding agencies investigate, prosecute and adjudicate the defendant.

**(b) Observations on the implementation of the article**

483. There is adequate compliance with this article.

484. There were no examples provided during the country visit of cases where Vietnamese authorities provided evidence or materials to a foreign country on their own initiative when they became aware of a related investigation.

**Article 42 Jurisdiction**

**Paragraph 6**

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

485. Vietnam indicated that it has implemented the provision under review in Article 340 of the Criminal Proceedings Code on the principle of international cooperation in criminal proceedings and in the Law on Mutual Legal Assistance in Article 4 on principles of mutual legal assistance. Accordingly, Vietnamese laws and regulations on criminal jurisdiction and their implementation in practice are in accordance with the fundamental principles of Vietnamese laws, international laws and practices.

**(b) Observations on the implementation of the article**

486. There is adequate compliance with this article.

## **Chapter IV. International cooperation**

### **Article 44 Extradition**

#### **Paragraph 1**

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

487. The Declaration on the ratification of the Convention dated 1 December 2009 indicates that Vietnam shall not directly apply the Convention in extradition matters and that extradition shall be based on bilateral treaties between Vietnam and other States parties and the principle of reciprocity, which will always be considered in bilateral relations.

488. Almost all bilateral treaties on extradition signed by Vietnam indicate that the dual criminality principle is one of the fundamental conditions to decide whether the country will grant extradition or not. Vietnam reported that from 2009 to 2011 it had not received requests for extradition for corruption related offences.

489. Additionally, according to the laws of Vietnam, the extradition of a person may not be granted if the conduct committed by the person whose extradition is requested does not constitute an offence under the Penal Code of the Socialist Republic of Vietnam (see also Article 344 of the 2003 Criminal Proceedings Code and Article 35 of the 2007 Law on Mutual Legal Assistance).

**(b) Observations on the implementation of the article**

490. Vietnam meets the minimum standard for extradition set by UNCAC. During the country visit the reviewing experts were informed that extradition may be refused in the absence of dual criminality. Furthermore, extradition may be granted in the absence of dual criminality where the request for extradition is submitted through the channels of INTERPOL or ASEANAPOL and in line with the principle of reciprocity.

491. The institution responsible for receiving and submitting requests for extradition and transfer of sentenced persons is the Ministry of Public Security. Upon receipt of an extradition request, the Ministry of Public Security will examine its admissibility and, if the request is deemed admissible, it will forward it to the competent People's Court at the

provincial level for consideration and decision. The People's Procuracy at the provincial level shall be notified of the request. The extradition request shall be considered at a hearing of a panel consisting of three judges, with the attendance of a representative of the People's Procuracy. The decision of the People's Court on extradition can be appealed by the person sought. The Supreme People's Court will render the final decision. The Ministry of Public Security shall proceed to all necessary arrangements for the execution of the decision on extradition and inform in writing the requesting State thereof.

## **Article 44 Extradition**

### **Paragraph 2**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

492. According to paragraph 2 of Article 35 of the 2007 Law on Mutual Legal Assistance, if an act committed by the person whose extradition is requested does not constitute an offence under the Penal Code of Vietnam, the decision to extradite or not is under the criminal jurisdiction of Vietnamese competent authorities. This means that extradition may be refused. The decision will be made pursuant to the Criminal Proceedings Code and the Law on Mutual Legal Assistance.

493. The competent bodies in charge of the proceedings may therefore agree to extradite persons whose acts do not constitute an offence under the Penal Code, including acts that constitute a crime according to UNCAC but have not been criminalized under Vietnamese laws, in line with the principle of reciprocity and with the need to prevent and combat crime.

#### **(b) Observations on the implementation of the article**

494. There is adequate compliance with this provision. Article 35 paragraph 2 of the 2007 Law on Mutual Legal Assistance allows Vietnam to grant extradition even without dual criminality. The provision is structured in a manner that in the absence of dual criminality Vietnam may refuse to grant extradition.

495. During the country visit, the reviewing experts were informed that extradition may be accepted in the absence of dual criminality where the request for extradition is submitted through the channels of INTERPOL or ASEANAPOL.

## **Article 44 Extradition**

### **Paragraph 3**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

496. Vietnam indicated that it has partially implemented the provision under review. The Declaration on the ratification of the Convention indicates that Vietnam shall not take the Convention as the legal basis for extradition (“in accordance with Article 44 of the Convention thereof, the Socialist Republic of Vietnam declares that it shall not take the Convention as the legal basis for Extraditions. The Socialist Republic of Vietnam shall conduct extradition in accordance with the Vietnamese law, on the basis of treaties on extradition and the principle of reciprocity”).

497. Thus, Article 44 paragraph 3 of the Convention shall not be applied even if the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with the Convention.

498. In addition, paragraph 1 (d) of Article 35 of the 2007 Law on Mutual Legal Assistance states that, “The agencies conducting criminal proceedings of Vietnam shall not grant extradition if the request for extradition relates to more than one offense, each of which is punishable under the law of the requesting state party but does not fall under paragraph 1 of Article 33 of this Law”.

499. Extraditable offences are offences punishable under the criminal laws of both Vietnam and the requesting state party – for which at the time of extradition a person has been sentenced to imprisonment for a period of at least one year, to life imprisonment or to death, or has been sentenced by the court of the requesting state party to imprisonment and the remaining term of imprisonment to be served is at least six months.

**(b) Observations on the implementation of the article**

500. According to the texts cited, Vietnam does not appear to be implementing this optional provision when extradition is requested through official channels. However, during the country visit the reviewing experts were informed that when an extradition request is submitted through law enforcement channels, it may be accepted even in absence of dual criminality.

**Article 44 Extradition**

**Paragraph 4**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party*

*whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

501. At the time it ratified the Convention, Vietnam declared that “based on Article 44 of the Convention, the Socialist Republic of Vietnam does not regard the Convention as a direct legal basis for extradition; the Socialist Republic of Vietnam will carry out extradition in accordance with the laws of Vietnam, based on extradition treaties and the principle of reciprocity”.
502. In addition, according to the laws of Vietnam and all international treaties and conventions that Vietnam signed or acceded to, there is no provision on the refusal of extradition on the ground of a crime relating to corruption.
503. With regard to the conditions for extradition, Article 343 of the Criminal Proceedings Code states that the Vietnamese authorized bodies in criminal proceedings can extradite a foreigner to the requesting country if he or she has committed a crime with an enforceable criminal judgment and is found in the territory of the Socialist Republic of Vietnam. With regard to extraditable offences, in all the treaties on mutual legal assistance and extradition that Vietnam has signed nor acceded to, there is no clear provision defining which offences are extraditable and which are not.
504. In the case of bilateral treaties, the Signatory Parties shall, according to the request, extradite any person who is found in their territory and sought by the other Party for prosecution or execution of punishment. The extradition will be granted if the conduct committed by the person sought is a crime according to the law of both Parties (the Requesting and Requested Party).
505. In the case of multilateral treaties or conventions, the member States are required to extradite persons who committed crimes falling within the scope of the respective multilateral treaty or convention.
506. For example, Article 8 of the 1970 United Nations Convention for suppression of unlawful seizure of aircraft states that “The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between Signatory States. Signatory States undertake to include the offence as an extraditable offence in every extradition treaty to be concluded between them”.
507. It is widely accepted that persons who have committed a political offence are not to be extradited and this has become a common rule agreed by many countries. It is stipulated in the legislation on extradition as well as in the bilateral or multilateral treaties on extradition.
508. Similarly, a political offence or an offence bearing a political character is considered as a ground for refusal of mutual legal assistance, including extradition.
509. However, currently there is no provision in domestic law or in international treaties identifying a political offence. The definition of political offence or offence bearing

political character is considered in various ways, depending on each particular circumstance and the legal system of each country. Ultimately, the authority deciding on an extradition request will determine whether the offence is political, taking into consideration the facts of the case.

510. Article 8 paragraph 1 of the Penal Code of Vietnam defines a crime as “an act dangerous to the society prescribed in the Penal Code, committed intentionally or unintentionally by a person having the penal liability capacity, infringing upon the independence, sovereignty, unity and territorial integrity of the Fatherland, infringing upon the political regime, the economic regime, culture, defense, security, social order and safety, the legitimate rights and interests of organizations, infringing upon the life, health, honor, dignity, freedom, property, as well as other legitimate rights and interests of citizens, and infringing upon other socialist legislation”.

511. Based on the nature and seriousness of the conduct, offences are divided into less serious offences, serious offences, very serious offences and extremely serious offences. The punishment applied must be proportionate to the seriousness of the crime. There is no definition of a political offence in the law of Vietnam.

512. According to the Penal Code, corruption offences and related offences identified in the Convention are not political offences in Vietnam.

**(b) Observations on the implementation of the article**

513. There is adequate compliance with this provision.

**Article 44 Extradition**

**Paragraph 5**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

514. Vietnam makes extradition conditional on the existence of a treaty.

515. Vietnam does not consider the Convention as the legal basis for extradition in respect of any offence to which the article under review applies.

**(b) Observations on the implementation of the article**

516. There is no compliance with this optional provision, as Vietnam does not consider the Convention as the legal basis for extradition.

**Article 44 Extradition**

## Paragraph 6

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

### (a) Summary of information relevant to reviewing the implementation of the article

517. Vietnam makes extradition conditional on the existence of a treaty.

518. Vietnam does not consider the Convention as the legal basis for extradition in respect to any offence to which this article applies.

519. Vietnam has concluded treaties on extradition with other States parties to the Convention on matters related to extradition, as described below.

520. The Declaration on the ratification of the Convention dated 1 December 2009 states that “In accordance with Article 44 of the Convention thereof, the Socialist Republic of Vietnam declares that it shall not take the Convention as the legal basis for extraditions. The Socialist Republic of Vietnam shall conduct extradition in accordance with the Vietnamese law, on the basis of treaties on extradition and the principle of reciprocity”.

521. In order to create a legal basis for extradition between Vietnam and other countries, including extradition of corruption offences, Vietnam has concluded and ratified 12 bilateral treaties on mutual legal assistance which also cover provisions relating to extradition.

522. The 12 treaties which contain provisions relating to extradition are:

- Treaty on mutual legal assistance in criminal and civil matters between the Socialist Republic of Vietnam and the Lao People’s Democratic Republic (signed on 6 July 1998, ratified on 6 July 1999). Provisions relating to extradition are included in Article 59 to Article 76 in Chapter III, Section II.
- Treaty on mutual legal and law assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the Socialist Republic of the Soviet Union (signed on 10 December 1981 in Moscow, ratified on 22 January 1982). Provisions relating to extradition are in Chapter III “Mutual legal assistance on extraditions” (including 16 articles from Article 53 to Article 68). The Russian Federation is the successor State for this treaty.

- The treaty on mutual legal and law assistance in civil and criminal matters between the Socialist Republic of Vietnam and the Socialist Republic of Czechoslovakia (signed in Prague on 12 October 1982, ratified on 30 March 1983). Provisions relating to extradition, including 19 articles from Article 61 to Article 79 are in Part II “Criminal matters”. The Czech Republic and Slovakia are the successor States for this treaty.
- The treaty on mutual legal assistance in civil, family, labor and criminal matters between the Socialist Republic of Vietnam and the Republic of Cuba (signed in Havana on 26 March 1984, ratified on 19 August 1987). Provisions relating to extradition are in Chapter I Section 3 (Criminal law), including 16 articles from Article 58 to Article 73.
- The treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the People’s Republic of Hungary (signed in Hanoi on 18 January 1985, ratified on 26 March 1985). Provisions relating to extradition are in Chapter I Section 2 (Mutual legal assistance in criminal matters), including 18 articles from Article 58 to Article 75.
- The treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the People’s Republic of Bulgaria (signed in Sofia on 3 October 1986 and ratified on 16 February 1987). Provisions relating to extradition are in Chapter VIII (Mutual legal assistance in criminal matters), including 16 articles from Article 59 to Article 74.
- The treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the Republic of Poland (signed in Warsaw on 22 March 1993 and ratified on 8 March 1994). Provisions relating to extradition are in Chapter I Section 3, including 18 articles from Article 52 to Article 69 and provisions relating to transit are in Chapter II (including 6 articles from Article 70 to Article 75).
- The treaty on mutual legal assistance in civil and criminal matters between the Socialist Republic of Vietnam and the Russian Federation (signed in Moscow on 25 August 1998 and ratified on 3 June 1999). Provisions relating to extradition are in Chapter II, including 16 articles from Article 62 to Article 77.
- The treaty on mutual legal and law assistance in civil and criminal matters between the Socialist Republic of Vietnam and Ukraine (signed in Kiev on 6 April 2000). Provisions relating to extradition are in Chapter III (Mutual legal assistance and law relation in criminal matters), including 15 articles from Article 48 to Article 62.
- The treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and Mongolia (signed in Ulan Bator on 17 April 2000, ratified on 5 June 2000). Provisions relating to extradition are in Part 3 (Mutual legal assistance in criminal matters), including 16 articles from Article 54 to Article 69.
- The treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the Republic of Belarus (signed by the Socialist Republic of Vietnam and the Republic of Belarus in Minsk on 14 September 2000). Provisions relating to extradition are in Chapter II Section 2 (Extradition for prosecution or enforcement of sentence), including 17 articles from Article 69 to Article 85.
- The treaty on mutual legal assistance in civil and criminal matters between the Socialist Republic of Vietnam and the People’s Republic of Korea (signed in Pyongyang on 3 May 2002, ratified on 24 February 2004). Provisions relating to extradition are in Part 2 (Mutual legal assistance in criminal matters), including 12 articles from Article 33 to Article 44.

523. With an aim to improve the legal basis for extradition in general and extradition of corruption cases in particular, Vietnam has also entered into two specific treaties on extradition which clearly lay down the procedure, principle and authorities of extradition, thus greatly contributing to the legal basis for extradition. Both treaties mark an important progress in extradition activities of Vietnam because this is the first time Vietnam has such specific treaties:

- Treaty with the Republic of Korea (signed on 15 September 2003 in Seoul, ratified on 19 April 2005).
- Treaty with the People's Democratic Republic of Algeria (signed 14 April 2010 in Algier, ratified on 31 December 2010).

Vietnam has also recently successfully negotiated a treaty on extradition with Australia and with the Republic of India, and is in the process of negotiations with the Kingdom of Spain and other countries.

**(b) Observations on the implementation of the article**

524. Vietnam has informed the Secretary-General that it will not take the Convention as the legal basis for cooperation in extradition with other States parties of the Convention. There is adequate compliance with this provision, as Vietnam seeks actively to conclude treaties on extradition with other States.

## **Article 44 Extradition**

### **Paragraph 7**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

**(a) Summary of information relevant to reviewing the implementation of the article**

525. The Declaration of 1 December 2009 on the ratification of the Convention stipulates that extradition shall be done according to bilateral treaties.

526. However, based on the characteristics, principles and conditions of extradition of Vietnam stipulated in its 2003 Criminal Proceedings Code and 2007 Law on Mutual Legal Assistance, Vietnam law allows the extradition of 7 types of conduct related to corruption, according to Section A, Chapter XXI "Crimes relating to position" (from Article 278 to Article 284) of the 1999 Penal Code as follows:

- Embezzling property (Article 278);
- Receiving bribes (Article 279)
- Abusing positions and/or powers to appropriate property (Article 280);
- Abusing positions and/or powers while performing official duties (Article 281);
- Abusing powers while performing official duties (Article 282);

- Abusing positions and/or powers to influence other persons for personal profits
- Abusing positions and/or powers to influence other persons for personal profits (Article 283);
- Forgery in the course of employment (Article 284).

527. According to paragraph 2 of article 35 of the 2007 Law on Mutual Legal Assistance, if an act committed by the person whose extradition is requested does not constitute an offence under the Penal Code of Vietnam, the decision to extradite or not is under the criminal jurisdiction of Vietnamese competent authorities. This means that extradition may be refused.

528. The competent bodies in charge of the proceedings may therefore agree to extradite persons whose acts do not constitute an offence under the Penal Code, including acts that constitute a crime according to UNCAC but have not yet been criminalized under Vietnamese laws, in line with the principle of reciprocity and with the need to prevent and combat crime.

**(b) Observations on the implementation of the article**

529. Vietnam makes extradition conditional to the existence of a treaty.

**Article 44 Extradition**

**Paragraph 8**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

530. According to the Vietnamese legislation, extradition is a particular aspect of mutual legal assistance activities between countries and it has the following fundamental features:

- Extradition is the transfer by the requested State to the requesting State of a person alleged to have committed an offence or of a convicted person who is present in the territory of the requested State. The transfer is carried out by the competent authorities of the countries.
- Extradition is only done upon request of one country. The requesting country may be the country of the delinquent's nationality, the country where the conduct is committed, the country where the crime is completed or the country whose interests were violated. However, extradition is granted or not depending on the decision of the requested country. If there are concurrent requests, the requested State, basing itself on its law, relevant international treaties and particular circumstances of the crime, decides to which country among those requesting countries it will grant extradition.

- Extradition has two purposes: prosecution of the alleged offender or enforcement of the sentence. These activities will be done by the requesting State after receiving the person sought from the requested State.
- Extradition is usually done on the basis of international treaties or of the relationship between countries. International treaties on extradition include bilateral or multilateral treaties which require its parties or signatories to carry out extradition according to its provisions. If an extradition request is in conformity with a treaty between the States parties, that request shall be carried out. If the requested State refuses the request without legitimate grounds (stipulated in the treaty or law), this State violates its international duties.
- Extradition activities will follow the principles of international law and specific principles of extradition.

531. Regarding conditions and grounds upon which extradition requests may be refused, Vietnam referred to Article 344 of the 2003 Criminal Proceedings Code and Article 35 of the 2005 Law on Mutual Legal Assistance, which provide that the Vietnamese authorities in charge of conducting proceedings shall not grant extradition in any of the following circumstances:

- Principle of national sovereignty: This is one of the fundamental principles of international law and Vietnamese law in extradition activities. The Government of the Socialist Republic of Vietnam has the right to grant or refuse extradition of the person sought for reasons of national sovereignty.
- Statute of limitations: Under the law of Vietnam, the person whose extradition is requested cannot be prosecuted or does not have to serve the sentence imposed due to lapse of the statute of limitations, or for other legitimate grounds.
- Principle of reciprocity: In the spirit of integration and friendship in relation with other countries, Vietnamese law lays down that the agencies conducting criminal proceedings may perform extradition on the basis of the principle of reciprocity.
- Principle of dual criminality: According to the law of Vietnam, the extradition of a person may be refused if the conduct committed by the person whose extradition is requested does not constitute an offence under the Penal Code of Vietnam.
- Principle of not extraditing Vietnamese citizens: The competent authority has to refuse extradition if the person whose extradition is requested is a Vietnamese citizen.
- Principle of not extraditing persons who committed political offences: Where the competent authorities of Vietnam have reasonable grounds to believe that the request for extradition has been presented with a view to prosecuting or punishing the person sought by reason of race, religion, sex, nationality, social status, or political opinions.
- The person whose extradition is requested for prosecution has been convicted under a final judgment by a Vietnamese court for the conduct to which the request relates or the case has been suspended according to the criminal proceedings law of Vietnam.
- The person whose extradition is requested is being prosecuted in Vietnam for the offense for which extradition is requested.
- Extraditable persons according to Vietnamese law are persons who committed offences which are punishable under the criminal laws in force in both Vietnam and the requesting

State at the time of extradition by imprisonment for a period of at least one year, for life imprisonment or death, or persons who have been sentenced by the court of the requesting State to imprisonment and the remaining term of imprisonment to be served is at least six months.

- It shall not matter whether the laws of both Vietnam and the requesting State place the conduct committed by the person sought within the same category of offense or denominate the offense by the same terminology.
- Where the offence has been committed outside the territory of the requesting State, extradition shall be granted if it is a criminal offence under the Penal Code of Vietnam.
- The person who has been surrendered to Vietnam shall neither be prosecuted nor extradited to a third country for a conduct committed by that person before he or she has been surrendered to Vietnam if that conduct does not constitute a criminal offense under the law of Vietnam and is not mentioned in the request of Vietnam or of the third country.
- If Vietnam is the requested State, extradition shall be granted only if the requesting State assures that it shall not prosecute the person sought or extradite that person to any third country for conduct committed by that person before he or she has been surrendered to the requesting State, except by written consent of Vietnam.

532. The treaties on extradition that Vietnam has concluded and the treaties covering extradition to which Vietnam is a party have provisions on principles and conditions for extradition (see for example the treaties with Algeria, Australia and South Korea).

533. An agency conducting criminal proceedings that has refused to grant extradition according to the above grounds shall inform the competent authority of the requesting country of the reasons for refusal.

**(b) Observations on the implementation of the article**

534. There is adequate compliance with this provision.

535. The reviewing experts noted the minimum penalty provisions in Article 33 of the Law on Mutual Legal Assistance 2007.

**Article 33. Extraditable offenses**

1. Extraditable offences are offences punishable under the criminal laws of both Vietnam and the requesting state in force at the time of extradition by imprisonment for a period of at least one year, for life imprisonment, or for death, or has been sentenced by the court of the requesting State to imprisonment and the remaining term of imprisonment to be served is at least six months.

2. It shall not matter whether the laws of both Vietnam and the requesting state place the conduct referred to in paragraph 1 of this Article within the same category of offense or denominate the offense by the same terminology;

3. Where the offence referred to in paragraph 1 of this Article has been committed outside the territory of the requesting state, extradition shall be granted if it is a criminal offence under the Penal Code of Vietnam.

**Article 44 Extradition**

## Paragraph 9

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

### (a) Summary of information relevant to reviewing the implementation of the article

536. Vietnam indicated that it has partially implemented the provision under review. Vietnam provided the following information on the procedural rules applicable to extradition, which are cited from the 2007 Law on Legal Assistance, Chapter IV on Extradition (Articles 38 to 40, as cited below):

1. Procedures in dealing with an extradition request by competent State agencies of Vietnam:
  - a) Within 20 days of receipt of the request for extradition and the accompanying documents sent by a foreign competent authority, the Ministry of Public Security shall enter this fact in the extradition register and examine the validity and feasibility of the request.
  - b) The Ministry of Public Security may request the foreign competent authority to furnish additional information. If this additional information is not received by the Ministry of Public Security within 60 days as from the date of sending the request for that information, the Ministry shall return the dossier with the request for extradition to the requesting State and inform that State of the reasons for the return.
  - c) If the dossier is valid, the Ministry of Public Security shall transmit without delay the dossier to the competent People's court at the provincial level for consideration and decision.
  - d) Within 10 working days of receipt of the request for extradition transmitted by the Ministry of Public Security, the provincial People's court where the person whose extradition is requested is residing, detained or serving the sentence of imprisonment must entertain and inform in writing the People's Procuracy at the same level. Within the time limit for considering the request for extradition, the People's Court at the provincial level may request the foreign competent authority for clarification of uncertain points in the request for extradition. The request for extradition and the reply shall be transmitted through the Ministry of Public Security of Vietnam.
  - e) Within 4 months of entertainment, the People's Court at the provincial level shall, depending on each particular case, issue one of the following decisions:
    - Consider the request for extradition if it satisfies all the requirements prescribed by this Law;
    - Suspend the consideration of the request and return the dossier of request to the Ministry of Public Security if either the request is not within the jurisdiction of the Court, the request has been withdrawn by the foreign competent authority, the person whose extradition is requested has left Vietnam, or for other reasons making the consideration of the request impossible.

f) The People's Court at the provincial level must consider the request for extradition within 30 days of the issuance of the decision stated above and shall transmit without delay a set of the dossier of request to the People's Procuracy at the same level.

g) The request for extradition shall be considered at a hearing of a panel consisting of three judges, one of whom shall chair the hearing and with the attendance of a representative of the People's Procuracy at the same level. The panel shall consider the request for extradition according to the following procedures:

- A member of the chamber presents the contents of the dossier of request and expresses the opinions on the legal grounds of the extradition sought;
- The representative of the People's Procuracy presents his or her opinions regarding the extradition sought;
- The lawyer or legal representative (if any) of the person whose extradition is requested presents his or her views;
- The person whose extradition is requested shall presents his or her opinion; and
- In accordance with the provisions of this Law, other relevant Vietnamese laws and international treaties to which Vietnam is a party, the chamber shall discuss and decide by majority whether to grant extradition or not.

h) The People's Court at the provincial level shall, within 10 working days of the decision on extradition or refusal of extradition, send the decision to the person whose extradition is requested, the People's Procuracy at the same level, and the Ministry of Public Security for exercising their legal rights and duties.

i) The person whose extradition is requested has the right to appeal and the People's Procuracy at the same level has the right to protest within 15 days, while the Supreme People's Procuracy has the right to protest within 30 days of the decision issued by the People's Court at the provincial level. The People's Court at the provincial level shall send the dossier of request, appeal and/or protest to the Supreme People's Court within 7 days after the lapse of the time limit for making an appeal or a protest.

k) Within 20 days of receipt of the dossier of request, appeal and/or protest, the Supreme People's Court shall review the decision of the People's Court at the provincial level, which is appealed or protested. The appellate court shall decide whether to extradite or refuse to extradite the person sought. The appeal or protest shall be reviewed according to the procedures set out in paragraph 4 of this Article.

l) A legally binding decision on extradition shall include:

- The decision of the court of first instance which is not appealed or protested; and
- The decision of the appellate court.

2. Applying preventive measures to secure extradition:

Upon an official request from a foreign State for extradition of a person, the competent authority of Vietnam may take preventive measures stipulated by the law of Vietnam and international treaties to which Vietnam is a party to secure the consideration of the request for extradition.

3. Execution of decision on extradition:

- Within 5 working days of the date on which the decision takes legal effect, the Chief Judge of the People's Court at the provincial level having the right to consider the request

must issue a decision on execution of the decision on extradition. The decision on execution must be sent to the People's Procuracy at the same level, the Ministry of Public Security, the requesting State, and the person to be extradited.

- Upon receipt of the decision on execution of the decision on extradition, the competent public security agency shall arrest the person whose extradition is requested. The arrest shall be carried out according to Vietnamese laws and international treaties to which Vietnam is a party.

- The Ministry of Public Security shall arrange the execution of the decision on extradition and inform in writing the requesting State thereof.

#### 4. Surrender of the person sought:

- The Public Security Agency executing the decision on extradition shall surrender the person sought at the place and time agreed in writing in advance. The time limit for receiving the person sought shall be 15 days from the decision on execution of the decision on extradition.

- If the requesting State has not received the person sought within the time limit agreed in advance in writing, the Ministry of Public Security shall request the People's Court at the provincial level which has issued the decision on extradition to cancel the decision on execution of the decision on extradition and inform the requesting State thereof.

#### 2007 Law on Legal Assistance

##### Article 38. Receipt of extradition requests

Within twenty days after the receipt of extradition requests and enclosed documents, the Ministry of Public Security shall record in the extradition dossier book and check the dossiers under the provisions of Article 36 of this Law. It may request competent bodies of the extradition-requesting countries to supply information supplementing the dossiers. If it does not receive any additional information within sixty days after the sending of its written requests for additional information, the Ministry of Public Security shall return the dossiers to the extradition-requesting countries and clearly state the reasons therefor. If the dossiers are valid, the Ministry of Public Security shall immediately forward two dossier sets to competent provincial-level Peoples Courts for consideration and decision.

##### Article 39. Consideration of many countries requests for extradition of one person

1. In case the Ministry of Public Security receives written requests of two or more countries for the extradition of one person for the same crime or many different crimes, it shall assume the prime responsibility for, and coordinate with the Ministry of Foreign Affairs, the Ministry of Justice, the Supreme People's Procuracy and the Supreme People's Court in, considering them and deciding to meet the extradition request of one of the requesting countries and transfer the extradition request dossiers to the concerned provincial-level Peoples Court for extradition consideration and decision.

2. Upon consideration of extradition requests prescribed in Clause 1 of this Article, apart from legal provisions, the following relevant factors must also be taken into account:

- a) The effectual nationality and last place of residence of the person requested for extradition;
- b) The legality and compatibility of the extradition request;
- c) The time and place of crime commission;
- d) Specific interests of the requesting countries;
- e) The severity of the crime;
- f) The nationality of the victim;

- g) The possibility of subsequent extradition between the extradition-requesting countries;
- h) The date of making the extradition request;
- i) Other relevant factors.

#### Article 40. Extradition decision

1. Within ten working days after the receipt of extradition request dossiers transferred by the Ministry of Public Security, the provincial-level Peoples Courts of the localities where the persons requested for extradition are residing, being detained or held in custody or serving their imprisonment sentences shall handle them and notify the Peoples Procuracies of the same level thereof in writing. While preparing to consider the extradition requests, the concerned provincial-level Peoples Courts may request competent bodies of foreign countries to clarify unclear points in the extradition request dossiers. Written extradition requests and written replies shall be sent via the Ministry of Public Security.

2. Within four months after handling the requests, provincial-level Peoples Courts shall, on a case-by-case basis, issue one of the following decisions:

- a) Decision to consider the extradition request when the conditions prescribed by this Law are fully met;
- b) Decision to suspend the consideration of the extradition request and return the dossier to the Ministry of Public Security in case the request does not fall under their jurisdiction, the foreign country withdraws the extradition request or the person requested for extradition has left Vietnam or for other reasons the consideration cannot proceed.

3. Provincial-level Peoples Courts shall consider an extradition request within thirty days after issuing the decision defined at Point a, Clause 2 of this Article and immediately transfer a dossier set to the Peoples Procuracies of the same level.

4. The extradition request shall be considered at sessions of a council consisting of three judges, including a presiding judge, with the participation of members of the Peoples Procuracy of the same level.

The extradition request-considering council works in the following order:

- a) A council member presents the contents of the dossier of the extradition-requesting country and states his/her opinions on the legal grounds of the extradition;
- b) The procurator states the Peoples Procuracies viewpoints on the extradition;
- c) The lawyer or lawful representative of the person requested for extradition presents his/her opinions, if any;
- d) The person requested for extradition states his/her opinions;
- e) Based on the provisions of this Law, relevant provisions of other Vietnamese laws and treaties to which Vietnam is a contracting party, the council discusses and decide by majority on the extradition or extradition refusal.

5. Within five working days after the issue of decisions on extradition or extradition refusal, the provincial-level Peoples Courts shall send the decisions to the persons requested for extradition, the Peoples Procuracies of the same level and the Ministry of Public Security for the exercise of rights and performance of obligations according to law. Persons requested for extradition may appeal and the Peoples Procuracies of the same level may protest within fifteen days, the Supreme People's Procuracy may protest within thirty days as from the date the provincial-level Peoples Courts issue decisions. The provincial-level Peoples Courts shall forward the dossiers, appeals and protests to the Supreme People's Court within seven days from the date the appeal or protest time limit expires.

Within twenty days after receiving the extradition dossiers and appeals or protests, the Supreme People's Court shall open court sessions to consider the appealed or protested

decisions of the provincial-level Peoples Courts; the appellate council shall decide on the extradition or extradition refusal. The order for examination of appeals or protests against extradition decisions of provincial-level Peoples Courts complies with Clause 4 of this Article.

6. Legally effective extradition decisions include:

- a) Decisions of first-instance courts, which are not appealed or protested against;
- b) Decisions of the courts of appeal.

**(b) Observations on the implementation of the article**

537. The description of the procedure to be followed is very clear. There is sufficient compliance with this provision.

**Article 44 Extradition**

**Paragraph 10**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

538. According to Article 41 of the 2007 Law on Mutual Legal Assistance, which covers preventive measures to secure extradition, upon an official request from a foreign State for extradition of a person, the competent authority of Vietnam may take preventive measures stipulated by the law of Vietnam and international treaties to which Vietnam is a party to secure the consideration of the request for extradition.

539. In addition, preventive measures are also mentioned in Article 79 of the 2003 Criminal Proceedings Code of Vietnam, including: arrest, remand into custody, detention, prohibition of leaving from domicile, guarantee, and release on bail.

540. Article 88 of the 2003 Criminal Proceedings Code covers the measure of detention as follows: “1. Detention may be imposed on the charged person, the accused under the following circumstances: a) the charged person, the accused committed particularly serious crime or very serious crime; b) the charged person, the accused committed serious crime or less serious crime, that the Criminal Code provides the penalty for that crime is more than 2 years of imprisonment and there is ground that person can escape or cause obstacles for the investigation, prosecution, adjudication or would commit further crimes”.

541. The Criminal Proceedings Code also contains provisions on other preventive measures to prevent the crime or where there is a ground to believe that the accused or charged person will either create difficulties for the investigation, prosecution and adjudication or would commit further crimes, or when this is needed to enforce the sentence, including:

arresting the person in urgent cases (Article 81); remanding into custody (Article 86); prohibition of leaving from one's domicile (Article 91).

542. Such measures to ensure the presence of the person to be extradited are also included in the treaties on mutual legal assistance that Vietnam has signed and ratified with other countries, including:

- Article 59 of the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia provides for the arrest of a person before receiving an extradition request in writing: "1. In emergency cases, according to request of the requesting Party, the requested Party may arrest the person sought before receiving extradition request in writing mentioned in Article 56 of this Treaty. The request for arrest has to quote the arrest warrant or the final judgment and clearly statement that an extradition request shall be sent later on. Request for arrest may be transferred by post, telegram, telephone or any other means..."
- Article 58 of the treaty on mutual legal and law assistance in civil and criminal matters between Vietnam and Ukraine provides for the same issue as follows: "1. In emergency cases, according to request of the requesting Party, the requested Party may arrest the person sought prior to the reception of extradition request in writing. The request for arrest has to quote the arrest warrant or the final judgment and clearly statement that an extradition request shall be sent later on. Request for arrest may be transferred by post, telegram, telex or fax..."
- Article 75 of the treaty on mutual legal and law assistance in civil, family and criminal matters between Vietnam and Belarus provides for the arrest of a person before receiving an extradition request in writing: "1. Arrest for extradition prior to the reception of extradition request: the requested State may arrest the person sought before receiving of extradition request if the requesting State proposes clearly so by quoting the arrest warrant or final judgment which is basis for extradition. It does not matter whether the request for arrest is transferred, by post, telegram or any other means...."

543. In addition most of the treaties on mutual legal assistance that also cover extradition provide for the arrest of a person before receiving an extradition request if the requesting State clearly offers or requests it, for example:

- Article 64 of the treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the People's Republic of Hungary regulating temporary arrest;
- Article 63 of the treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the Republic of Poland regulating remand into custody prior to the receipt of an extradition request;
- Article 5 of the treaty on mutual legal assistance in civil and criminal matters between the Socialist Republic of Vietnam and the People's Republic of Korea regulating the postponement of extradition and temporary extradition.

**(b) Observations on the implementation of the article**

544. There is adequate compliance with this provision.

## Article 44 Extradition

### Paragraph 11

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

545. The non-extradition of nationals of Vietnam is one of the fundamental principles of Vietnamese legislation on extradition.

546. Accordingly, competent authorities will refuse an extradition request if the person sought is a national of Vietnam.

547. However, the prosecution of Vietnamese nationals will be carried out in accordance with the laws of Vietnam. Vietnam referred to Article 29 of the 2007 Law on Mutual Legal Assistance, which stipulates that the Supreme People's Procuracy will consider a request by a foreign competent authority regarding the prosecution of a national of Vietnam for criminal offences committed abroad when that person is present in Vietnam, following the below procedures:

- If the case is in the process of investigation and is under the mandate of the agencies in charge of proceedings in provinces or cities under central authority (hereinafter called "provincial proceedings agencies"), the case will be transferred to the People's Procuracy of the province where the Vietnamese national resided most recently before moving abroad for further investigation by an investigation agency of the same level. For cases under the mandates of the investigation agency of the Ministry of Public Security, it will be transferred to the investigation agency of the Ministry of Public Security.

- If the case is in the process of prosecution and is under the mandate of the provincial People's Procuracy, it will be transferred to the provincial People's Procuracy of the province where the Vietnamese national resided most recently before moving abroad for prosecution.

- The investigation, prosecution and adjudication of cases stipulated in the Article is conducted in accordance with the provisions of laws on criminal proceedings of Vietnam.

548. In addition, recent bilateral international treaties on mutual legal assistance on criminal matters that Vietnam has signed all contain similar provisions, such as in Article 3 of the treaty on extradition between the Socialist Republic of Vietnam and the People's Democratic Republic of Algeria, which provides for the refusal of a request to extradite

nationals as follows: (i) The parties shall not extradite their own nationals; (ii) The requested party commits to submit its national to the competent agency for prosecution of offences committed in the territory of the other Party. In that case, the requesting party shall send a request with accompanying documents and evidence through diplomatic channels; (iii) The requesting party shall be informed about the next steps to handle its request.

549. Vietnam also cited Articles 5 and 6 of the Penal Code, which provide that the Penal Code is applied to every crime committed on the territory of Vietnam notwithstanding whether it is committed by a Vietnamese citizen or a foreigner. For foreigners who commit offenses in the territory of the Socialist Republic of Vietnam but are entitled to diplomatic immunities or consular privileges and immunities under Vietnamese laws, their criminal liabilities shall be settled through diplomatic channels, based on international treaties which the Socialist Republic of Vietnam has signed or acceded to or international practices.

550. Vietnamese citizens or Stateless persons who permanently reside in Vietnam and commit offenses outside the territory of the Socialist Republic of Vietnam may be examined for criminal liability in Vietnam according to the Penal Code.

551. On the other hand, paragraph 2 of Article 6 of the Penal Code states that foreigners who commit offenses outside the territory of the Socialist Republic of Vietnam may be examined for penal liability according to the Penal Code of Vietnam in circumstances provided for in the international treaties which the Socialist Republic of Vietnam has signed or acceded to. Hence, Vietnam may have jurisdiction in such cases.

552. Vietnam further referred to Articles 171 and 172 of the Criminal Procedure Code, which provide as follows: As provided for by this Code, a court has jurisdiction over a case if it is a court located where the offence was committed. In case the offence is committed in several parts of Vietnam or if the place of offence is unknown, the court where the investigation has been terminated shall have jurisdiction over the case. Crimes committed on board of an aircraft or vessel of the Socialist Republic of Vietnam while operating outside the air and sea boundaries of Vietnam shall fall under jurisdiction of a Vietnam's court located at the airport or seaport where such aircraft or vessel would first arrive or of the court where this aircraft or vessel has been registered.

**(b) Observations on the implementation of the article**

553. There is adequate compliance with this provision

**Article 44 Extradition**

**Paragraph 12**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the*

*extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

554. Vietnam indicated that it has not implemented the provision under review.

**(b) Observations on the implementation of the article**

555. The legislation of Vietnam does not allow for the extradition of nationals. This provision is not applied in Vietnam.

**Article 44 Extradition**

**Paragraph 13**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

**(a) Summary of information relevant to reviewing the implementation of the article**

556. Vietnam indicated that it has not implemented the provision under review.

**(b) Observations on the implementation of the article**

557. Vietnam has not implemented this provision. It would not consider enforcement of the sentence imposed in the requesting State party against a national of Vietnam whose extradition from Vietnam is refused.

**Article 44 Extradition**

**Paragraph 14**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

**(a) Summary of information relevant to reviewing the implementation of the article**

558. Ensuring the equal rights of citizens, fair treatment before the law as well as other lawful rights and protections in criminal proceedings are fundamental principles of Vietnamese laws, both in general and in laws on criminal proceedings in particular.
559. These principles are prescribed in Articles 5, 7, 8, 9, 11, 14 and 19 of the Criminal Proceedings Code. As provided for by this Code, any agency or person conducting criminal proceedings shall ensure that all citizens are equal before the law, regardless of ethnicity, sex, beliefs, religions and social origins. Any person who committed an offence, including offences of corruption, shall be punished according to the Penal Code. Criminal cases shall be conducted in accordance with the grounds, orders and procedures prescribed by this Code.
560. According to Vietnam's laws, any criminal proceeding in the territory of the Socialist Republic of Vietnam shall be conducted pursuant to the Criminal Proceedings Code.
561. With regard to an offence within the territory of the Socialist Republic of Vietnam committed by a foreigner who is citizen of a foreign State party to an international treaty which the Socialist Republic of Vietnam has signed, ratified or acceded to, the criminal proceedings shall be conducted pursuant to regulations of that international treaty.
562. With regard to an offence within the territory of the Socialist Republic of Vietnam committed by a foreigner who enjoys diplomatic privilege, consulate preferential treatment or immunity pursuant to Vietnamese law, international treaties which the Socialist Republic of Vietnam has signed, ratified or acceded to or to international custom, the case shall be resolved through diplomatic channels (Article 2 of the Criminal Proceedings Code 2003).
563. In addition to the above mentioned provisions, persons detained, charged or accused have the following fundamental rights:
- Right to security of the body: Article 71 of the 1992 Constitution asserts that the citizen shall enjoy inviolability of the body and the protection of the law with regard to his life, health, honour and dignity. No one can be arrested in the absence of a ruling by the People's Court or a ruling or sanction of the People's Office of Supervision and Control, except in case of flagrant offenses. Taking a person into, or holding him in custody must be done with full observance of the law. It is strictly forbidden to use all forms of harassment and coercion, torture, violation of his honour and dignity, against a citizen. The application of measures that prevent or limit freedom of citizen must be done by a decision of competent authority with full observance of procedures set forth in law.
  - Right to inviolability of dwelling, safety and secrecy of correspondence, telephone and telegrams: Domiciliary searches and the opening, control, and confiscation of a citizen's correspondence, telephone and telegrams can only be done by a competent authority in accordance with the order and procedures prescribed in the Criminal Proceedings Code.
  - Right to be presumed innocent: Nobody is held guilty and punished until a guilty judgment of a Court has acquired legal force (Article 9 of the Criminal Proceedings Code). In the course of investigation, a person detained, charged or accused must always be treated as innocent. The application of preventive measure to them only aims at making it easier to find out the facts of the case and does not aim at their punishment, education or rehabilitation.

- Right of defence or right to retain defence counsel: a person detained, charged or accused or their legal representative shall have the right to defend him/herself or retain other person to defend him. Investigating bodies, Procuracies and Courts shall have responsibility to ensure the defence for them in conformity with provisions of this Code (Article 11 of the Criminal Proceedings Code). If not, investigating bodies, Procuracies or Courts shall have responsibility to request relevant agencies to send a defence counsel for them.
- Right to be equal before the law: all citizens are equal before the law, regardless of ethnicity, sex, beliefs, religions and social origins. Any persons who committed an offence shall be punished according to law (Article 5 of the Criminal Proceedings Code).
- Right to compensate damage and restore honour in case of miscarriage of justice: Article 19 of the Criminal Proceedings Code, the Resolution No. 388/2003/NQ-UBTVQH11 dated 17 March 2003 on the compensation for persons who suffered miscarriage of justice caused by competent person conducting criminal proceedings; the Joint Circular No.01/2004/TTLT-VKSNDTC-BCA-TANDTC-BTP-BQP-BTC dated 25 March 2004 guiding the application some provisions of the Resolution No 388/2003/NQ-UBTVQH11 and the Circular No. 18/2004/TT-BCA(V19) dated 9 November 2004 of the Ministry of Public Security guiding the compensation of damages for person who suffered miscarriage of justice caused by a competent person of the people's public security force.
- Right to know the charge: a detained person has the right to know the reason of his/her remand (to receive a decision on the remand which clearly states the reason); the accused has the right to know the reason of his/her prosecution (to receive the prosecuting decision).
- Right to explanation of rights and duties: the executor of an arrest warrant or order of remand has to inform the arrested and/or detained persons of his/her rights and obligations. When delivering the decision on the institution of a criminal case against the person detained or charged, the official will inform him/her of all his/her rights and duties. The investigator has to explain the rights and duties to the person charged before the interrogation.
- Right to give statement: Article 46 of the Penal Code 1999 provides that when offenders make honest declarations and reports, this is a circumstance which mitigates penal liability. However, if the offender makes a dishonest declaration or refuses to give a declaration, this is considered a circumstance aggravating penal liability.
- It is strictly forbidden to instruct a detained, charged or accused person what to say, or to apply coercion or physical torture to force them to make a declaration (Article 6 of the Criminal Proceedings Code); any persons who apply the above measures may be prosecuted according to the Penal Code 1999 and its Article 298 on the application of corporal punishment or Article 299 on forcing evidence or testimony.
- Right to present evidence and documents;
- Right to complaint and denunciation in criminal proceedings: (Article 31, Article 49 and Articles 325 to 339 of the Criminal Proceedings Code): Citizens, agencies and organizations shall have the right to complain about decisions and acts in criminal proceedings made by bodies or persons conducting criminal proceedings or any other persons of these bodies. The complainant may lodge complaints by him/herself or through his/her legal representative (Article 326 of the Criminal Proceedings Code). The complainant has the right to receive the paper on the handling of his complaints by the

investigating bodies and to have his legal rights and interests which were infringed upon recovered and compensated for damage according to the laws.

- Concurrently, citizens also have the right to file a denunciation against unlawful actions made by bodies or persons conducting criminal proceedings or any other persons of these bodies that cause or have the real possibility to cause damage to the Government's interest, lawful rights and legitimate interests of citizens, agencies or organizations.
- Right to request for replacement of the person conducting proceedings, expert or interpreter: the person charged has the right to request the replacement of persons conducting proceedings, such as judges, prosecutors, experts or interpreters according to paragraph 2 (d), Article 49 of the Criminal Proceedings Code.
- Right to receive criminal proceedings documents: the person charged has the right to be given a copy of the order on initiation of the case, the order on adoption, alteration and abrogation of deterrent measures, the conclusion of investigation, the decision of suspension or temporary suspension of investigation, the decision of suspension or temporary suspension of case, the bill of indictment, the decision of prosecution, or other decisions of proceeding (paragraph 2(g) Article 49 of the Criminal Proceedings. A person detained has the right to be given the order on remand in custody.

564. All bilateral treaties on preventing and fighting crime, on mutual legal assistance in criminal matters with regard to extradition or transfer of sentenced persons that Vietnam concluded are based on the principle of respect for human rights, respect for international and domestic laws and the full awareness of the guarantee in each country's legal system of equal trial of the charged person, including the right to be tried by an unbiased adjudicatory body set up according to the provisions of law. This issue is always mentioned in the preamble of each treaty when listing the principles of cooperation.

**(b) Observations on the implementation of the article**

565. There is adequate compliance with this provision.

**Article 44 Extradition**

**Paragraph 15**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

**(a) Summary of information relevant to reviewing the implementation of the article**

566. The 1992 Constitution stipulates that in the Socialist Republic of Vietnam human rights in the political, civic, economic, cultural and social fields are respected. They are embodied in citizen's rights and are determined by the Constitution and the law (Article 50). In addition, citizens shall enjoy freedom of belief and of religion. All religions are equal before the law (Article 70).

567. In accordance with the fundamental principles of the Constitution, the legislation of Vietnam prohibits discrimination and unfair treatment of its citizen on the reason of sex, race, religion, nationality, social background or political opinion.

568. According to the laws on extradition, Vietnam shall refuse extradition if it has reasonable ground to believe that the request of extradition has been made for the purpose of prosecuting or punishing the person sought for the reason of sex, race, religion, nationality, national/social origin or political opinions, or if the grant of extradition may affect his position for any of the above reasons. This is established in paragraph 1(d) Article 343 of the Criminal Procedure Code: Vietnam shall refuse extradition if “the sought person is residing in Vietnam for the reason of possible persecution by the requesting country due to the discrimination of race, religion, nationality, minority, social class and political view”. Similarly, paragraph 1(d) of Article 35 of Law on Mutual Legal Assistance 2007 states that extradition shall be refused if there is reasonable ground to believe that the sought person is possibly prosecuted or punished by reason of discrimination of race, religion, sex, nationality, social status, or political opinions.

569. In addition to the above provisions, all treaties on extradition that Vietnam concluded with other countries state the principle accepted by the Government of Vietnam that Vietnam shall not extradite a person when there are reasonable grounds to believe that this person may be prosecuted or tried for the reason of race, religion, political views. For example, this is provided for in paragraph 7 of Article 4 of the treaty on extradition between the Socialist Republic of Vietnam and the People’s Democratic Republic of Algeria and in paragraph 1(d) of Article 3 of the treaty on extradition between Vietnam and South Korea.

**(b) Observations on the implementation of the article**

570. There is adequate compliance with this provision.

**Article 44 Extradition**

**Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

571. A crime relating to financial matters is not a ground for refusal of extradition under Vietnamese law (Articles 343, 344 of the Criminal Proceedings Code and Article 35 of the 2007 Law on Mutual Legal Assistance on refusal of extradition).

572. A review of the 14 mutual legal assistance treaties that Vietnam has signed with other countries which contain provisions on extradition and the two extradition treaties that Vietnam has signed with the Republic of Korea and the People’s Democratic Republic of Algeria shows that there are no provisions to provide that Vietnam could refuse extradition on the sole ground that the offence is also considered to involve fiscal matters.

**(b) Observations on the implementation of the article**

573. There is adequate compliance with this provision.

**Article 44 Extradition**

**Paragraph 17**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

574. According to the domestic laws of Vietnam, the treaties on mutual legal assistance and the treaties on extradition between Vietnam and other countries, the competent authorities of Vietnam have the responsibility to inform the requesting State about the refusal of the extradition and reasons for its refusal.

575. Paragraph 3 of Article 344 of the 2003 Criminal Proceedings Code prescribes that: “The authorized bodies in criminal proceedings of the Socialist Republic of Vietnam that refused extradition according to paragraph (1), (2) of this Article have the responsibility of notifying their foreign counterparts”. Similarly, paragraph 3 of Article 35 of the 2007 Law on Mutual Legal Assistance prescribes the responsibility of notifying the requesting party of a refusal of extradition as follows: “The agency conducting criminal proceedings of Vietnam, which has refused to grant extradition under paragraphs 1 and 2 of this Article, shall inform the competent authority of the requesting country of the reasons for refusal”.

576. In all treaties on mutual legal assistance which have provisions relating to extradition and treaties on extradition concluded between Vietnam and other countries, there are provisions relating to circumstances and grounds for refusal of extradition. For example, these are included in paragraph 3 of Article 63 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and Russian Federation, paragraph 1 of Article 5 of the treaty on extradition between Vietnam and South Korea, and paragraph 3 of Article 3 of the Treaty on extradition between Vietnam and Algeria. Extradition treaties provide for the notification of the reasons of refusal of extradition, but do not contain provisions on consultation before refusing extradition

577. In addition, there is no provision in Vietnam’s laws or bilateral treaties on extradition to deny or prevent Vietnam from presenting its opinions and information on the allegation when Vietnamese competent authorities decide to refuse extradition. The practice of international cooperation in extradition of Vietnam shows that, in the spirit of strengthening cooperation, mutual understanding and reciprocity, Vietnam competent authorities in fact facilitate the provision and receipt of relevant information from foreign counterparts and take the information into consideration when making decisions. Vietnam shows a constructive spirit of collaboration, which is required when legal issues arise. For example, some countries refuse to accept extradition requests from Vietnam arguing that

the offence for which the person sought is accused is a political offence. Such a position was adopted by South Korea in a 2010 case, when after the bombing of the Embassy of Vietnam in Seoul, South Korea extradited the alleged perpetrator to the United States of America and not to Vietnam.

**(b) Observations on the implementation of the article**

578. Even if the obligation is not categorical, so that the requested State party retains a degree of discretion, the Vietnamese reply mentioning the responsibility to provide information does not imply an obligation to consult with the requesting State Party *before* extradition request is refused. Furthermore, the absence of a provision in Vietnam that would prevent Vietnam to present its opinion when authorities decide to refuse extradition seems to confirm that there is not a possibility of prior consulting.

579. During the country visit, the reviewers were informed that, despite the absence of specific legal provisions, the practice of the Ministry of Public Security is to consult with the requesting State before deciding on the request for extradition. Several Memoranda of Understanding (MOU) on police cooperation have been signed in order to establish mechanisms of cooperation and exchange of information. Based on the practice described by Vietnam, there appears to be adequate compliance with this provision.

**Article 44 Extradition**

**Paragraph 18**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

580. It has become an objective and urgent requirement of the Government of Vietnam to enhance cooperation in preventing and combating crimes, and in particular to strengthen the negotiation of treaties on mutual legal assistance in general and treaties on extradition in particular. In Resolution No 48-NQ/TW of 24 May 2005 on the Strategy of developing and perfecting the legal system of Vietnam to 2010 - orientation to 2020, the task of developing and perfecting legal system for international integration is defined as follows: “Signing and entering into international convention against terrorism, transnational organized crimes, money laundering, anti corruption as well as bilateral and multilateral treaties on mutual legal assistance. Paying attention to integrating provisions of international treaties relating to security, public order, social safety that Vietnam is a party. The Government shall promulgate laws on extradition and transferring of person sentenced to jail”.

581. Resolution No 49-NQ/TW dated 2 June 2005 of the Party Politburo on the Strategy of judicial reform towards 2020 also defines the tasks: To implement well the international treaties that Vietnam is a member; To continue signing treaties on mutual legal assistance with more countries who are neighbouring countries first, then countries in the region and countries with traditional relationship; To boost the coordination in preventing and

combating international crimes and international terrorism with organizations such as INTERPOL, ASEAN POL, with police force of the neighbouring countries and in the region, of the countries where many Vietnamese live, study or work.

582. Currently, the Ministry of Public Security is assigned with the task of presiding the negotiation and signing of international treaties concerning extradition, according to Article 65 of the 2007 Law on Mutual Legal Assistance as follows: “1. Receive, send, consider, and execute foreign requests for extradition and transfer of persons who are serving sentences of imprisonment; consider and transmit dossiers of request to the appropriate People’s Procuracy and the People’s Court and carry out mutual legal assistance activities within its competence; 2. Propose for conclusion of, accession to and implementation of international treaties concerning extradition and transfer of persons who are serving sentences of imprisonment; propose for amendments and improvement of Vietnamese legislation on mutual legal assistance”.

583. Presently, Vietnam has signed 14 bilateral treaties on mutual legal assistance with provisions on extradition and two bilateral treaties on extradition, i.e., the treaty on extradition with South Korea and the treaty on extradition with Algeria. Vietnam has signed a treaty on extradition with Australia in September 2011 and has finished the negotiating process of a treaty on extradition with India. It is negotiating treaties on extradition with Spain and the Philippines and preparing to sign treaties with other countries. Vietnam is also considering withdrawing its reservation relating to extradition in the International Convention on rights of children and its Protocols and the Convention Against Drugs.

**(b) Observations on the implementation of the article**

584. There is adequate compliance with this provision.

**(c) Technical assistance needs related to article 44**

585. Vietnam has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Specificities in its legal system
2. Model treaty(ies)
3. Summary of good practices/lessons learned
4. Other assistance: Vietnam indicated that technical assistance for law-making activities and training for public officials and especially public security forces, in terms of expertise skills and foreign languages would be of assistance

None of these forms of technical assistance has been provided to date.

**Article 45 Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences*

*established in accordance with this Convention in order that they may complete their sentences there.*

**(a) Summary of information relevant to reviewing the implementation of the article**

586. Vietnam indicated that the 2007 Law on Mutual Legal Assistance in Chapter V regulates in detail the transfer of sentenced persons (Articles 49 to 60). This is an important legal basis for transferring sentenced persons which will give these persons an opportunity to serve imposed sentences in their home country and will contribute to their social rehabilitation. It will also help to remove difficulties due to differences in languages, local customs and culture, as well as shortages in communicating with their family and relatives which can cause disadvantages for the enforcement of the verdict of the foreign prisoners.

587. At the same time, Vietnam noted that it also favours the negotiation and conclusion of bilateral treaties on the transfer of sentenced persons. To date, Vietnam has signed two treaties on mutual legal assistance with provisions relating to the transfer of sentenced persons: the treaty on mutual legal assistance in civil, family and criminal matters between the S.R of Vietnam and the People's Republic of Hungary in 1985, which contains Chapter III regulating the transfer of sentenced persons and subsequent enforcement of depriving liberty sentences (Articles 79 to 95); and the treaty on mutual legal assistance in civil, family and criminal matters between the S.R of Vietnam and the Republic of Poland in 1993, which contains Chapter IV regulating the transfer of the sentenced person to the State of their nationality to serve the sentence (Articles 79 to 85);

588. Moreover, Vietnam has signed four specific treaties on the transfer of sentenced persons with the United Kingdom of Great Britain and Northern Ireland, Australia, South Korea and Thailand. It has also finished the negotiation process with the Czech Republic and has engaged in negotiations with the Kingdom of Spain to strengthen the legal basis for bilateral cooperation in this field.

589. Vietnam further indicated that according to Vietnamese law, the transfer of a sentenced person can be done when all three parties involved so agree. The three parties are: (i) the requesting country; (ii) the requested country; and (iii) the sentenced person.

590. In accordance with international law and practice, the transfer of sentenced persons to Vietnam has to obey the following principles:

- The transfer shall be carried out in respect of the principle of respect by each State for each other's independence, sovereignty and national territorial integrity, non-intervention in each other's internal affairs, equality and mutual benefit, and in compliance with the Constitution and law of Vietnam as well as international treaties to which Vietnam is a party;
- The transfer has to originate from humanity purposes;
- The transfer shall be effected based in priority to an international treaty to which Vietnam is a party. In circumstances where there is no treaty, then the principle of reciprocity will be applied, provided that this does not contradict Vietnamese laws and is in compliance with international law and practice.
- The act or omission to act must constitute a crime under the law of both parties/States involved.

- Any costs incurred in relation to the transfer of the sentenced person or enforcement of the sentence after the transfer shall be borne by the requesting party unless otherwise agreed. However, according to international practice, each party shall bear costs incurred exclusively within its territory. The requested party may seek to recover all or part of the costs of transfer from the sentenced person.

591. The following grounds will be taken into account during the consideration for the transfer of a sentenced person:

- The sentenced person is a foreigner sentenced to fixed term imprisonment or life imprisonment and is serving the sentence in the territory of Vietnam;
- A competent authority of the State of nationality of which the sentenced person is a citizen or to which he is closely attached by his interests and activities requests in writing the transfer. In this case, the consent of the sentenced person, or his legal representative if he has a mental disease, is required.
- A competent authority of Vietnam requests the transfer. In this case, the consent of the sentenced person, or his legal representative if he has a mental disease, is required.
- The foreign prisoner agrees to be transferred; he may express interest in his transfer to the competent authorities of Vietnam or to the country of his nationality.

592. The following conditions have to be met for a person to be transferred to Vietnam for serving his or her sentence:

- The sentenced person shall be a national of Vietnam;
- He/she shall have his/her last place of residence in Vietnam;
- The criminal acts for which the person has been convicted in the transferring State also constitute a criminal offense under the law of Vietnam;
- At the time when the request for transfer is received, the sentenced person has still at least one year of imprisonment to serve. In special cases, this period shall be at least 6 months;
- The judgment is final and no other legal proceedings relating to the offence are pending in the transferring State;
- The transferring State consents to the transfer; and
- The sentenced person consents to the transfer.

593. The following conditions have to be met for a person serving a sentence of imprisonment in Vietnam to be transferred:

- The sentenced person is either a citizen of the receiving State, a person who is permitted to reside there for an indefinite term, or a person whose relatives are residing in the receiving State;
- The criminal acts for which that person has been convicted in the transferring State also constitute a criminal offense under the law of Vietnam;
- At the time when the request for transfer is received, the sentenced person has still at least one year of the sentence to serve. In special cases, this period shall be at least 6 months;
- The judgment is final and no other legal proceedings relating to the offence are pending in the transferring State;
- The transferring State consents to the transfer;
- The sentenced person consents to the transfer;

- He or she has completed the service of any additional penalty imposed, for example a fine, confiscation of property or any other legal consequence specified in the judgment;
- The receiving State consents to the transfer.

594. The competent authority of Vietnam shall refuse to transfer a person who is serving a sentence of imprisonment in Vietnam in any of the following circumstances:

- There are grounds to believe that the sentenced person would be subject to torture, retaliation or persecution in the receiving State; or
- The transfer would prejudice the sovereignty or national security of Vietnam.

595. The dossier of request for transfer of a person who is serving a sentence of imprisonment must, in accordance with Article 52 of the 2007 Law on Mutual Legal Assistance, be composed of:

- A written request of the competent authority of the country where the person is serving a sentence of imprisonment for transfer of that person;
- The request for transfer of a person serving a sentence of imprisonment shall include the following information: Date and place of the request; Reasons for requesting the transfer; Name and address of the competent authority requesting the transfer; Name and address of the competent authority to which the request is submitted; name, sex, date of birth, nationality, last place of residence, legal basis indicating that the person to be transferred is internationally eligible for transfer, and any other necessary information about that person.
- The request for transfer of a person who is serving a sentence of imprisonment shall be accompanied by the following judicial documents: (i) Documents proving that the person to be transferred meets all the conditions set forth in this Law; (ii) A brief statement of the facts of the case and a copy of the judgment of conviction against the sentenced person made by the court in the transferring state; (iii) A statement of the law to be applied to determine constitutive elements of the offense and its denomination, punishment and the time limit for enforcement of that punishment; (iv) A description of the identity and photo of the person to be transferred according to international law and practice; (v) A document certifying the length of time of the sentence of imprisonment already served by the sentenced person in the transferring state and the remaining term to be served in the receiving state; (vi) Documents certifying physical and mental health conditions of the sentenced person, as well as diseases suffered before or during the service of his or her sentence, if any; and (vii) International treaties or agreements between the transferring and the receiving states.

596. Regarding the language used in the dossier:

- In case an international treaty on mutual legal assistance between Vietnam and the foreign State is in force, the language used in mutual legal assistance shall be the language stipulated in the treaty.
- In case no international treaty on mutual legal assistance exists between Vietnam and the foreign State, the request for mutual legal assistance and supporting documents shall be accompanied by a translation of the request and the supporting documents into a language acceptable to the requested state.

597. Regarding time limits and procedures for dealing with a request for transfer:

- Within 20 days of receipt of the request for transfer of a person who is serving a sentence of imprisonment and the accompanying documents, the Ministry of Public Security shall enter them in the Transfer Requests Register and examine the file against the requirements set forth in Articles 52 and 53 of the Law on Mutual Legal Assistance.
- The Ministry of Public Security may request the competent authority of the requesting state to provide additional information. If this information is not received within 60 days of the date on which the request for additional information is sent, the Ministry of Public Security shall return the request for transfer of the person who is serving a sentence of imprisonment and specify reasons thereof. If the request is valid, the Ministry of Public Security shall without delay transmit two sets of the request to the competent provincial People's court for consideration and decision (Article 54).
- Within 10 working days of receipt of a valid file of request for transfer of a person who is serving a sentence of imprisonment in Vietnam to a foreign country transmitted to it by the Ministry of Public Security, the People's Court at the provincial level where the sentenced person is serving his or her sentence of imprisonment must initiate the processing the request and inform in writing the People's Procuracy at the same level thereof.
- Within the time limit for considering the request for transfer of a person who is serving a sentence of imprisonment, the People's Court has the right to request the competent authority of the country to clarify points that are not clear in the files of request. The request and the written reply shall be sent through the Ministry of Public Security of Vietnam.
- Within 30 days of initiation of the processing of the request, the People's Court shall, depending on specific circumstances of each case, issue one of the following decisions: (i) To consider the request for transfer of the person who is serving a sentence of imprisonment if the transfer satisfies all the conditions set forth in Article 50 of this Law; (ii) To suspend the consideration of the request for transfer of the person who is serving a sentence of imprisonment and return the file of request to the Ministry of Public Security if the request is not within its jurisdiction, or if the request for transfer has been withdrawn by the competent authority of the foreign country, or if the person whose transfer is requested has left Vietnam, or for other reasons making the consideration of the request impossible.
- The People's Court at the provincial level must consider the transfer of a person who is serving a sentence of imprisonment within 30 days of issuance of the decision stipulated in subparagraph a) of paragraph 2 of this Article and transmit without delay a set of the file of request to the People's Procuracy at the same level.
- The request for transfer of a person who is serving a sentence of imprisonment shall be considered at a hearing by a panel consisting of three judges, one of whom shall chair the hearing. A representative of the People's Procuracy at the same level shall attend the hearing. The panel shall consider the request for transfer according to the following procedures: (i) A member of the panel presents the contents of the request for transfer of the person who is serving a sentence of imprisonment in Vietnam submitted by the foreign state and expresses the opinion of the People's Court on the legal basis of the transfer; (ii) The representative of the People's Procuracy presents his or her views on legal bases for the transfer; (iii) The lawyer or legal representative (if any) of the person whose transfer is requested presents his or her arguments; (iv) The person whose transfer is requested presents his or her opinion; (v) The panel shall, based on this Law, other relevant Vietnamese laws and international treaties to which Vietnam is a party, discuss and decide by majority whether to permit the transfer of the person.

- The People's Court at the provincial level shall, within 10 working days of issuance of the decision on the transfer, send the decision to the People's Procuracy at the same level and the Ministry of Public Security for them to excise their legal prerogatives and duties.
- The person whose transfer is requested has the right to appeal and the People's Procuracy at the provincial level has the right to protest within 15 days, while the Supreme People's Procuracy has the right to protest within 30 days of the date on which the competent People's Court at provincial level issues the decision. The competent People's Court at provincial level shall provide the dossier of request, appeal and protest to the Supreme People's Court within 7 days of the lapse of the time limit for making an appeal or a protest.
- Within 20 days of receipt of the file of request, appeal and/or protest, the Supreme People's Court shall review the challenged decision of the People's Court at the provincial level. The appellate court shall decide whether to transfer or refuse to transfer the person. The appeal or protest shall be reviewed according to the procedures set out in paragraph 4 of this Article
- A legally binding decision on transfer shall include: the decision of the court of first instance which is not appealed or protested; and the decision of the appellate court.
- Within 5 working days of the date on which the original decision on transfer takes legal effect, the Chief Judge of the People's Court at the provincial level that which has issued the decision, must issue a decision on execution of the decision on transfer. The decision on execution must be sent to the People's Procuracy at the same level and the Ministry of Public Security for execution. A copy of that decision shall also be sent to the competent authority of the receiving state and the person to be transferred
- The Ministry of Public Security shall organize the execution of the transfer and inform thereof in writing the receiving state (Article 57).
- The Ministry of Public Security executing the decision on transfer of the person who is serving a sentence of imprisonment shall arrange the delivery of that person at the place and on the time agreed in writing in advance by the competent authority of Vietnam and that of the receiving state.
- If the sentenced person is not removed by the receiving State within the time limit agreed, the Ministry of Public Security shall request the People's Court which has issued the decision on transfer to cancel the decision on execution of the decision on transfer and inform the receiving State thereof (Article 59).

598. Regarding the competence to receive a person transferred to Vietnam, Article 56 of the Law on Mutual Legal Assistance provides that the People's Court at the provincial level where the person to be transferred had his or her last place of residence in Vietnam shall decide whether to receive that person back to Vietnam. The procedures for considering whether to receive or not shall be similar with procedures for transferring a sentenced person to a foreign country.

599. Article 58 regulates the continued enforcement of the sentence in Vietnam as follows:

- Continued enforcement in Vietnam of the sentence imposed on the transferred person shall be in accordance with the Vietnamese laws.
- If the term of the sentence imposed by the transferring State is compatible to the one stipulated by the law of Vietnam, the competent People's Court shall issue a decision upon receipt of the sentenced person. In that decision, the Court must specify the remaining term of the sentence of imprisonment to be served in Vietnam by the person transferred.

- If the sentence imposed in the transferring State is by its nature or duration inconsistent with the law of Vietnam, the competent People's Court which has issued the decision on receipt of the sentenced person shall, based on the facts of the case, decide to adapt the sentence to make it consistent with the provisions of the Penal Code of Vietnam. The duration of the sentence of imprisonment so adapted shall not be longer than the duration of the sentence imposed in the transferring State.
- Upon receiving a notice about a decision on general or special amnesty or reduction of the sentence from the transferring State, the Ministry of Public Security must transmit that notice to the competent state authority for decision.

600. Presently, in order to make the cooperation and coordination between the national competent authorities faster and more effective, and to allow sharing of power and responsibility among units involved in the transfer of sentenced persons, the Ministry of Public Security has been assigned to take the lead in drafting a Joint Circular among the Ministry of Public Security, the Ministry of Justice, the Supreme People's Procuracy and the Supreme People's Court with regard to the specific guidelines on receiving and transferring sentenced persons, as well as continuing enforcement of the sentence. This is expected to be jointly issued in 2012.

**(b) Observations on the implementation of the article**

601. During the country visit, Vietnam provided examples of the application of the measures on transfer of sentenced persons in practice. In 2011, Vietnam transferred two sentenced persons to the United Kingdom, and received additional requests to transfer sentenced persons from Australia (20 persons), Laos (2 persons), South Korea (2 persons), Thailand, and other States. Vietnam has received 4 sentenced persons from the United Kingdom. Vietnam noted that it has not received any request for transfer of sentenced persons for corruption related offences. There is adequate compliance with this article.

602. The institution responsible for receiving and submitting requests for extradition and transfer of sentenced persons is the Ministry of Public Security. Upon receipt of a request for transfer of a sentenced person, the Ministry of Public Security will examine its admissibility and, if the request is deemed admissible, it will forward it to the competent People's Court at the provincial level for consideration and decision. The People's Procuracy at the provincial level shall be notified of the request. The request for transfer of a sentenced person shall be considered at a hearing of a panel consisting of three judges, with the attendance of a representative of the People's Procuracy. The decision of the People's Court on the request can be appealed by the person whose transfer is requested. The Supreme People's Court will render the final decision. The Ministry of Public Security shall organize the execution of the transfer and inform thereof in writing the requesting State.

**(c) Challenges related to article 45**

603. Vietnam has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequate capacity (e.g. human/technological/institutional);

**(d) Technical assistance needs related to article 45**

604. Vietnam has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Model treaty (ies)
2. On-site assistance by a relevant expert;

None of these forms of technical assistance has been provided to date.

## **Article 46 Mutual legal assistance**

### **Paragraph 1**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

605. The Criminal Proceedings Code of Vietnam 2003 has dedicated one Part (Part 8) to regulating cooperation in criminal proceedings. Part 8 consists of two chapters: Chapter XXXVI regulating general principles on cooperation in criminal proceedings and Chapter XXXVII regulating extradition and transfer of files, documents and objects of the case. Accordingly, international cooperation in criminal proceedings between competent bodies of the Socialist Republic of Vietnam and their foreign counterparts shall be conducted in accordance with the principles of respect for national independence, sovereignty, territorial integrity, non-intervention in the internal affairs, equality and mutual benefit, as well as in conformity with the Constitution of the Socialist Republic of Vietnam and fundamental principles of international law.

606. International cooperation in criminal proceedings shall also be conducted in conformity with international treaties to which the Socialist Republic of Vietnam is a party and Vietnamese domestic law. In case there is no relevant treaty to which the Socialist Republic of Vietnam is a party, international cooperation in criminal proceedings shall be conducted under the principle of reciprocity, provided that it may not violate Vietnamese domestic laws, international laws and practices (Article 340). During the country visit, officials of the Ministry of Foreign Affairs confirmed that Vietnam frequently applies the principle of reciprocity in the areas of extradition and mutual legal assistance. In case of execution of a request for mutual legal assistance, the authorized bodies or persons in criminal proceedings of the Socialist Republic of Vietnam shall apply relevant provisions of international treaties to which the Socialist Republic of Vietnam is a party and other provisions of the Criminal Proceedings Code (Article 341). In addition, when the Law on Mutual Legal Assistance was promulgated in 2007, it dedicated one chapter, Chapter 3, to regulate in detail the scope, procedure, competence and form of documents with respect to requesting or executing requests of mutual legal assistance in criminal matters involving foreign counterparts by Vietnam competent judicial authorities.

607. The institutions responsible for receiving and submitting mutual legal assistance requests are:

- (i) for mutual legal assistance in civil matters, the Ministry of Justice.

- (ii) for mutual legal assistance in criminal matters, the Supreme People's Procuracy.
- (iii) for extradition and transfer of sentenced persons, the Ministry of Public Security.

608. The scope of mutual legal assistance in criminal matters includes:

- (i) Provision of documents and other records and documents concerning mutual legal assistance in criminal matters;
- (ii) Summon of witnesses, experts, and persons who have rights and obligations in a case;
- (iii) Collection and provision of evidence;
- (iv) Criminal prosecution;
- (v) Exchange of information; and
- (vi) Other forms of mutual legal assistance in criminal matters. This may include the transfer of information related to banking and accounts, seizure and confiscation of assets etc., depending on the request and within the scope of the provisions of laws.

609. In addition, in bilateral and multilateral treaties on mutual legal assistance in criminal matters that Vietnam signed or is a party, there are always provisions on legal assistance in investigation, prosecution and trial of criminal cases.

610. Between 2009 and 2011, Vietnam received approximately 100 mutual legal assistance requests for all criminal matters, including economic crimes. In particular, in 2010 Vietnam received 32 mutual legal assistance requests in criminal matters, while in 2011 Vietnam received 40 such requests. From July 2008 to January 2012 Vietnam received 3 mutual legal assistance requests relating to corruption offences. Among those 3 requests, 2 had been responded to at the time of the country visit, while the third one, received in late 2011, was still being processed. .

611. With regard to outgoing cases, Vietnam reported that in 2010 it had submitted more than 20 mutual legal assistance requests on criminal matters, while in 2011 it submitted more than 10 such requests, including one request relating to corruption. In this corruption case the Ministry of Justice of Japan provided assistance to Vietnam on the basis of good international relations, and despite the fact that the two countries had not concluded a mutual legal assistance treaty.

612. Examples of treaties on mutual legal assistance include:

- The treaty on mutual legal and law assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the Socialist Republic of the Soviet Union of 1981. The States parties assist each other in legal matters by assignment of investigation in conducting particular criminal proceedings in accordance with the law of the requested State, such as service of documents; search and seizure; transfer of evidence; forensic examination; taking testimony of the accused, witness, forensic expert, plaintiff, defendant or other person; examining objects of the case in the court, execution of decisions, extradition of offenders, investigation; or transfer of file, documents and providing other relevant information (Article 4).

- The treaty on mutual legal and law assistance in civil and criminal matters between the Socialist Republic of Vietnam and the Socialist Republic of Czechoslovakia of 1982. Judicial authorities of the States parties assist each other in conducting criminal proceedings, especially taking testimony of witnesses, plaintiffs, defendants or other

related persons; forensic examinations; transfer and service of documents (Paragraph 2, Article 2 of the treaty).

- The treaty on mutual legal assistance in civil, family, labour and criminal matters between the Socialist Republic of Vietnam and the Republic of Cuba of 1984. The scope of mutual legal assistance includes conducting different acts in the context of criminal proceedings, such as: servicing of documents; summon; taking testimony of witnesses, forensic expert and related persons; conducting investigative experiment and seizure; transferring the results of forensic examinations, documents, objects of the case; extradition of accused and convicted persons (Article 5).

- The treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the People's Republic of Hungary of 1985. Article 4, paragraph 1 provides that mutual legal assistance includes the conduct of particular criminal procedural acts such as search of premises; remanding in custody; confiscation of property; transmittal of evidence; taking testimony of witnesses, forensic experts and other person; request for servicing documents, sending documents and files.

- The treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the People's Republic of Bulgaria of 1987. The signatory parties assist each other in legal matters by carrying out specific criminal procedural acts in accordance with the law of the requested State, namely: service of documents; search and seizure; identification of persons and objects; forensic examination; taking testimony of the accused, witnesses, forensic experts, plaintiffs, defendants and other related persons; examination of objects of the case in court, execution of decisions, extradition of offenders etc.

- The treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the Republic of Poland of 1993. Article 5 paragraph 2 stipulates that mutual legal assistance includes the conduct of particular civil and criminal procedural acts, especially service of documents, search of premises, confiscation and transfer of evidence, forensic examination, taking testimony of witnesses, forensic experts and other persons.

- The treaty on mutual legal assistance in criminal and civil matters between the Socialist Republic of Vietnam and the Lao People's Democratic Republic 1998. The signatory parties assist each other in legal matters by conducting particular criminal procedural acts such as: service of documents; taking testimony of witnesses and other related persons; forensic examination; collecting evidence; transfer of evidence, results of forensic examination, documents and files (Article 5).

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998. Article 1 of the treaty covers the service of documents; investigation; gathering of evidence; recognition and execution of decisions of foreign courts in civil matters and decisions of arbitrators; other legal assistance provided for in this treaty.

- The treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the Republic of Belarus of 2000. The signatory parties assist each other in legal matters by conducting particular criminal procedural acts such as: service of documents; transfer of civil, criminal and administrative cases; providing

information on reality of the trial, current law and other legal assistance provided in this treaty (Article 5).

- The treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and Mongolia of 2000. Article 4, paragraph 1 provides as follows: the signatory parties assist each other in legal matters by conducting particular procedural acts according to their national law, and namely: service of documents; search, seizure and transfer of evidence; forensic examination; obtaining testimony of accused persons, witnesses, forensic experts, plaintiffs, defendants and other persons; recognition and execution of decisions of civil courts, as well as decisions awarding compensation of civil damage in criminal trials; execution of decisions; criminal prosecution and extradition of offenders; transfer and translation of documents; providing information.

- The treaty on mutual legal and law assistance in civil and criminal matters between the Socialist Republic of Vietnam and Ukraine of 2000. Article 3 regulates the scope of legal assistance as follows: mutual legal assistance includes carrying out procedural acts according to the law of the Requested State, such as taking testimony of accused persons, victims, witnesses, forensic experts and other related persons; forensic examination; transfer of evidence; criminal prosecution; extradition; recognition and execution of decisions of civil courts, as well as decisions awarding compensation of civil damage in criminal trials; service and transfer of documents; notifying to the other signatory party, in accordance with the request of the latter, of information on the trial and other procedural act in conformity with the law of signatory parties.

- The treaty on mutual legal assistance in civil and criminal matters between the Socialist Republic of Vietnam and the People's Republic of Korea or North Korea of 2002. According to the law of the signatory parties, mutual legal assistance under this treaty includes: conducting procedural acts consisting of taking testimony of plaintiffs, defendants, charged persons, accused, witnesses, forensic experts and victims; providing information and documents of the case; executing requests to search, arrest and provide evidence; recognition and execution of decisions, judgments of courts on civil matters, decisions and verdict of Arbitrators; investigation, arrest of delinquents and transfer (Article 3). Mutual legal assistance in criminal cases covers: investigation, arrest, examination, extradition of suspects, accused and convicted persons, execution of judgments and providing materials relating to criminal cases (Article 31).

- The treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the Republic of Korea of 2003. This treaty provides for the scope of mutual legal assistance in Article 1 as follows: mutual legal assistance in criminal matters means investigations, prosecutions or proceedings relating to any offence, including offences against tax legislation, customs duties legislation, foreign exchange control or other revenue matters, the punishment of which at the time of the request for assistance falls within the jurisdiction of the requesting party.

- The treaty on mutual legal assistance between the Socialist Republic of Vietnam and the Republic of India of 2007. This treaty stipulates in Article 1 that each party shall grant the other the widest measure of mutual legal assistance in criminal matters in investigations, prosecutions or other criminal proceedings in the requesting party, irrespective of whether the assistance is sought or is to be provided by a court or another authority.

- The treaty on mutual legal assistance between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland. According to this treaty, the parties shall provide the widest measure of mutual legal assistance, in accordance with the provisions of this treaty and in conformity with their respective domestic laws, for the purpose of criminal proceedings. Mutual assistance may also be afforded in proceedings in respect of acts which are punishable under the domestic law of the requesting or the requested party by virtue of being infringements of the rule of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

- The treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the People's Democratic Republic of Algeria. This treaty provides as follows in article 1: The parties shall provide the widest measure of mutual legal assistance, in accordance with the provisions of this treaty and in conformity with their respective domestic laws.

- The ASEAN treaty on mutual legal assistance in criminal matters of which Vietnam is a member provides in Article 1 as follows: the parties shall, in accordance with this treaty and subject to their respective domestic laws, render to one another the widest possible measure of mutual legal assistance in criminal matters, namely investigations, prosecutions and follow-up proceedings.

**(b) Observations on the implementation of the article**

613. Vietnam does not use the Convention against Corruption as the legal basis for mutual legal assistance, as it considers its provisions to be non-self-executing. The reviewers noted the significant number of treaties concluded by Vietnam, especially in the region, which creates a good framework for the provision of mutual legal assistance. This framework has even allowed both the provision and request of mutual legal assistance in corruption related cases, which should be considered as a good practice. The reviewers suggest that consideration be given to using the Convention as a basis for mutual legal assistance in order to streamline procedures and cooperation with other States parties

614. Overall, it appears that mutual legal assistance is provided satisfactorily under the bilateral treaties and arrangements that Vietnam has entered into, as well as pursuant to the principle of reciprocity, which is very commonly applied by Vietnam.

**Article 46 Mutual legal assistance**

**Paragraph 2**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

615. Vietnam indicated that it has partially implemented the provision under review. According to the laws of Vietnam, legal persons may bear civil or administrative liability, though (as discussed above in regard to UNCAC article 26) this does not include corruption offences, with the exception of money laundering.

**(b) Observations on the implementation of the article**

616. During the country visit, the reviewing experts were informed that Vietnam would consider providing assistance even in the absence of dual criminality, based on the principle of reciprocity and its will to establish and maintain good international relations in corruption cases.

617. Establishing the liability of legal persons in the legal framework of Vietnam would ensure that there are no issues of dual criminality in responding to requests for assistance involving legal persons and would provide a more solid foundation on which to respond to such requests.

**Article 46 Mutual legal assistance**

**Subparagraphs 3 (a) to 3 (i)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(a) Taking evidence or statements from persons;*

*(b) Effecting service of judicial documents;*

*(c) Executing searches and seizures, and freezing;*

*(d) Examining objects and sites;*

*(e) Providing information, evidentiary items and expert evaluations;*

*(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*

*(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*

*(h) Facilitating the voluntary appearance of persons in the requesting State Party;*

**(a) Summary of information relevant to reviewing the implementation of the article**

618. *With regard to the requirements of Subparagraph 3 (a):* Paragraph 3 of Article 17 of the Law on Mutual Legal Assistance of 2007 of Vietnam provides that the “scope of mutual legal assistance in criminal matters between Vietnam and foreign states shall

include ... the collection and provision of evidence”. In addition, mutual legal assistance agreements which Vietnam has signed with other States contain provisions referring to “the taking of evidence or the testimony of people involved”. More specifically:

- The treaty on mutual legal assistance in civil and criminal matters signed between Vietnam and the Socialist Republic of the Soviet Union in 1981 has provisions on the scope of assistance in Article 5, in which are included acts such as: seizure and transfer of exhibits and obtaining of testimony from the parties, witnesses, experts, persons identified as having committed the offense, the defendant and others.
- The treaty on mutual legal assistance in civil and criminal matters signed between Vietnam and Czechoslovakia in 1982 stipulates in paragraph 2 of Article 2 as follows: The judicial authorities provide mutual assistance in carrying out procedural acts, especially in obtaining statements from witnesses, the involved parties, the accused or others.
- The treaty on mutual legal assistance in civil, family, labour and criminal matters signed between Vietnam and Cuba in 1984 also defines the scope of mutual legal assistance (Article 5) and includes therein acts such as: summoning and having an appointment to obtain the statements of witnesses, experts and others.
- The treaty on mutual legal assistance in civil, family and criminal matters signed between Vietnam and Hungary in 1985 provides in paragraph 1 of Article 4 for the provision of legal assistance, including the implementation of specific procedural acts such as transmitting evidence and obtaining statements of witnesses, experts and others, interrogating the accused, etc.
- The treaty on mutual legal assistance in civil, family and criminal matters signed between Vietnam and Bulgaria in 1987 also includes provisions on mutual legal assistance provided by performing specific procedural acts such as: searching, seizing and transferring of exhibits and obtaining statements of the defendants, experts, involved parties and third persons (Article 5).
- The treaty on mutual legal assistance in civil, family and criminal matters signed between Vietnam and Poland in 1993 provides that mutual legal assistance includes separate acts in the framework of civil proceedings and criminal proceedings, in particular seizing and transferring exhibits, providing expertise, obtaining statements of suspects, defendants, witnesses and experts, etc.
- The treaty on mutual legal assistance in civil and criminal matters signed between Vietnam and the Lao People’s Democratic Republic in 1998 includes provisions on obtaining statements of the involved parties, witnesses and other concerned persons, as well as collecting and transferring evidence (Article 5 defining the scope of mutual assistance under the treaty).
- The treaty on mutual legal assistance in civil and criminal matters signed between Vietnam and China in 1998 makes reference to mutual legal assistance in investigating and collecting evidence in Article 1 and details these in Articles 12 and 23 as follows: Based on the request, the two contracting parties shall assist mutually each other in investigating, collecting evidence and performing necessary procedural acts to

investigate, collect evidence. Apart from having to comply with the provisions of Article 7 of this treaty, the request for investigating, collecting evidence should also include the following contents: Questions used to obtain statements of the involved parties or informing of the case needing to obtain statements; papers or property to be checked. The requested party shall inform the requesting party of the results of the investigation, the collection of evidence in writing and the evidential materials attached together (Article 12). The two contracting parties, upon request, for the purpose of investigating and collecting evidence, shall obtain statements of witnesses, victims and accused persons, expertise, conduct judicial examinations as well as other proceedings related to the investigation and collection of evidence. Apart from having to comply with the provisions at Article 7 of this treaty, the request for investigation and collection of evidence in criminal cases shall also include a description of the criminal acts and the provisions of criminal law of the requesting party criminalizing these acts. The requesting party should keep all evidential documents provided by the requested party in confidentiality and only uses these documents for the requested purpose unless otherwise agreed by the parties (Article 23).

- The treaty on mutual legal assistance in civil, family, labour and criminal matters signed between Vietnam and Belarus in 2000, contains provisions on mutual legal assistance, though these are not directly mentioned in the provision on the scope of mutual legal assistance, as follows: contracting parties shall afford mutual legal assistance to each other by carrying out acts such as preparing, sending and serving papers, transferring civil, criminal or other cases, providing information on trial practice, current law as well as mutual legal assistance in other cases stipulated by this Treaty (Article 5). Through the application of other relevant provisions, the scope of mutual legal assistance includes the collection of evidence and obtaining statements as follows: The contracting parties have the right to serve the documents to their citizens and obtaining statements through their diplomatic agencies or consular agencies. The parties shall not apply coercive measures in the process of execution (Article 10). If, in the course of the investigation or trial in the territory of one contracting party shall, there is a need to summon witnesses or experts in the territory of the other contracting party, the relevant competent authorities of that contracting party must be contacted to require performance of this mutual assistance (Article 10). For implementing this treaty, the transfer of items or money from the territory of one contracting party into the territory of the other contracting party, as well as diplomatic agencies or consular agencies of the other contracting party, is made in accordance with the laws of the contracting party where the agency making the transfer is located in (Article 16).
- The treaty on mutual legal assistance in civil, family and criminal matters signed between Vietnam and Mongolia in 2000, in Paragraph 1 of Article 4, includes a provision as follows: contracting parties shall provide mutual legal assistance to each other by conducting separate procedure acts stipulated in the law of the requested party such as: serving documents; collection and transfer of exhibits pursuant to search warrant, expertise, taking testimony or statements of the accused, witnesses, experts or other involved parties etc. The judicial authorities of the contracting parties shall transfer to each other all exhibits used as a means for the commission of crimes or traces of crime or appropriated by the offender, if possible simultaneously with the extradition of criminals; The above exhibits are still transferred even if extradition of the offender is not possible due to that person's death or due to other reasons. The rights of the requesting party or a third party for transferred exhibits are completely

guaranteed. If such rights exist, after finalizing the judgment on the case, such items must be returned immediately and freely to the requested party in order to be returned to their owner. In some cases these items may be returned to the owner before finalizing the judgment, if this does not affect the judgment. If the owner of the above items is living in the territory of the requesting party, this contracting party, with the consent of the requested party, may return those items directly to its owner (Article 73 on the transfer of exhibit convened crime).

- The treaty on mutual legal assistance in civil and criminal matters signed between Vietnam and Ukraine in 2000 includes a provision on the scope of mutual legal assistance as follows (Article 3): Mutual legal assistance shall include the implementation of procedural acts in accordance with the law of requested party such as obtaining statements of the involved parties, third persons, the person who allegedly committed the offense, the accused and the defendant, victims, witnesses and experts;; transfer of exhibits, etc.
- The treaty on mutual legal assistance in civil and criminal matters of 2002 signed between the Socialist Republic of Vietnam and the People's Democratic Republic of Korea provides as follows: As required by the law of the contracting parties, mutual legal assistance in accordance with this treaty shall include: The execution of procedural acts including obtaining statements from the involved parties, defendants, witnesses, experts and victims; providing information and documents on the case; executing the request of tracing, seizing and giving evidence; recognition and enforcement of decisions and judgments of courts on civil matters, as well as judgments and decisions of the arbitrators; and investigating and arresting offenders and transferring such persons (Article 3, the scope of mutual legal assistance).
- The treaty on mutual legal assistance in criminal matters signed between Vietnam and South Korea in 2003, in Paragraphs 2 and 3 of Article 1 and Article 10, makes reference to the collection of evidence and obtaining statements as follows: The criminal matters in this treaty shall be the investigation, prosecution and trial for any crime, including offenses related to taxation, customs, foreign exchange control or income issues that at the time of the request for mutual assistance are subject to the requesting party's right of holding criminal liability (Article 1). Mutual assistance includes: collecting evidence or obtaining statements; providing information, documents, records and exhibits; determining the residence of people, location of items, identifying people and items; serving documents; executing requests for search and seizure; arranging for the person concerned to give evidence or assisting in the investigation, prosecution, criminal trial in the territory of the requesting party; tracing, seizure and distaining upon the property possessed by the crime and means for committing a crime; and any other mutual assistance complying with the purpose of this treaty and not inconsistent with the law of the requested party.

The same treaty on mutual legal assistance with South Korea further provides as follows regarding the collection of evidence: In the framework of its domestic law and as required, the requested party shall obtain testimony or statements from persons concerned or ask them to deliver items to be transferred as exhibits to the requesting party. In the framework of its legislation, the requested party shall allow persons named in the request to take part in the process of executing the request for mutual assistance and may allow them to put questions to the person giving statement or

evidence. In case they are not allowed to ask questions directly, those persons can be allowed to submit questions to be put to the persons giving statement or evidence. The person from whom the requesting party will obtain evidence pursuant to the request for mutual assistance in accordance with this Article may decline to give evidence in case: a) The law of the requested party allows or requires that person to decline to give evidence in similar circumstances upon the order, in criminal proceedings conducted in the territory of the requested party; b) The law of the requesting party allows or requires that person to decline to give evidence upon such order, in criminal proceedings conducted in the territory of the requesting party. If any person in the requested party claims that the law of the requesting party contains provisions on the right and obligation to decline to give evidence, the central authority of the requesting party, if requested, has the obligation to provide to the central authority of the requested party a certified confirmation on the existence of such rights or obligations. If any person in the territory of the requested party claims that the requirements of the law contains provisions on the right or obligation to refuse to give evidence, the central authority of the requesting party, if required, must provide a written confirmation to the central authority of the requested party on the existence of such rights or obligations. In the absence of evidence to the contrary, that written confirmation shall be sufficient to prove the issues mentioned in it (Article 10, Collecting evidence).

- The treaty on mutual legal assistance in criminal matters signed between Vietnam and India in 2007, in Article 1, Paragraph 4, contains the following provisions: Assistance shall include: taking evidence or statements from persons. Taking evidence is further addressed in a separate article (Article 11) as follows: “The Requested Party shall, to the extent its laws permit and upon request, take testimony or otherwise obtain statements from persons, or require them to produce items of evidence for transmission to the Requesting Party. The Requested Party, to the extent permitted by its law, shall permit the presence of those persons specified in the request during the execution of the request, and may allow those persons to question the person whose testimony or evidence is being taken. In the event such direct interrogation is not permitted, those persons shall be allowed to submit questions to be posed to the persons whose testimony or evidence is being taken. However, the persons present at the execution of a request may be permitted to make a verbatim transcript of the proceedings. The use of technical means to make such a verbatim transcript may be permitted. A person from whom evidence is to be taken in the Requested Party pursuant to a request under this Article may decline to give evidence where: the law of the Requested Party would allow or require that person to decline to give evidence in similar circumstances in criminal proceedings originating in the Requested Party; or the law of the Requesting Party would permit or require that person to decline to give evidence in such criminal proceedings in the Requesting Party. If any person in the Requested Party claims that there is a right or obligation to decline to give evidence under the law of the Requesting Party, the Central Authority of the Requesting Party shall, upon request, provide a certificate to the Central Authority of the Requested Party as to the existence or not of that right. In the absence of evidence to the contrary, the certificate shall be sufficient evidence of the matters stated in it”.
- The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009 also provides for assistance, including: (a) taking the testimony or statements of persons including by video-conference or television, and

(b) providing documents, records and other evidentiary material ... (Article 1). A person in the territory of the requested party may be required to present upon the summons to provide testimony or documents, records or exhibits in accordance with the law the requested party, if necessary ... Where the person mentioned claims the right to an exemption or a privilege under the law of the requesting party, the requesting party must be informed of this claim and the accompanying evidence unless the legality of the claim is accepted by the requested party. Based on the request for assistance, the central authority of the requested party shall inform the requesting party of the time and place to collect evidence under the provisions of this Article. If under Article 6(4) (Execution of requests) of this treaty the requested party has permitted the presence of specified persons during the execution of the request, then, subject to the domestic law of the requested party, such persons may be permitted to present questions to be asked to the person giving testimony or producing evidence (Article 10, Taking testimony and producing evidence in the territory of the requested party). A request under this treaty may seek assistance in facilitating the appearance of any person in the territory of the requesting party for the purpose of giving evidence before a court or of being identified or assisting by his presence in any other way criminal proceedings. The central authority of the requested party shall: (a) ask a person whose voluntary appearance in the territory of the requesting party is desired whether he/ she would agree to appear; and (b) promptly inform the central authority of the requesting party of this person's answer (Article 11. Taking testimony in the requesting party).

- The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria in 2010 also provides in Article 1 for the scope of assistance, which includes: a) taking the testimony of witnesses; and b) giving materials, records and other exhibits. Persons in the territory of the requested party required to take the testimony may be present at the summon or other form permitted by the law of requested party. Whenever a person required to testify or give information in the territory of the requested party this shall be done in compliance with the law of that party. Where the person is exempted or incompetent or entitled to other exemptions by the law of the requesting party, the requested party shall inform the requesting party of that. When a request is made, the central authority of the requested party shall notify of the time and place where the evidence will be collected (Article 7, Taking testimony in the territory of the requested party). Where the requesting party becomes aware that the summoning of witnesses or experts to testify before the competent authorities in criminal matters is necessary, it shall request for assistance and the requested party shall inform the requesting party of the outcome of the implementation of the request (Article 8, Taking testimony in the requesting party).
- The ASEAN treaty on mutual legal assistance in criminal matters of which Vietnam is a signing party, contains a provision in Article 1 on the acts of assistance, including collection of evidence or obtaining voluntary statements from persons concerned. More specifically: when a request is made to obtain a statement from a person in relation to a criminal matter in the requesting party, the requested party shall endeavour, with the consent of that person, to obtain that statement (Article 10, Obtaining voluntary statements); The requested party shall, subject to its domestic laws, arrange to have evidence, including sworn or affirmed testimony, documents or records taken or obtained from witnesses in relation to a criminal matter, and their transmission to the requesting party. Where sworn or affirmed testimony is to be taken

under this Article, the parties to the relevant criminal proceedings in the requesting party or their legal representatives may, subject to the domestic laws of the requested party, appear and put questions to the person giving that evidence. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the requested party for the purpose of executing this Article if it is expedient in the interests of justice to do so (Article 11, Collecting evidence).

619. ***With regard to the requirements of Subparagraph 3 (b):*** The service of materials, records and documents concerning legal assistance in criminal matters is the first matter addressed in Article 17 of the Law on Mutual Legal Assistance in 2007 on “the scope of mutual assistance”, and covers the service of materials, records and documents understood as their transfer to the recipient. Service is done in accordance with national legislation, ensuring the timely receipt of relevant materials and documents by the persons concerned. The recipients can receive the materials and documents either in person or through their representatives, as provided for in the legislation. In the process of resolving criminal cases involving foreign elements, service will not be possible if the recipient is present in the territory of other States. Therefore, mutual legal assistance in criminal matters shall facilitate States, through their judicial authorities, to assist each other in effecting service of documents relating to security purposes, procedures and time limits of criminal procedures. After the service of documents, the competent authorities of the requested State shall promptly send to the requesting State information allowing to identify whether such documents were delivered to the right person. The transfer of objects and money related to the case to any territory outside the territory of the Socialist Republic of Vietnam is conducted in conformity with the treaties to which the Socialist Republic of Vietnam is a party and under the provisions of the Criminal Procedure Code (Article 346). In addition, in treaties on mutual legal assistance which Vietnam has signed or acceded to, there are also provisions on this matter. More specifically:

- The treaty on mutual legal assistance in civil, criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 stipulates as follows: The contracting parties shall provide legal assistance to each other by carrying out separate procedural acts stipulated by the law of the requested party such as making, sending and serving papers, recognizing and enforcing decisions of Courts on civil matters ... (Article 5). The requested authority, based on the applicable law, shall effect the service. The served documents must be accompanied with the certified translation into the language of the requested party or their English translation (Article 9, The service of document). The service of documents is confirmed by the certification of service with the signature of the recipient, the official seal of the requested authority, the date of service and the signature of the official of the agency effecting service. The confirmation of service can be also made by another document, in which the manner, place and time of service must be indicated clearly. (Article 10, Confirmation on service of documents).
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982, in Article 2, provides that: the judiciary authorities shall assist one another in carrying out procedural acts, especially in making, transferring and serving documents. Article 8 (Service of document to its citizens) provides as follows: the signing States can effect the service of documents to their respective

citizens through the diplomatic mission as well as the consular office. In this case, the use of coercive measures is not permitted.

- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Cuba of 1984 provides for the service of documents in Articles 5 and 3, regulating specifically the order and procedure of service: “The requesting judicial agency sends documents, under its applicable legal provisions, in the language of the contracting State or accompanied by a officially certified translation to the requested agency. If this is not the case, the requested agency may decline to receive; the mandate of service of documents needs to be indicated with the full name and address of the recipient and the name of the document to be served. If the service fails at the address mentioned, the requested judicial authority will take other measures to seek the address of the recipient. If the requested authority is unable to serve the documents, it shall inform and return the documents to the requesting judicial authority (Article 8). The requested judicial authority is required to notify of the implementation of service under its domestic law on service. The confirmation on service shall indicate clearly the time, place and the full name of the recipient (Article 9). Each contracting State has the right to effect service of documents to its citizens through the diplomatic mission or consular agency in the other contracting State. However, where the service of documents is made under this form, coercive measures are not applicable (Article 10)”.
- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Hungary of 1985, in Paragraph 1 of Article 4, provides for legal assistance, including the implementation of separate procedural acts such as the request of service of documents as well as making and sending documents. Accordingly, the requested authority shall effect the service in accordance with its domestic law on the service of documents with the condition of serving documents translated into the language of the requested State or accompanied with the duly certified translation into the language of the requested State. If not so, the requested authority shall only effect the service of documents when the served person receives it voluntarily. The served documents shall mention the correct address of the recipient as well as the nature of the served documents. If the service fails at the address mentioned, the requested judicial authority will take other necessary measures to find the address of the recipient. If the requested authority is unable to find the address, it shall inform and return the documents to the requesting judicial authority (Article 9). The requested State, basing on its applicable domestic law on service of documents, shall provide confirmation of the service. The confirmation of service shall mention the date and the place of service. Each contracting State shall have the right to serve documents to its citizens in the territory of the other State through its diplomatic mission or consular agency; in this case, coercive measures are not applicable (Article 11).
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria of 1987 stipulates that the contracting States shall provide legal assistance by executing acts related to separate legal proceedings such as making, sending and service of documents etc (Article 5). Accordingly, the requested authority shall effect the service of documents written in the language of the State of the requested agency or accompanied with a duly certified translation. If not so, the requested authority shall only effect service of documents with the consent of the

served person. The full name and address of the recipient as well as the documents to be served are indicated clearly in the notice on the service. If the service fails, the requested authority shall return the documents to the requesting authority (Article 8). The service must be certified and the certification is done in accordance with the law of the requested State. The certification of service shall mention the place, the time of service and the full name of the served person (Article 9).

- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Poland of 1993 stipulates in Paragraph 2 of Article 5: Legal assistance includes acts in the framework of civil and criminal proceedings, especially the service of documents etc. Moreover, Article 9 provides as follows: Service of documents: The requested authority, pursuant to its domestic law, shall effect service, if the served documents are written in its language or accompanied with a certified translation into its language. In other cases, the requested authority shall effect service if the served person receives the document voluntarily”.
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People’s Democratic Republic of 1998 provides as follows: “The contracting States shall provide legal assistance by executing acts of separate legal proceedings in each case...” (Article 5). Article 9 stipulates: “Service of documents: 1. The judicial authorities of the requesting State shall effect service of documents to the requested State in its language and accompanied with a duly certified translation. 2. The served documents must mention the full name and residence of the recipient, together with the designation of the documents. 3. If unable to serve documents at the address mentioned in the document, the judicial authority of the requested State is required to apply the necessary measures to find the correct address of the recipient. If it fails to do so, the judicial authority of the requested State shall inform the judicial authority in the requesting State in writing and return all documents mentioned above”.
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998 provides for service of documents in Articles 1, 11 and 22. According to these provisions, the requested party shall effect service of judicial documents and other documents at the request of the requesting party, and the requested party shall send to the requesting party the confirmation on service of documents indicating the date, place and means of service, signature and seal of the serving authority after effecting the service of documents. If the service fails, the requested party shall inform the requesting party of the reason (Article 11). The requested party shall effect service of documents at the request of the requesting party with the exception of documents that require the presence of a defendant to be effected (Article 22).
- The treaty on mutual legal assistance in civil, family, labor and criminal matters between Vietnam and Belarus of 2000 stipulates: “The Contracting Parties shall provide legal assistance to each other by carrying out procedural acts such as making, sending and serving documents etc (Article 5). The requested authority, based on its applicable laws on service, shall effect service of documents, if the served documents are drafted in the official language of the requested Party or accompanied with the certified translation into the language of that contracting Party. Where the served documents are not drafted in the language of the requested Party or not accompanied

with the translation, the service shall be effected only if the served person receives the document voluntarily (Article 8, Service of documents). The Contracting Parties have the right to serve documents to their respective citizens and take their testimony through the diplomatic mission or consular agency. Coercive measures are not applied by the Parties while effecting the service (Article 10, Service of documents and Taking testimony of the citizens through the diplomatic agency or consular agency)".

- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia of 2000 provides as follows: "Article 4: The Contracting Parties shall provide mutual legal assistance to each other by carrying out procedural acts stipulated by the law of the requested Party such as service of documents etc. Article 10 - Service of documents: 1. The requested authority, pursuant to the applicable regulations, shall effect service of documents if the served documents are written in the language of the requested Party, accompanied with the certified translation into Russian. In other cases, the authority shall serve the document to the recipient only if that person is agreeable to receive it. 2. The request to serve documents should specify the address of the recipient and the title of the document. 3. If the requested authority is unable to serve the documents at the address mentioned in the request of service, the requested authority, in accordance with its domestic law, shall take the necessary measures to find the correct address. If unable to find the address of the recipient, the requested authority shall inform the requesting authority and return the document to be served".
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Ukraine of 2000 provides as follows: "Article 3: Legal assistance shall include execution of procedural act in accordance with the law of the requested Party such as service and transfer of documents, informing at the request of the other Party on judgment of the defendant etc. Article 9 - The form of service of documents: 1. The requested authority, pursuant to its applicable regulations, shall effect service of documents if the served documents are written in its language or accompanied with the certified translation into its language. In case the documents are not written in the language of the requested Party or not accompanied with the translation, the service shall be effected only if the served person agrees to receive the document".
- The treaty on mutual legal assistance in civil and criminal matters between the Socialist Republic of Vietnam and the Democratic Republic of Korea of 2002 stipulates the following: "Article 7. Certification and service of documents: 1. The copy and translation of the documents made officially in the territory of either Party shall be accepted in the territory of other Party if those documents are signed lawfully and sealed by its competent authorities. 2. The contracting Parties shall serve documents through the Central Authorities as provided in paragraph 2 of Article 4 of this Treaty. 3. Diplomatic and consular agencies of one Contracting Party, with the consent of the competent authorities of the host State, may serve court and other documents to its citizens and legal entities in the territory of the other Contracting Party directly without using coercive measures."
- The treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the Republic of Korea of 2003 contains the following provisions: "Paragraph 3 of Article 1: legal assistance shall include service of documents, search and seizure etc. Article 9 - Service of Documents: 1. The

Requested Party shall, to the extent its laws permit, carry out requests for the service of documents in respect of a criminal matter.2. A request for service of a summons to a witness giving testimony must be send to the Requested Party within a period of 45 days before the date that person is required to be present in the Requesting Party. In case of urgency, the Requested Party may waive this requirement. 3. The Requested Party shall transmit to the Requesting Party a document certifying that the document is served. The Requested Party shall be informed of the reason why the service could not be effected. 4. A person who fails to comply with any document served to him or her shall not be liable to any penalty or coercive measure pursuant to the law of the Requesting Party nor Requested Party”.

- The treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007 contains provisions on legal assistance, including: collection of evidence or taking testimony, and service of documents (Paragraph 4 of Article 1). More precisely: “Article 7. Service of Documents: 1. The Requested Party shall, to the extent its laws permit, carry out requests for the service of documents in respect of a criminal matter. 2. A request for service of a summons requiring the appearance of a person as a witness in the Requesting Party shall be made to the Requested Party within forty - five (45) days before the scheduled appearance. In urgent cases, the Requested Party may waive this requirement. 3. The Requested Party shall forward to the Requesting Party proof of service of the documents. If service can not be affected, the Requested Party shall be so informed and advised of the reasons”.
- The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009 contains provisions on the scope of assistance, including: supply of documents, records and other exhibits, and service of documents (Article 1). Detailed provisions on service of documents are contained in Article 15 as follows: “1. The Requested Party shall, upon request and insofar as possible, effect service of: (a) Any document issued or made for the purposes of criminal proceedings. (b) Any documents issued or made by an authority for the purposes of clemency proceedings. 2. Any person who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the Requesting Party and is there again duly summoned. 3. The Central Authority of the Requesting Party shall transmit any request for the service of documents requiring the appearance of a person before an authority or court in the Requesting Party within a reasonable time before the scheduled appearance”.
- The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 defines in Article 1 the scope of mutual legal assistance, in which service of documents is included.
- The ASEAN treaty on mutual legal assistance in criminal matters describes in Article 1 the scope of assistance, in which service of judicial documents is included.

620. ***With regard to the requirements of Subparagraph 3(c):*** Strip search, as well as searching premises, objects, correspondence and postal parcels are defined in Articles 140, 145, 146, 147 and 148 of the Criminal Proceedings Code of Vietnam. Accordingly, the competent authorities have the right to strip search and search dwellings and places

only if there are grounds to believe that instruments and means to commit an offence, objects obtained by committing an offence, documents relevant to the case or other things are carried by the person located in a dwelling or other premises of the individual. During searching, the investigator may seize things that constitute evidence and documents directly related to the case. Those things are prohibited to be kept and circulated and shall be seized and promptly delivered to the competent authority. In case of necessity the seized articles are required to be placed under seal or otherwise locked; this procedure must be conducted in the presence of the owner or representatives of his family, representatives of the local authority and other eyewitnesses. To ensure the objectiveness and accuracy of the procedure, when conducting search and seizure of the above mentioned items, a record must be prepared in accordance with the provisions of the Criminal Proceedings Code. In addition, competent persons of the proceedings also have the right to distrain the portion of property corresponding in value to the amount which would be confiscated, fined or compensated.

621. Freezing of assets is also stipulated in the Civil Proceedings Code 2004, including freezing of bank accounts or accounts at other credit institutions. State Treasury shall apply for freezing measures if in the course of settling cases there are grounds showing that the obligors have accounts at banks, other credit institutions or State Treasury and the application of this measure is necessary to ensure the settlement of the cases or to ensure the judgment enforcement (Article 112). Freezing assets at depositories shall apply if in the course of settling cases there are grounds showing that the assets of the obligors have been deposited (Article 113). Freezing the obligors' properties shall apply if in the course of settling cases there are grounds showing that the obligors have such properties (Article 114) and the application of this measure is necessary to ensure the settlement of the cases or to ensure the judgment enforcement.

622. In addition, the Law on Mutual Legal Assistance stipulates that forms of mutual legal assistance in criminal matters between Vietnam and foreign States shall include: "1. Service of documents and other records and documents concerning mutual legal assistance in criminal matters; 2. Summon of witnesses, experts, and persons who have rights and obligations in the case; 3. Collection and provision of evidence; 4. Criminal prosecution; 5. Exchange of information; and 6. Other forms of mutual legal assistance in criminal matters." There are also a number of treaties on mutual legal assistance which Vietnam has signed or acceded to, which contain provisions on facilitating mutual assistance in these activities. More precisely:

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 defines the scope of legal assistance, including search and seizure, and transfer of exhibits (Article 5).
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982 stipulates in Article 2: The judicial authorities shall provide mutual assistance to each other in carrying out procedural acts.
- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Cuba in 1984 describes the scope of mutual legal assistance including the implementation of various acts such as seizure and transfer of the outcome of expertise, exhibits and documents (Article 5).

- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985, in Paragraph 1 of Article 4, contains provisions on legal assistance, including the implementation of separate procedural acts such as the search of home, detention, forfeiture of assets, forwarding of evidence, etc.
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria in 1987 provides as follows: the contracting States shall provide legal assistance to each other by performing acts of separate proceedings such as search, seizure and transfer of exhibits (Article 5).
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Poland of 1993 provides as follows: Mutual legal assistance includes separate acts in the framework of civil and criminal procedure, in particular service of documents, home search, seizure and transfer of exhibits (Paragraph 2, Article 5).
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People's Democratic Republic of 1998 provides for the provision of mutual assistance to each other in carrying out acts of separate proceedings such as: service of documents; taking testimony of witnesses and others involved persons, provision of expertise, collecting evidence, and transfer of evidence and the outcome of expertise with related records and other documents (Article 5).
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998 provides in Article 1 that the two contracting parties shall provide legal assistance to each other in civil and criminal matters as follows: "1) Service of documents; 2) Investigation and collection of evidence; 3) Recognition and enforcement of Court decisions in civil matters as well as decisions of arbitration; 4) Any other legal assistance under the provisions of this Treaty". Specific provisions regarding the investigation and collection of evidence are contained in Paragraph 1 of Article 12, according to which the two contracting parties shall provide mutual assistance to each other in the investigation, collection of evidence and performance of actions necessary for the investigation and collection of evidence.
- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Belarus in 2000 provides as follows: Contracting parties shall provide mutual assistance to each other in making, forwarding and serving documents, transferring civil, criminal or other types of cases, giving information on the practice of trials as well as providing mutual legal assistance in other cases as stipulated by this treaty (Article 5).
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia of 2000, in Paragraph 1 of Article 4, provides as follows: Contracting parties shall provide assistance to each other in conducting separate procedural act in accordance with the law of the requested party, such as service of documents, search, collection and transfer of exhibits, expertizing, and taking testimony from the accused persons, the witnesses, experts, involved parties and others.
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Ukraine of 2000 defines the scope of mutual legal assistance in Article 3 as follows: Mutual legal assistance includes the implementation of the procedural acts in accordance with the laws of the requested party, such as taking testimony from the involved parties,

the third persons, the suspect, the accused, the defendants, victims, witnesses, experts, conducting expertise, considering legal aspects, transferring exhibits, and other acts in accordance with the laws of the contracting parties.

- The treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the Republic of Korea of 2003 provides that the scope of assistance includes the following acts: “a) taking evidence or statements from persons; b) providing information, documents, records and items of evidence; c) locating or identifying persons or items; d) serving documents; e) executing requests for search and seizure; f) making arrangements for the persons to give evidence or assist in criminal investigations, prosecutions or proceedings in the requesting Party; g) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities; and h) any other assistance consistent with the objects of this Treaty which is not inconsistent with the laws of the requested Party (Article 1)”. Search and seizure are also addressed separately in Article 15 as follows: “1. The requested Party shall, to the extent its laws permit, carry out requests made in respect of a criminal matter in the requesting Party for the search, seizure and delivery of materials to that Party; 2. The requested Party shall provide such information as may be required by the requesting Party concerning the result of any search, the place and circumstances of seizure and the subsequent custody of the materials seized. 3. The requested Party shall observe any conditions imposed by the requested Party in relation to any seized material which is delivered to the requesting Party”. Regarding finding, search and seizure, the treaty stipulates: “Where, pursuant to paragraph 2, suspected proceeds of crime are found, the requested Party shall take such measures as permitted by its law to restrain or confiscate such proceeds (Paragraph 3 of Article 16)”.
- The treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007 provides in Article 1 as follows: “4. Assistance shall include: a) taking evidence or statements from persons; b) providing information, documents, records and articles of evidence; c) locating or identifying persons or items; d) serving documents; e) executing requests for search and seizure; f) permitting the person in custody to give evidence or assist in investigation. g) making arrangements for the persons to give evidence or assist in criminal investigations, prosecutions or proceedings in the requesting Party; h) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities including proceeds and instrumentalities concerning terrorism; i) any other assistance consistent with the objects of this Treaty which is not inconsistent with the laws of the requested Party”. Search and seizure are addressed separately in Article 15 as follows: “1. The requested Party shall, to the extent its laws permit, carry out requests made in respect of a criminal matter in the requesting Party for the search, seizure and delivery of materials to that Party pursuant to the rules and procedures followed by its executive and judicial authorities; 2. The requested Party shall provide such information as may be required by the requesting Party concerning the result of any search, the place and circumstances of seizure and the subsequent custody of the material seized. 3. The requested Party shall observe any conditions imposed by the requested Party in relation to any seized material which is delivered to the requesting Party (paragraph 2 of Article 16)”.
- The treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the United Kingdom of Great Britain of 2009 provides in paragraph 3 of Article 1 that the scope of legal assistance includes acts such as: “f) executing requests for search and seizure; (g ) identifying, tracing, restraining, confiscating and disposal of proceeds of crime and assistance in related proceedings; (h) return of assets, (i) sharing of

assets in accordance with Chapter II”, as well as such other assistance activities as may be agreed between the Central Authorities. Assistance in search and seizure is also specifically covered in this Treaty. Accordingly, the requested Party shall execute a request for the search, seizure and delivery of any article to the requesting Party if the request includes the information justifying such action under the laws of the requested Party and is carried out in accordance with the laws of that Party. The requested Party may refuse a request if it relates to conduct in respect of which powers of search and seizure would not be available in the territory of the requested Party in similar circumstances. The Central Authority of the requested party may require that the requesting Party agrees to terms and conditions which the requested Party may deem necessary to protect third party interests over the items to be transferred (Article 16). Also, the Parties shall assist each other in relation to the identification, tracing, restraint, seizure and confiscation of the proceeds and instrumentalities of crime. If the Central Authority of one Party becomes aware that proceeds or instrumentalities of crime are located in the territory of the other Party and that these proceeds or instrumentalities may be liable to restraint, seizure or confiscation under the laws of that Party, it may so inform the Central Authority of the other Party. If the Party so notified has jurisdiction, this information may be presented to its authorities for determining whether any action is appropriate. The said authorities shall issue their decision in accordance with the laws of their country and the Central Authority of that country shall ensure that the other Party is notified of the action taken (Article 18).

- The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 provides at Paragraph 2 of Article 1 that the scope of assistance includes acts such as: “Executing requests for search and seizure; Identifying, locating, freezing and confiscating proceeds of crime and assisting in the related proceedings concerned; Return of assets; Any other assistance activities as agreed by both Parties”. Assistance in search and seizure is defined in Article 12: According to this article, to the extent that its laws permit, within its legal framework and taking into account the legitimate interests of third parties involved, the requested party will execute requests for seizure, search and transfer of all exhibits collected at the request of the requesting party, and the requesting party shall comply with all conditions required by the requesting party concerning documents and exhibits collected for the transfer. In addition, assistance in the procedural framework of freezing, seizure, confiscation is regulated clearly in this treaty: the parties agree to assist in criminal procedure matters related to identifying, locating, freezing or seizing of instrumentalities of crime under the applicable law of the requested party and as long as these acts are not harmful to the interests of third parties (Article 14).
- The ASEAN treaty on mutual legal assistance in criminal matters to which Vietnam is a contracting party defines in Article 1 the scope of assistance as follows: “2. Assistance in this Treaty may include: ... (d) executing searches and seizures; (e) examining objects and sites; (f) providing original or certified copies of relevant documents, records and items of evidence; (g) identifying or tracing property derived from the commission of an offence and instrumentalities of crime; (h) the restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated; (i) the recovery, forfeiture or confiscation of property derived from the commission of an offence; (j) locating and identifying witnesses and suspects; and (k) The provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the laws of the requested Party”. Further, there are specific provisions on assistance in search and seizure: “Article 18. Search and seizure: 1. The requested Party shall, subject to its domestic laws, execute a request for the search, seizure

and delivery of any documents, records or items to the requesting Party if there are reasonable grounds for believing that the documents, records or items are relevant to a criminal matter in the requesting Party. 2. The requesting Party shall observe any conditions imposed by the requested Party in relation to any seized document, record or item which may be delivered to the requesting Party, that are considered necessary by the requested Party to protect the documents, records or items to be transferred. 3. The requested Party shall as soon as practicable inform the requesting Party of the result of any search, the place and circumstance of seizure and the subsequent custody of the documents, records or items seized; Article 22. Assistance in forfeiture proceedings: 1. The requested Party shall, subject to its domestic laws, endeavour to locate, trace, restrain, freeze, seize, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime for which such assistance can be given provided that the requesting Party provides all information which the requested considers necessary. 2. Where a request is made under paragraph 1, the request shall be accompanied by the original signed order or a duly authenticated copy of it. 3. A request for assistance under this Article shall be made only in respect of orders and judgments that are made after the coming into force of the Treaty. 4. Subject to the domestic laws of the requested Party, property forfeited or confiscated pursuant to this Article may accrue to the requesting Party unless otherwise agreed in each particular case. 5. The requested Party shall, subject to its domestic laws and pursuant to any agreement with the requesting Party, transfer to the requesting Party the agreed share of the property recovered under this Article subject to the payment of costs and expenses incurred by the requested Party in enforcing the forfeiture order”.

623. ***With regard to the requirements of Subparagraph 3(d):*** According to the procedural law of Vietnam, site examination shall be applied for tracing of crime, exhibits and classification of cases (Article 150 of the Criminal Procedure Code of 2003). Site examination is one of the mutual legal assistance activities in criminal matters stipulated in Paragraph 3 of Article 17 of the Law on Mutual Legal Assistance of 2007 (collection and provision of evidence). Site examination is regulated in the Criminal Procedure Code of 2003 as follows: “Article 150. Site examination: 1. Investigators shall examine the scene where an offence has been committed or where an offence has been discovered to find out traces of crime, material evidence and ascertain elements important to the case. 2. Site examination may be conducted prior to initiation of a criminal case. Before conducting such an examination, the investigator must notify thereof to the Procuracy at corresponding level. The prosecutor shall be present to supervise the examination. Eyewitness shall be called to be present at the examination; the charged, victim, witnesses may be allowed and specialists may be invited to take part therein. 3. During the examination, the investigator shall take photos, make diagrams, describe the scene, measure, reproduce the scene, collect and examine at the scene traces of the offence as well as objects and documents related to the case. The outcome of such an examination must be clearly indicated in a record”.

624. If it is impossible to immediately examine objects and documents collected, they must be preserved, kept intact or sealed and transported to the site of the investigating body.

625. There are also a number of treaties on mutual legal assistance in criminal matters that Vietnam has signed or acceded to, which contain provisions on this matter, in particular:

- Article 5 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981.
- Paragraph 2 of Article 2 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982.
- Article 5 of the treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Cuba of 1984.
- Paragraph 1 of Article 4 of the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985.
- Article 5 of the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria of 1987.
- Paragraph 2 of Article 5 of the treaty on mutual legal assistance on civil matters, family and criminal matters between Vietnam and Poland of 1993.
- Article 5 of the treaty on mutual legal assistance in civil and criminal between Vietnam and the Lao People's Democratic Republic of 1998.
- Articles 1, 12 and 23 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998.
- Article 5 of the treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Belarus of 2000.
- Paragraph 1 of Article 4 of the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia of 2000.
- Article 3 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and Ukraine of 2000.
- Article 1 of the treaty on mutual legal assistance in criminal matters between Vietnam and the Republic of Korea of 2003.
- Article 1 of the treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007.
- Article 1 of the treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009.
- Article 1 of the treaty on mutual legal assistance in criminal matters between Vietnam and Algeria in 2010.
- Article 1 and Article 11 of ASEAN treaty on mutual legal assistance in criminal matters to which Vietnam is a contracting Party.

626. ***With regard to the requirements of Subparagraph 3(e):*** The Law on Mutual Legal Assistance of 2007 allows Vietnamese competent authorities to request competent foreign bodies to perform their criminal legal assistance requests or to perform criminal legal assistance requests of foreign countries in information sharing, summoning of witnesses and experts, collection and supply of evidence in Article 17 (paragraphs 3, 5 and 6) and Article 26. Upon the request of the competent authority of Vietnam or of a foreign country, the Supreme People's Procuracy shall request bodies in charge of criminal procedure of Vietnam or of a foreign country to provide information related to the criminal legal assistance request, or a copy of the legally valid court judgment or decision against a citizen of the requesting country. Upon the request of the competent bodies of Vietnam or foreign countries, the Supreme People's Procuracy requests competent bodies of foreign countries or procedure-conducting bodies of Vietnam to provide information related to the criminal legal assistance or copies of legally valid court judgments and decisions accorded to citizens of the requested countries. Information or evidence supplied by competent bodies of Vietnam in charge of procedure may be used only for the purposes

for which they were provided and must not be disclosed or transferred, unless prior written consent of competent bodies of Vietnam is obtained (Article 27).

627. Collection of evidence, order and the procedure for collecting evidence are regulated in Chapter V of the Criminal Proceedings Code 2003, including Article 63 (Matters to be proved in criminal cases); Article 64 (Evidence); Article 65 (Collection of evidence); Article 66 (Evaluation of evidence); Article 67 (Statements of witnesses); Article 68 (Statements of victims); Article 69 (Statements of civil parties and civil defendants); Article 70 (Statements of persons with interests and obligations related to criminal cases); Article 71 (Statements of arrested persons and persons in custody); Article 72 (Statements of the accused or defendants); Article 73 (Conclusions of expertise); Article 74 (Exhibits); Article 75 (Collection and preservation of exhibits); Article 76 (Handling of exhibits); Article 77 (Minutes of investigating and adjudicating activities); Article 78 (Other documents and objects in criminal cases).

628. The Criminal Proceedings Code also contains procedures for conducting expertise, such as Article 156 (Conduct of expertise); Article 157 (Contents of conclusions of expertise); Article 158 (Right of the accused and participants in the procedure with regard to conclusions of expertise); Article 159 (Additional expertise or re-expertise).

629. Treaties on mutual legal assistance in criminal matters that Vietnam has signed or acceded to contain provisions on the supply of information, evidence and expertise:

- Treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981. Mutual legal assistance in criminal matters with respect to provision of information, evidence and expertise is covered in Articles 5, 60, 79, 81 and 82.
- Articles 2 and 12 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982;
- Articles 5, 16, 76 and 77 of the treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Cuba of 1984;
- Paragraph 1 of Article 4, articles 13, 75, 96 and 97 of the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985;
- In Articles 5, 14, 70, 71, 77 and 78 of the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria of 1987;
- Paragraph 2 of Article 5, Articles 4, 68 and 78 of the treaty on mutual legal assistance on civil matters, family and criminal matters between Vietnam and Poland of 1993;
- Articles 5, 14, 57 and 58 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People's Democratic Republic of 1998;
- Articles 1, 26 and 28 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998;
- Articles 5, 13, 15, 73, 74, 87, 89 of the treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Belarus of 2000;
- Paragraph 1 of Article 4 of the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia of 2000;
- Subparagraph e) of paragraph 3 of Article 46, 61, 64, 65, 66 of Treaty on mutual legal assistance in civil and criminal matters between Vietnam and Ukraine of 2000;
- Articles 3, 44 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Democratic Republic of Korea of 2002;

- Articles 1, 14 of the treaty on mutual legal assistance in criminal matters between Vietnam and the Republic of Korea of 2003;
- Articles 1, 8 of the treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007;
- Articles 1, 14 of the treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009;
- Articles 1 and 18 of the treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010;
- Articles 1 and 19 of the ASEAN treaty on mutual legal assistance in criminal matters to which Vietnam is a signatory party.

630. *With regard to the requirements of Subparagraph 3(f):* According to the law of Vietnam on criminal matters, upon request of competent bodies of Vietnam or foreign countries, the Supreme People’s Procuracy shall request competent bodies of foreign countries or competent bodies in charge of procedure of Vietnam to supply information relating to criminal legal assistance requests or copies of criminal judgments or court decisions which have taken legal effect on citizens of the requesting countries (Article 26 of the Law on Mutual Legal Assistance). During the country visit, it was clarified that not only criminal judgments but also other documents could be provided to the requesting country, as they would fall under the category of “information” mentioned in article 26 of the Law on Mutual Legal Assistance.

631. The transfer of files and exhibits of criminal cases is stipulated in Articles 345 and 346 of the Criminal Procedure Code 2003; accordingly, for cases involving foreigners who have committed offenses in the territory of the Socialist Republic of Vietnam, if the procedure cannot be conducted because such persons have left the country, the bodies in charge of procedure which are handling the case may transfer the case files to the Supreme People’s Procuracy for carrying out the procedures to transfer them to the foreign authorities with corresponding competence. When transferring the case files to the foreign authorities with corresponding competence, the bodies in charge of procedure of the Socialist Republic of Vietnam may also transfer exhibits of the cases. Delivery, receipt and transfer of documents, objects and money related to criminal cases shall comply with the international agreements which the Socialist Republic of Vietnam has signed or acceded to and the provisions of the Code. The transfer of objects and money related to criminal cases out of the territory of the Socialist Republic of Vietnam shall comply with the laws of the Socialist Republic of Vietnam (Article 346). The handing-over of documents, objects and monies in connection with mutual legal assistance activities shall be in accordance with the law of Vietnam (Article 9, Law on Mutual Legal Assistance of 2007). Vietnamese legislation does not limit the delivery of relevant files for the purpose of criminal examination, provided that the documents and files were used properly in order to prosecute and judge offenders.

632. International treaties related to mutual legal assistance in criminal matters which Vietnam has signed or acceded to contain the following provisions on this matter:

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 provides as follows: The member countries shall assist each other by carrying out acts of separate proceedings stipulated in the law of the requesting country such as making, sending and serving documents, recognition and enforcement of court’s decisions in civil matters, search, seizure and

transfer of exhibits, expertise, taking testimony of the parties, witnesses, experts, persons who were identified as having committed the crime, the defendant and other persons, executing criminal prosecution, extradition for the purpose of criminal prosecution or enforcing the sentences (Article 5). Upon request, the member country undertakes to provide free of charge to each other with the certificate of education degree, duration of labour, civil status documents and other documents relating to the rights and personal interests of the citizens of the other party (Article 16);

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982, at Article 2, provides that the judicial authorities shall assist each other in carrying out procedural acts especially taking testimony of the witnesses, the involved parties, the accused or other persons, in the expertise, in the preparation, transport and service of documents;
- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Cuba of 1984 provides that the scope of assistance includes the implementation of various procedural acts such as service of document, summon, making an appointment to take the testimony of witnesses, experts and other persons, search and seizure, transfer of the results of expertise, exhibits, documents as well as the extradition of accused and convicted persons (Article 5). The State parties shall provide each other, through the diplomatic channel with the birth, marriage and death certificates and additional documents or attached appendixes related to citizens of the other member country within one month from the date of preparation of documents mentioned above. The sending of the certificate is free of charge. Upon request of the birth, marriage and death authority of one State party, the corresponding authority of the other Signatory State shall send to the requested authority at no cost the copies of the full text or necessary excerpts regarding issues related to the birth, marriage and death record for official use (Article 14);
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985, in Paragraph 1 of Article 4, provides as follows: Mutual legal assistance includes the implementation of separate procedural acts, such as search at home, temporary detention, confiscation of assets, sending evidence, taking testimony of witnesses, experts and other persons, interrogating the accused, examining sites, service of documents, sending documents and preparation and submission of documents;
- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Bulgaria of 1987 provides that the States parties shall assist each other by performing acts of separate legal proceedings, such as preparing, sending and serving documents, search, seizure and transfer of exhibits, expertise, taking testimony of defendants, experts, involved parties and third persons, enforcement of decisions and extradition of offenders etc (Article 5). States Parties shall send to each other through the diplomatic channel, at no cost, the extract from the birth, marriage, death record of citizens, as well as additional notes and the amendments relating to nationals of other States parties within one month from the date of preparing the corresponding documents (Article 13);
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Poland of 1993 provides that assistance includes separate acts in the framework of civil procedure and criminal procedure, in particular service of documents,

search at home, seizure and transfer of exhibits, expertise, taking testimony of suspects, defendants, witnesses and experts, as well as assessing judicial aspects (Paragraph 2, Article 5). The State parties, at the request of each other, shall send each other copies of civil status certificates as well as copies of decisions on civil status, if the documents are related to the citizen in the requested country. These documents do not need to be legalized and translated and shall be sent to the requesting country without the payment of deposit (Article 14). Along with the written request for criminal prosecution, the certified copy of case files and exhibits collected by the requesting country shall be attached thereto. The transfer of objects must comply with paragraph 4 of Article 68 of this Treaty. The translation is not required in the file (Article 77);

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People's Democratic Republic of 1998 provides that the State party shall assist each other by carrying out acts of separate proceedings in each case such as service of documents; taking testimony of the involved parties, witnesses and other persons concerned; expertise, collecting evidence, transfer of evidence and results of the expertise with the records and other documents; the recognition and enforcement of sentences and decisions of the Court and the Economic Arbitration; extradition of offenders (Article 5). The State party shall provide each other with documents of civil status through the diplomatic channel, the fees of extracting of civil status record or copy of full text of civil status record and other documents related to civil status of nationals of the signatory state concerned (Article 13);
- Article 1 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998;
- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Belarus of 2000 provides that the State parties shall assist each other by carrying out procedural acts such as preparing, sending and serving documents, transfer of civil, criminal cases and others, providing information on the status of trial and applicable law, as well as mutual legal assistance in other cases stipulated by this Treaty (Article 5). Upon request, the competent authorities of the State party undertake to send civil status documents to each other (Article 13);
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia of 2000, paragraph 1 of Article 4, provides as follows: The signatory parties shall assist each other by carrying out acts of separate proceedings in accordance with the law of each country, such as: service of document; search, collection and transfer of exhibits; expertise; taking testimony of the accused, the witnesses, the experts, the involved parties and other persons; assessing legal aspects; recognition and enforcement of court decisions on civil matters, the decision relating to civil compensation in criminal judgments as well as by enforcement of decisions; conducting criminal prosecution and extradition of offenders; transferring and translating of documents and providing information. One State party, upon the request received through diplomatic channels, shall send to the other State party: certificate of registration of civil status, certificate of education, certificate of work experience and other documents related to personal rights and interests of nationals of other member country. The above documents are sent to the other member country through diplomatic channels without being translated and free of charge (Article 9);

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Ukraine of 2000 contains the following provision on the scope of legal assistance: Mutual legal assistance includes conducting separate acts in the framework of the law of the requested country such as taking testimony of involved parties, third party, suspects, the accused, defendants, victims, witnesses and experts, expertise, assessing judicial aspects, transfer of exhibits, conducting criminal prosecution, extradition of offenders, recognition and enforcement of court decisions on civil matters, the decision relating to civil compensation in criminal judgments, service and transfer of documents, providing information as requested by the other State party on the trial of defendants, as well as other acts in accordance with the law of States parties (Article 3). Upon request, the registry of civil status of one State party shall send directly to the judicial authority of the other member country the excerpts of documents on civil status. The certificates of education, working seniority and other documents related to personal right, interests and assets of nationals are transferred as stipulated in paragraph 2 of this Article. Documents mentioned in paragraphs 1, 2, and 3 of this Article are transferred without being translated and free of charge (Article 16).
- Article 3 of the treaty between the Socialist Republic of Vietnam and the Democratic Republic of Korea on mutual legal assistance in civil and criminal cases of 2002;
- Article 1 of the treaty on mutual legal assistance in criminal matters Vietnam and the Republic of Korea of 2003;
- Article 1 of the treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007;
- Article 1 of the treaty on mutual legal assistance in criminal matters Vietnam and the United Kingdom of 2009;
- Articles 1 and 11 of the treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010;
- Articles 1 and 13 of the ASEAN treaty on mutual legal assistance in criminal matters to which Vietnam is a Signatory Party.

633. ***With regard to the requirements of Subparagraph 3(g):*** The legislation of Vietnam does not limit the assistance in tracing of evidence. The requirement for identification or tracing of illegal money, property, tools or other objects used as evidence can be established. A criminal legal mandate document must clearly indicate the mandate purpose; summarize the elements of the case, related circumstances, applicable legal provisions and penalties, timeline of investigation, prosecution and trial, and the mandate performance duration; describe assets and places where assets need to be searched for and grounds for determining that the assets acquired from commission of crimes are located in the requested country and may fall under the jurisdiction of the requested country; the execution of court judgments or rulings on mandate for search, seizure or confiscation of assets acquired from commission of crimes; measures applicable to the criminal legal mandate, which may lead to detection or recovery of assets acquired from commission of crimes; requests or procedures of the requesting State to ensure the effective performance of legal mandate, mode or form of supplying information, evidence, documents and articles; request for confidentiality of legal mandate (Article 19: Law on Mutual Legal

Assistance) and other relevant information to support competent authorities of Vietnam to identify and trace in a timely and effective manner. In addition, the collection and preservation of evidence can be made according to the order and procedures prescribed in Chapter V of the Criminal Procedure Code of 2003. The treaties on mutual legal assistance in criminal matters which Vietnam has signed contain similar regulations.

634. ***With regard to the requirements of Subparagraph 3(h):*** Article 8 of the Law on Mutual Legal Assistance of 2007 stipulates that witnesses and experts may be summoned to give testimony in the requesting country. Article 25 of this Law provides that convicted persons in the territory of Vietnam may be temporarily transferred to the competent authority of the requesting country in order to give evidence in criminal cases in the requesting country. More specifically: “1. While conducting proceedings, competent bodies in charge of procedure may summon witnesses and experts under the provisions of this Law as well as of treaties to which Vietnam is a State party; 2. A summons must clearly specify the conditions for the witness or expert and the commitment to guarantee the life and health safety, accommodation, meals and travel conditions for the witness or expert; 3. Witnesses and experts are given favorable entry and stay conditions under the provisions of Vietnamese legislation; 4. Witnesses and experts summoned in Vietnam may not be arrested, detained, held in custody or investigated, prosecuted or adjudicated for the following acts committed before their arrival in Vietnam: a) Supplying testimonies or written expert conclusions on the cases for which they are summoned; b) Committing crimes in Vietnam; c) Having relations with persons being subject to criminal investigation, prosecution or trial in Vietnam; d) Being Involved in civil or administrative matter in Vietnam; 5. Witnesses and experts shall not be arrested, detained, held in custody or investigated, prosecuted and tried, as defined in Clause 4 of this Article. This will cease if those persons do not leave Vietnam within fifteen days after receiving written notice from competent Vietnamese bodies on their unnecessary presence in Vietnam. This duration does not include periods of time during which the witnesses or experts cannot leave Vietnam due to reasons of *force majeure*” (Article 8); “1. Persons who are serving their imprisonment sentence in Vietnam may be transferred to competent bodies of requesting countries for supplying evidence in criminal cases in the requesting countries; 2. Competent bodies of Vietnam may transfer persons who are serving their imprisonment sentence as provided for in Clause 1 of this Article only under the following conditions: a) Such persons agree with their transfer and to supply evidence in requesting countries; b) Competent bodies of the requesting countries commit in writing to ensure their life safety, health, accommodation and meal, travel conditions, duration and mode of receipt and return as well as other specific conditions related to the transfer as proposed by competent bodies in charge of procedure of Vietnam. Such written commitment is made in accordance with the Vietnamese laws and international law related to the transfer of persons who are serving their imprisonment sentence for supplying evidence. The return of transferred persons to the competent bodies in charge of procedure of Vietnam must be made at such time as committed; 3. The duration for which the persons who are serving their imprisonment sentence are transferred to and stay in the requesting countries is counted into their sentence-serving duration” (Article 25); “1. The requesting countries wishing to summon witnesses or experts who are residing in Vietnam shall send the summons to the Supreme People’s Procuracy at least ninety days before the expected date of their presence in the requesting countries. The procedures to receive summons of witnesses or experts shall comply with Article 23 of this Law; 2. The Authorities serving the summons shall immediately send to the Supreme People’s Procuracy written certifications of such service so that the latter transfers them to the requesting countries; in

case of non-service, they shall notify accordingly in writing and clearly state the reasons thereof.

635. The international treaties which Vietnam has signed on mutual legal assistance in criminal matters contain specific provisions on this. More specifically:

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 provides as follows: “Article 8. Summon of witnesses or experts: 1. In the course of the investigation or trial, when a State Party deems necessary to summon witnesses or experts in the territory of the other member country, it shall contact the concerned judicial authority to require the member country to perform this assistance; 2. Witnesses or experts shall not be subject to any sanctions unless they are not present at the summons; 3. The witness or expert, irrespective of nationality, voluntarily present at the requesting authority of the other member country at the summon, shall not be prosecuted for criminal liability, fined for administrative violation, arrested or detained for any act committed before that person has crossed the border of the requesting country. These people can not be prosecuted for criminal liability, fined for administrative violations, arrested for their testimonies or conclusions as experts or concerning the act which is the subject of the case; 4. The witness or experts shall not be entitled to the guarantees prescribed in paragraph 3 of this Article if they do not leave the territory of the requesting country within 15 days from the time when the requesting authority informs that their presence is no longer necessary. The period of time during which the witnesses or experts are unable to leave the territory of the requesting country due to reasons not depending on them will not be taken into account; 5. The witnesses or experts in the territory of the other member country at the summon, may ask the summoning authority to refund the cost of travel, accommodation abroad, as well as wages (income) not received when they were absent from work. In addition, the experts are also entitled to remuneration of expertise. Summons must indicate clearly the rate and amount of money to which the persons summoned are entitled. If requested by the persons summoned, the member country shall pay an amount in advance for expenses.”
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982 provides that: “Article 9. Protection of witnesses and experts: 1. A witness or an expert residing permanently in the territory of a member country is not obliged to come forward when receiving the summon from an authority of the other member country; therefore, the summon shall not include provisions on threat of application of coercive measures if the person is not present; 2. A witness or an expert, irrespective of nationality, residing permanently in the territory of a member country, complying with the summon of the judicial authorities of the other member country, shall not be prosecuted and his/her freedom shall not be restricted for offences committed before crossing the border of the requesting country. They are also not forced to execute the penalty imposed on this illegal act, restricted his/her freedom regarding things that related to the case in which they are summoned; 3. The witnesses or experts shall not be entitled to the protection referred to at paragraph 2 of this Article if they do not leave the territory of the summoning country within 15 days after being informed that their presence is no longer necessary. The time when witnesses and experts are compelled to stay for unexpected reasons will not be taken into account; 4. Summoned persons may be paid for the costs of travel and accommodation costs, as well as receive an allowance. In addition, the expert is also

entitled to remuneration of expertise. The summon will indicate clearly allowances to which the witnesses and experts are entitled. If requested, the person summoned shall receive a part of the allowance in advance; 5. If a person summoned to testify is being detained in the territory of the requested member country, the authorities of this country mentioned at paragraph 2 of Article 3 of the Treaty will take necessary measures to transfer that person to the territory of the requesting country, provided that he/she will be in detention in this country and shall be returned immediately after making their statement.”

- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Cuba of 1984 provides that: “Article 11. Protection of witnesses and experts: 1. When the witness or expert, irrespective of nationality, is present at the judicial authority of the requesting country at the summon of Courts of the requested country concerning civil, family, labour or criminal matters, he/she shall not be prosecuted, arrested, interrogated or punished for any act committed before that person has crossed the border of the requesting country. These persons cannot be judged or arrested for their witness testimonies, conclusions of professional expertise as well as because they are involved in the crimes which are the subject of the case; 2. The witness or expert shall be deprived of the right to the above protection if they do not leave the territory of the requesting State within 7 days after having been informed that their presence is no longer necessary. The period of time during which witnesses and experts are unable to leave the territory of the requesting Country for unexpected reasons, shall not be taken into account; 3. The summoned persons are entitled to reimbursement of costs of travel and accommodation as well as wages not received during this period. In addition, the expert is also entitled to professional remuneration for his/her expertise. The summon shall indicate the allowances and remunerations to be paid to those persons. If requested by the summoned person, the competent authority of the requesting Country shall pay a portion in advance for necessary expenses; 4. Witnesses and experts summoned shall not be obliged to satisfy this requirement by coercive measures; 5. If witnesses or experts summoned are in custody in the territory of the requested country, the competent judicial authority competent mentioned in Article 58 shall take measures to transfer them to the requesting country provided that they remain in custody and must be transferred back as soon as possible, immediately after the conduct of the interrogation.”
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985 provides that: “Article 7. Protection of witnesses, experts and others: 1. No witness or expert, irrespective of nationality, coming voluntarily to the authorities of the requesting country subsequent to the summon referred to in Article 2, shall be prosecuted or detained or imposed with any other measures of restriction of personal freedom for offences committed or sentences imposed before they entered into the territory of the requesting country; 2. Accused persons of any nationality, summoned to the Courts of the requesting country for giving statements about the acts that caused their prosecution of that person, shall not be prosecuted, arrested or imposed with any measures of restriction of freedom in the territory of that country for offences committed or sentences imposed before they entered into the territory of the requesting State; 3. The right to be protected in paragraphs 1 and 2 shall be terminated if the witness or expert or accused person does not leave the territory of the requesting country within 15 days after their presence is considered no longer necessary by competent authority of the requesting country;

Article 8: 1. The witness or expert may ask for reimbursement of the costs of travel and accommodation, as well as receive an allowance. These costs shall be paid by the requesting State. The cost of accommodation and allowances is at least equal to the cost and allowances prescribed in the prevailing law of the requested State; 2. Upon the request of the witness or the expert, through the diplomatic mission or consular agency of his country, the requesting country shall pay a part or whole of the costs of travel and accommodation.”

- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria of 1987 provides that: “Article 76. The imprescriptible rights of witnesses, experts and others: 1. The witness or expert, irrespective of nationality, voluntarily present at the authorities of the requesting country at the summon, shall not be prosecuted or arrested in the territory of the requesting country on the ground of the crime that is the object of the investigation, they shall also not be sentenced because of the crime that they have committed before crossing the national border. 2. The imprescriptible rights of witnesses or experts shall be terminated in case they do not leave the territory of the requesting country within a week from the date on which the summoning authority informs that their presence is no longer necessary. The period of time during which the witnesses or experts are unable to leave the territory of that member country due to unexpected reasons shall not be taken into account.”
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Poland of 1993 provides that: “Article 13. Protection of witnesses and experts: 1. If during the proceedings before the Court or other authorities, a member country requires the presence of the witness or experts residing in the territory of the other member country, the Courts or other authorities of that member country may ask the Court or other authorities of the other member country to serve the summon to them. 2. In the case mentioned at paragraph 1, the summon at the trial shall not contain the threat, fine or other coercive measures in case of absence. 3. The requesting country shall refund the cost of travel and accommodation, as well as compensate wages to the witness and pay remuneration to the expert. 4. The witnesses or experts who is present at the requesting authority subsequent to the summons, irrespective of nationality, shall not be prosecuted or sanctioned with respect to offences they committed before entering into the requesting country. 5. The witnesses or experts shall not be entitled to the protection referred to in paragraph 4, if they do not leave the requesting country within 15 days after being informed that their presence is no longer necessary. The period of time during which they are unable to leave the requesting country due to unexpected reasons shall not be taken into account.”
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People’s Democratic Republic of 1998 provides that: “Article 8. Protection of witnesses or experts: 1. When the witnesses and experts, regardless of nationality, are summoned by the Courts of one member country, the member country where the witness and expert is residing, must facilitate the implementation of the summons and protect them, prevent them from being arrested, interrogated and prosecuted before crossing the border of the requesting country. The requesting country shall not arrest, detain, accuse them due to their testimony, professional conclusions, as well as for having relationship with persons who are investigated, prosecuted and adjudicated in criminal cases in the requesting country. 2. The witnesses or experts shall cease to benefit from protection of the provisions of

paragraph 1 of this Article, if they do not leave the territory of the requesting country within seven (7) days after having been officially notified that their presence is no longer required. The period of time during which they are unable to leave the territory of the requesting Country due to objective reasons, shall not be taken into account. 3. The witnesses or experts that received the summons of the Court under the provisions of paragraph 1 of this Article, may be paid an allowance for travel, meals, accommodation and wages for the time they are in the requesting country. In addition, the experts are also entitled to remuneration. The summons must specify the amount of remuneration that the expert is entitled to. In case the summoned person requests to be paid in advance, the competent judicial authorities of the requesting country shall pay a sum in advance to cover necessary expenses. 4. The witness or expert that received the summons may refuse to comply with the summons of the requesting Country. The requested Country has not the right to impose coercive measures to witnesses or expert for performing the summons. 5. When a witness or expert is in custody, and receives the summons of the requesting country, the requested country must take necessary measures to temporarily extradite that person to the requesting country. After receiving that person, the requesting country must take necessary measures to remand such person in custody. After completion of the interrogation, the requesting country must extradite him to his country in such time as agreed by member country.”

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998 provides that: “Article 24. Summon and protection of witnesses, experts. 1. The provisions of Article 13 and Article 14 of this Treaty shall be also applied in criminal matters. 2. If the Courts or competent authorities of one member country deem necessary to take testimony of persons detained in the territory of the other Country as a witness, the Central Authority referred to Article 4 of this Treaty shall agree to the transfer of that person to the territory of the requesting Country with the condition that the person remain in custody and be returned immediately after the termination of taking testimony. The costs for transfer must be indicated in the transfer agreement. 3. In exceptional circumstances, if the requested State has reasons to be unable to transfer the person mentioned at paragraph 2 of this Article, it may decline to transfer.”
- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Belarus of 2000 provides that: “Article 12. Protection of witnesses or experts: 1. In the course of the investigation or trial, a member country, when deeming necessary to summon witnesses or experts in the territory of the other member country, must contact the concerned competent authorities of the other member country to request assistance. 2. The summons of witnesses or experts must not include threats to apply coercive measures against them in case they are not present at the summons. 3. The witness or expert, irrespective of nationality, present at the authority of the requesting country subsequent to the summon, shall not be prosecuted for criminal liability or administrative sanctions, not be arrested or deprivation of their freedom, not be punished for any act committed before crossing the border of the requesting country. 4. The witness or expert shall not be entitled to the protection as prescribed in paragraph 3 of this Article, if they do not leave the territory of the requesting country within 7 (seven) days after that person has been officially notified that his or her presence is no longer necessary. The period of time during which the witness or expert is unable to leave the territory of the requesting

Country due to objective reasons, shall not be taken into account. 5. When the witness or expert is present in the territory of the other member country in response to the summons, they may be awarded an allowance for travel, accommodation abroad, as well as the wages that they have not been paid because of their absence from work. In addition, the expert is also entitled to remuneration. The summons must specify the amounts that the witnesses or experts are entitled to. If requested by the witness or expert, the summoning country shall pay a sum in advance to cover expenses. 6. The provisions of paragraphs 1, 2, 3, 4 and 5 of this Article shall also be applied to victims when they give evidence, as well as to the legal representatives of victims or witnesses that are unable to perform their rights themselves.”

- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia of 2000 provides that: “Article 7. Summon of witnesses or experts: 1. The witnesses or experts who are present at the requesting judicial authority upon summon by the requested judicial authority, regardless of their nationality, shall not be prosecuted for criminal liability or administrative sanctions, arrested or punished for any offence committed before crossing the national borders of the requesting Party. These people can not be prosecuted for criminal liability or administrative liability or arrested or punished because of their testimonies or conclusions as experts. The witnesses or experts shall cease to be entitled to the guarantees provided for in paragraph 1 of this Article, if they, although possible, have not left the territory of the requesting country within fifteen (15) days after being informed that their presence is no longer required. The period of time during which experts and witnesses are unable to leave the territory of the requesting country due to unexpected reasons shall not be taken into account. 3. Witnesses or experts summoned to the territory of the other member country are reimbursed the costs of travel and accommodation abroad and are given a sum for unpaid wages during their absence from work. In addition, the expert is entitled to remuneration. The summons must specify the amounts that the summoned persons are entitled to. At their request, the judicial authority of the summoning country shall pay a sum as advance to cover expenses.”
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Ukraine in 2000 provides for the scope of assistance in Article 3 as follows: “Assistance shall include the implementation of proceedings under the laws of the requested country such as taking testimony of the involved parties, third persons, suspects, the accused and the defendants, the victim, witnesses, the experts, expertise, assessing judicial aspects, transfer of exhibits, conducting criminal prosecution and extradition, recognition and enforcement of court decisions on civil matters, the decision on compensation for civil damages which is part of a criminal sentence, service and transfer of document, providing information as requested by the other country on the trial of the accused, as well as other acts in accordance with the laws of Signatory Parties. More specifically: “Article 11. Summon of the victims, witnesses and experts abroad 1. If during the trial in the territory of one member country the presence of victims, witnesses and experts who reside in the territory of the other member country is required, a request shall be submitted to the concerned judicial authorities of the other country for summoning them. 2. No sanction contained in the summons is applied to persons summoned unless they are not present at the summons. 3. The victims, witnesses, experts, irrespective of nationality, present at the requesting authority of other country at the summon, shall not be prosecuted for criminal liability

or administrative sanctions, arrested or punished for a crime committed before crossing the border of the requesting country. They may not be prosecuted for criminal liability or administrative sanctions, arrested or punished due to their testimony or their conclusions as an expert. 4. The victims, witnesses and experts are not entitled to protection, if they do not leave the territory of the requesting Country within fifteen (15) days after being informed that their presence is no longer required. The period of time during which they are unable to leave, shall not be taken into account. 5. The victims, witnesses, experts in the territory of the other country upon the summons, have the right to be reimbursed by the summoning judicial authority for the costs of travel and accommodation abroad, as well as for wages or income they would have received during their absence from work; the experts are also entitled to remuneration for their expertise. The summon must indicate the sums that the summoned person is entitled to. If requested by the summoned person, the summoning judicial authority may pay a sum in advance for expense.”

- The treaty between the Socialist Republic of Vietnam and the Democratic Republic of Korea on mutual legal assistance in civil and criminal matters of 2002 contains two articles on this issue: “Article 11. Summon of witnesses and experts: 1. During the preliminary investigation or interrogation at the courts, one member country may forward the summon to the other member country in order to request that Country to facilitate the presence as the witness or expert. 2. The requested Party, upon receipt of the summons, must serve it to the persons involved. 3. No sanction contained in the summons is applied to the persons summoned in case they are not present at the summons; Article 12. Protection of witnesses and experts: 1. Witnesses or experts present subsequent to the summon of one member country shall not be subject to criminal or administrative proceedings nor be arrested because of an act committed before crossing the border of requested country. 2. Unless the witnesses or experts cannot leave the territory of one member country due to objective reasons, the right to protection will be revoked, if they do not leave its territory within 15 days after being informed that their presence is no longer required, or had left but returned. 3. The authority having summoned witnesses and experts has the obligation to inform them in writing of the contents of paragraphs 1 and 2 of this Article prior to their first interrogation.”
- The treaty on mutual legal assistance in criminal matters between Vietnam and the Republic of Korea of 2003 provides that: “Article 12. Availability of other Persons to give evidence or assist in investigation: 1. The requesting country may request the assistance of the requested country in arranging for the transfer of a person (not being a person to whom Article 11 of this Treaty applies) to the requesting country to give or provide evidence or assistance in respect of a criminal matter in the requesting country. 2. The requested country shall, if satisfied that satisfactory arrangement for that person’s safety will be made by the requesting country, invites the person to consent to give or provide evidence or assistance in the requesting country. The person shall be informed of any expenses or allowances payable. The requested country shall promptly inform the requesting country of the person’s response and, if the person consents, take all necessary steps to facilitate the request; Article 13. Safety Guarantee: 1. Subject to paragraph 2 of this Article, where a person is present in the requesting country pursuant to a request made under Article 11 or 12 of this treaty, during the period that the person is required to remain in the requesting country for the purposes of the request: a) the person shall not be detained, prosecuted or punished in

the requesting country for any offence, nor be subject to any civil proceedings to which he could not be subjected had he not been present in the requesting Party, in respect of any act or omission which preceded that person's departure from the requested State Party; and b) The person shall not, without his/her consent, be required to give evidence in any criminal proceedings or to assist in any criminal investigation other than the criminal matters to which the request relates. 2. Paragraph 1 of this Article ceases to apply if that person, being free to leave, has not left the requesting country within a period of fifteen (15) days after having been officially notified that his or her presence is no longer required, or had left but returned. 3. A person who does not consent to give evidence pursuant to Article 11 or 12 of this Treaty shall not by reason thereof be liable to any penalty or coercive measure by the courts of the requesting country or the requested country. 4. A person who consents to give evidence pursuant to Article 11 or 12 of this Treaty shall not be subject to prosecution based on his or her testimony, except for perjury or contempt of court."

- The treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007 provides that: "Article 14. The presence of other persons to give evidence or assist in investigations: 1. At the request of the requesting country, the requested country may transfer a person (not being the person described in Article 13) to the territory of the requesting country to give evidence or assist in a criminal matter in the territory of the requesting country. 2. The requested country shall, if satisfied with the measures that the requesting country will apply to ensure the safety of the transferred person, will request that person to give evidence or assist in the territory of the requesting country. That person will be informed of the amount of benefits or costs. The requested country informs promptly the requesting country of the decision of that person and, if he/she accept to give evidence or to assist, shall conduct necessary steps to execute the request for assistance; Article 15. Safety Guarantee: 1. Under paragraph 2 of this Article, the person in the territory of the requesting country pursuant to Article 13 or Article 14 of this Treaty shall not: a) be detained, prosecuted or punished in the territory of the requesting Party, nor participate in any civil case if the civil case would not proceed in the absence of that person from the territory of the requesting Party, for actions or omissions having occurred before the person left the territory of the requested Party; b) Provide evidence in any criminal proceedings and assist any criminal investigation beyond the scope of criminal matters stated in the request for assistance without their consent; 2. Paragraph 1 of this Article shall cease to apply if that person, being free to leave the territory of the requesting country, does not leave within a period of thirty (30) days after having been officially notified that his or her presence is no longer required, or had left but returned. 3. A person who does not consent to give evidence pursuant to Article 11 or 12 of this Treaty shall not by reason thereof be liable to any penalty or coercive measure by the courts of the requesting country or the requested country. 4. A person who consents to give evidence pursuant to Article 11 or Article 12 of this Treaty shall not be subject to prosecution based on his or her testimony, except for perjury or contempt of court."
- The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009 provides that: "Article 11. Taking testimony in the requesting Party: 1. A request under this Treaty may seek assistance in facilitating the appearance of any person in the territory of the requesting country for the purpose of giving evidence before a court or of being identified in, or otherwise by his presence assisting, any criminal proceedings. 2. The Central Authority of the requested country

shall: a) ask the person whose voluntary appearance in the territory of the requesting country is desired whether he agrees to appear; and b) Promptly inform the Central Authority of the requesting country of this person's answer. 3. The Central Authority of the requesting country may make arrangement to ensure, so far as is possible, that a person present in the territory of the requesting country pursuant to this Article shall not be subject to service of process, be detained or be subjected to any restriction of personal liberty, by reason of any acts or convictions in the requesting country that preceded his departure from the territory of the requested country. 4. Arrangements made under paragraph 3 of this Article shall cease fifteen days after the Central Authority of the requested country has notified the Central Authority of the requested country that this person's presence is no longer required, or when the person, having left the territory of the requesting country, voluntarily returns to it. These arrangements may be extended by agreement between the State parties to take into account circumstances beyond the control of the person appearing, which do not include the commission of a criminal offence."

- The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 provides that: "Article 8. Taking testimony in the territory of the requesting Party 1. If the requesting country becomes aware that the summoning of witnesses or experts to testify before the competent authorities in criminal matters is necessary, it shall notify such request and the requested country must inform the requesting country of the result of the implementation of that requirement. 2. For cases mentioned in paragraph 1 of this Article, the summon shall indicate the sums expected to be paid to the person summoned, as well as costs of travel and accommodation. If possible, witnesses shall be paid part or the full amount of costs of travel through the consular agency of the requesting Party. 3. Witnesses or experts, irrespective of nationality, who are present voluntarily before the court shall not be prosecuted or arrested for the acts committed or judgments passed previous to their entry in the Requesting State. 4. The waiver will cease after 15 days from the termination of the testimony if the witness or expert does not leave the territory of the requesting country. 5. If the witness or expert is absent upon the summons, according to this Treaty, this person will not be punished even if in the summon indicates that the person is obliged to be present."
- The ASEAN treaty on mutual legal assistance in criminal matters provides that: "Article 10. Obtaining Voluntary Statements: When a request is made to obtain a statement from a person for the purpose of a criminal matter by the requesting party, the requested party shall endeavour, with the consent of that person, to obtain that statement; Article 14. The presence of a person in the requesting country: 1. The Requested country, according to its domestic law and practice, can facilitate the presence of a person in the requesting country, upon the consent of that person, in order to: a) Support the criminal investigation in the requesting country; or b) appear in proceedings related to a criminal matter in the requesting country, unless that person is the accused. 2. The requested country, in case it deems that the requesting country will guarantee the safety of persons invited to attend, will require them to give evidence or to provide support with respect to criminal cases in the requesting country. These persons will be informed about the costs and allowances afforded to them. 3. The requested country will report to the requesting country promptly on the feedback of the invitees, and if they agree, take necessary measures to facilitate their presence in the requesting country. 4. The provisions of this Article shall not prevent the use of

live television connection or appropriate means of media as prescribed by law and practices of the requested country, if this serves the administration of justice. Article 16. Safety guarantee: 1. Subject to paragraph 2, when a person is present in the requesting country upon request made pursuant to Article 14 or Article 15 of this Agreement: a) That person will not be detained, prosecuted, punished or subject to any restrictions of his/her liberty in the requesting country for any action or omission, or convicted of any crime committed against the laws of the requesting country, committed or deemed to have been committed before he left the requested country. b) That person will not be required to provide evidence for any other criminal matter in the requesting country except for the cases mentioned in the request for assistance, unless he/she agrees to do so. c) The civil action that is not related to any action or omission of which is said to have occurred before he left the requested country. 2. Paragraph 1 of this Article shall not be applicable if the transferee, although free and able to return, had not left the requesting country within 175 consecutive days after he was officially notified that his presence is no longer necessary, or returned, but voluntarily came back. 3. Persons present at the competent authorities or courts in the requesting country pursuant to the request made under Article 14 or Article 15 of this Agreement will not be prosecuted on the basis of their testimony that, unless they violate the legislation of the requesting country on contempt of court or perjury. 4. Persons who do not consent to be present at the requesting country on the basis of requests made under Article 14 or Article 15 of this Agreement shall not, due to such refusal or disagreement, be subject to any penalty or have any legal liability, regardless of the contents of the request for assistance.”

636. ***With regard to the requirements of Subparagraph 3(i):*** International cooperation in criminal procedure between Vietnam and foreign countries is based on the principles of respect for each other’s national independence, sovereignty and territorial integrity, non-intervention in each other’s internal affairs, equality and mutual benefit, as well as compliance with the Constitution of the Socialist Republic of Vietnam and fundamental principles of international law. International cooperation in criminal proceedings shall be carried out in conformity with the international treaties which the Socialist Republic of Vietnam has signed or acceded to and the laws of the Socialist Republic of Vietnam. Where the Socialist Republic of Vietnam has not signed or acceded to relevant international treaties, international cooperation in criminal proceedings shall be effected on the basis of the principle of reciprocity but in compliance with the laws of the Socialist Republic of Vietnam, international laws and practices (Article 340 of the Criminal Proceedings Code of 2003).

637. When rendering mutual legal assistance, the authorities as well as persons with competence in conducting procedure of the Socialist Republic of Vietnam shall apply the provisions of relevant international treaties which the Socialist Republic of Vietnam has signed or acceded to and the provisions of the Criminal Proceedings Code (Article 341). The scope of legal assistance is defined in Article 17 of Law on Mutual Legal Assistance. Vietnam shall only refuse to execute mutual legal assistance in criminal matters in the circumstances mentioned in Article 21 of this Law. The treaties on mutual legal assistance in criminal matters which Vietnam has signed or acceded to also contain provisions covering “other forms of assistance not contrary to the law of requested country”.

**(b) Observations on the implementation of the article**

638. There is adequate compliance with this provision.

## **Article 46 Mutual legal assistance**

### **Subparagraphs 3 (j) and 3 (k)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*[. . .]*

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

*(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

639. The Law on Mutual Legal Assistance and Criminal Proceedings Code contain provisions relating to the scope of assistance in criminal matters which includes identification, freezing and tracing the assets of crime. A request for legal assistance in criminal matters shall include the following elements: purpose of request; a brief description of the criminal case and related circumstances, the applicable legal provision and punishment; progress of the investigation, prosecution and trial; time limit within which compliance with the request is desired; a description of the asset sought and place where the asset may be found; grounds on which the requesting country believes that the asset of crime is located in the requested Country and may be under the jurisdiction of that Country; in view of the enforcement of the judgment, a Court decision on a request for search, seizure, tracing or confiscation of proceeds of crime. In addition, the identification, tracing, freezing or seizure of assets is dealt with in Vietnamese laws, such as the Penal Code (Article 40.- Confiscation of property; Article 41.- Confiscation of objects and money directly related to crimes); Criminal Procedure Code (Article 74.- Exhibits; Article 76.- Handling of exhibit; Article 139.- Identification, Article 142.- Body search, Article 143.- Search of residences, working places, premises; Article 144.- Forfeiture of correspondence, telegraphs, postal parcels and matters at post offices; Article 145.- Seizure of objects and documents during a search; Article 146.- Distrainment of property; and Article 267.- Execution of fine or property confiscation penalty); the Law on Credit Institutions; and Decree No. 64 dated 20 September 2001 on Payment activities through organizations providing payment services.

640. As stipulated in Article 41 of the Penal Code of 1999, property acquired from the commission of crimes will be confiscated. Before confiscating, the competent authority will apply temporary or emergency measures, such as distrainment or freezing of accounts in order to restrict the use, disposal or dispersal of assets. Article 140 of the Criminal Proceedings Code of 2003 allows the investigative authority to conduct search of body, accommodation, location, mail, parcels, mail article, to seize articles or property acquired from commission of crimes. As stipulated in Article 146 of the Criminal Proceedings Code, assets that are confiscated at a later stage under the provisions of the Penal Code

will be distrained by the investigating authorities. The Law on Credit Entities also contains provisions on the prevention and countering of transactions of illegal origins. Article 19 of this Law stipulates that credit institutions and other organizations conducting banking operations shall not conceal or provide any services in respect of sums of money of which the origins have been proved to be illegal. In cases where sums of money with illegal origins are identified, credit institutions or organizations conducting banking operations shall promptly notify the competent State authority. Article 115 of this Law provides that one of the measures for managing banking operations is to apply measures of prevention of illegal monetary activities.

641. The freezing of assets is also stipulated in the Civil Proceedings Code, including: the freezing of accounts at banks or other credit institutions, for which State Treasury shall apply if in the course of settling cases there are grounds showing that the obligors have accounts at banks, other credit institutions or State Treasury, and the application of this measure is necessary to ensure the settlement of the cases or to ensure the enforcement of judgments. Freezing assets at depositories shall apply if in the course of settling cases there are grounds showing that the obligors have their assets deposited (Article 113). Freezing the obligors' properties shall apply if in the course of settling cases there are grounds showing that the obligors have such properties (Article 114) and the application of these measures is necessary to ensure the resolution of the case or to ensure the enforcement of judgments.

642. Also concerning this issue, Decree No. 74/2005/ND-CP dated 7 June 2005 on anti-money laundering, in Article 11, lists the temporary measures applied in view of the prevention and countering of money laundering, which include freezing accounts, sealing or seizing property etc. In addition, international treaties also contain relevant provisions that make reference to this matter.

643. ***With regard to the requirements of Subparagraph 3(k):*** Mutual assistance in the recovery of property under the provisions of Chapter V of the Convention is dealt with in Vietnamese laws as follows:

- The Criminal Proceedings Code of 2003 stipulates that: The delivery and receipt of documents related to criminal cases shall comply with the international agreements which the Socialist Republic of Vietnam has signed or acceded to and the provisions of this Code. The transfer of objects and money related to criminal cases out of the territory of the Socialist Republic of Vietnam shall comply with the laws of the Socialist Republic of Vietnam (Article 346).
- The Law on Mutual Legal Assistance of 2007 provides that the handover of documents, articles and sums in connection with mutual legal assistance activities shall be in compliance with the law of Vietnam.
- The Law on Prevention and Combating of Corruption of 2005 provides: "Article 70. Principles on handling corruption related property: 1. Competent agencies or organizations must apply necessary measures to recover and confiscate corruption - related properties. 2. Corruption - related properties must be returned to their lawful owners or confiscated to the benefit of the country fund. 3. The bribe givers who takes initiative to report thereon before their bribing acts are detected shall have their properties that have been offered as bribe returned... 4. The confiscation of corruption-

related properties and the recovery of corruption-related properties shall be carried out by decisions of competent State authorities in accordance with the provisions of the law; Article 71. Recovery of corruption - related properties involving foreign elements: On the basis of treaties to which the Socialist Republic of Vietnam is a member country and under the principles of the Vietnamese laws, the Government of Vietnam shall cooperate with foreign governments in recovering Vietnamese or foreign corruption – related properties and returning such properties to their lawful owners”.

644. In addition, the international treaties in the field of mutual legal assistance contain provisions in order to establish a legal basis for assistance in asset recovery, such as:

- The treaty on mutual legal assistance and legal issues in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 contains provisions on the scope of assistance in Article 13 (Transfer of objects and money). According to this provision, for the purpose of this treaty, the transfer of objects and money from the territory of one member country into the territory of the other member country, as well as into the diplomatic mission or consular agency of the other member country, then the transfer is done in accordance with the laws of the member country where the agency made the transfer.
- The treaty on mutual legal assistance in legal civil, criminal between Vietnam and Czechoslovakia of 1982 addresses specifically the transfer of objects as follows: The objects used to commit crimes that led to the extradition under this Treaty as well as the objects derived from criminal conduct or the value of such assets and any objects that the offender can use as evidence in criminal proceedings, will be transferred to the requesting country. These objects are transferred even if in case the extradition fails because the sought person dies or for other reasons. Rights of third parties to the transferred objects are not affected. After terminating criminal proceedings, the requesting country shall transfer these objects to the requested country in order that they be returned to the entitled persons. In case the persons having rights and interest on these objects are present in the territory of the requesting country, the objects, with the consent of the requested country, will be returned directly to that person (Article 78).
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982 contains specific provisions on the transfer of objects as follows: The objects used to commit crimes that led to extradition under this Agreement as well as items generated from criminal activities.
- Although there is no separate provision on asset recovery in the treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Cuba of 1984, this matter falls within the scope of mutual legal assistance and is consistent with the national procedure law. The scope of assistance includes the implementation of various procedural acts, such as service of documents, summoning, making an appointment to obtain comments from witnesses, experts and other persons conducting investigative experiment and seizure, transferring the outcome of expertise, exhibits, and documents; as well as the extradition of accused and convicted persons (Article 5).

- Treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985, at Clause 1 of Article 4, provides as follows: Mutual legal assistance shall include the performance of separate procedure acts, such as the Search of homes, seizure and forfeiture of assets, sending evidence and obtaining statements from witnesses, experts and other persons, interrogating the accused, examining sites, requesting to serve and send documents as well as preparing and submitting materials. In addition, the treaty provides for mutual assistance actions in this field as follows: “Transfer of objects and cash transfer (Article 18): Based on the provisions of this Treaty, the transfer, taking out or moving assets, liquidity and other articles, must comply with the laws of the requested country; Transfer of objects (Article 75): The member countries, upon request, will transfer to each other: a. The objects derived by any offender or others as a result of criminal conduct; b. These objects may be used as exhibits in the case; the objects have to be transferred even if the extradition has not been completed due to the death or escape of the sought person or for other reasons. The rights of third parties to the above objects are guaranteed. The objects owned by the third parties, after completion of the proceedings, will be transferred to the requested country in order that they be returned to the person mentioned above”.
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria of 1987 provides that the member countries shall assist each other in performing acts of separate proceedings (Article 5). In addition, the recovery of assets may be performed on the basis of provisions on transfer of objects acquired from the commission of crimes (paragraph 3 Article 70). Accordingly, the rights of third parties to objects transferred to the requested country shall be ensured. After completion of the proceedings, these objects shall be returned to persons in the requested country that are entitled to such objects. If these persons are present in the territory of the requested country, the requesting country shall return the objects to those persons.
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Poland of 1993 provides that legal assistance includes separate acts in the framework of civil procedure and criminal procedure, and especially service of documents, home search, seizure and transfer of exhibits, expertise, obtaining statements from suspects, defendants, witnesses and experts, as well as consideration from justice aspect (Clause 2, Article 5). The Treaty also ensures the rights of third parties to assets and objects, and third persons with rights to articles transferred. After terminating the criminal proceedings, these objects must be returned to the transferring country as soon as possible in order that they be returned to the persons that have rights and interest thereon (Article 68).
- Treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People’s Democratic Republic of 1998 provides that the States parties shall assist mutually each other in performing acts of separate proceedings in each case (Article 5). In addition, the Treaty also contains provisions on guaranteeing the right of the owner in Article 57-Transfer of items related to the crime as follows: The ownership of a third party to objects transferred to the requesting country must be ensured, if that person is the owner of these objects. After completion of the criminal proceedings, the above objects shall be returned to the transferring country. The objects may be returned to their owner before completion of the adjudication of case,

if that does not harm the adjudication of the case. If the owner of those objects is residing in the territory of the requesting country, this country will return the objects directly to the owner after having obtained the consent of the other country.

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998 contains provisions allowing the transfer of objects and money from the territory of one member country to the territory of the other member country in accordance with the provisions of the law of the transferring country on transferring objects and money abroad (Article 10); At the request of any party and in accordance with its domestic law, the requested country shall transfer money and proceeds of crime in the territory of the requesting country or sought in the territory of the requested country to the requesting country. The transfer does not affect the lawful rights of the requested country or any third party on the money and property mentioned above (Article 25).
- The treaty on mutual legal assistance in civil, family, labor and criminal matters between Vietnam and Belarus of 2000 stipulates that for the purpose of that treaty, the transfer of objects or money from the territory of one State party to the territory of the other member country as well as to the diplomatic missions or consular agencies of the other party, must be executed in accordance with the law of the country where the authority which has made the transfer is located (Article 16). In addition, the objects of crime or held by exchange or paid by sin as well as other exhibits proved to be acquired from the commission of crimes may be transferred to the requesting country. The right of third parties to exhibits is regulated in paragraph 1 of this Article and the exhibits transferred to the requesting country shall be fully ensured. After completion of criminal proceedings, these exhibits shall be returned to the transferring country or, with the consent of that party, shall be returned directly to the person entitled to such exhibits. The provisions of law of the State party shall not be applied to the restrictions on importation and exportation of goods and foreign currency in the transfer of exhibits under the provision of this Article (Article 87).
- The treaty on mutual legal assistance in civil matters, family and criminal matters between Vietnam and Mongolia of 2000 allows the transfer of exhibits related to crime (Article 73). Accordingly, the right of the requesting country or the third party to exhibits is ensured fully. Where entitled to those rights, after completing the adjudication of case, those objects must be returned immediately and at no cost to the requested country in order that they be returned to the owner of such objects. In some cases these items may be returned to the owner before completing the adjudication, if this does not affect the adjudication. If the owner of the objects mentioned above is residing in the territory of the requesting country, that country, with the consent of the requested country, may return directly the object to its owner.
- The treaty on mutual legal assistance and legal issues in civil and criminal matters between Vietnam and Ukraine of 2000 also fully secures the rights of third parties to the exhibits transferred. After completing the criminal proceedings, these exhibits should be returned to the member country transferring them (Article 61).
- The treaty on mutual legal assistance in civil and criminal matters between the Socialist Republic of Vietnam and the Democratic Republic of Korea of 2002 allows

States parties to apply specific measures to return the objects transferred to the person entitled to receive those objects after completion of the case (Article 41).

- The treaty on mutual legal assistance in criminal matters between Vietnam and Korea of 2003 contains provisions on mutual assistance (Article 1) and provisions on “property acquired from the commission of crimes” (Article 16). Accordingly, for the purposes of this treaty, “property acquired from the commission of crimes” means any property suspected, or found by a court to be directly or indirectly derived or generated as a result of the commission of an offence, or to represent the value of property and other benefits derived from the commission of an offence, and includes property that is used to commit or to facilitate the commission of an offence. Where, pursuant to paragraph 2, suspected proceeds of crime are found, the requested country shall take such measures as permitted by its law to restrain or confiscate such proceeds. In the application of this Article, the rights of bona fide third parties shall be respected under the law of the requested country. The requested country shall retain any proceeds of crime that are confiscated unless otherwise agreed in a particular case.
- The treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007 stipulates that in case of discovering proceeds or instrumentalities suspected to result from crimes, the requested country shall apply measures, in accordance with its domestic law, to manage or confiscate such property or instrumentalities. When applying this Article, the legitimate rights of the third parties involved will be respected in accordance with the law of the requested country. The requested country shall retain the proceeds of crime or instrumentalities of crime confiscated, unless otherwise agreed in each case (Article 16). Where either State party has reasons to believe that a person or group of persons under its jurisdiction has subscribed or subscribing or contributing to any fund that directly or indirectly finances or supports terrorist activities in the territory of the other country, it will inform the other State party of that situation, and also apply measures, in accordance with its domestic law, to search, seizure and confiscate such funds and prosecute individuals involved (Article 17).
- The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009 contains provisions on mutual assistance, including the identification, tracing, freezing, confiscating and disposal of proceeds of crime and assistance in related proceedings: “If the Central Authority of one country becomes aware that proceeds or instrumentalities of crime are located in the territory of the other country and may be liable to restraint, seizure or confiscation under the laws of that country, it may so inform the Central Authority of the other Party. If the notified country has jurisdiction, this information may be presented to its senior authorities for taking any necessary measures. The competent authority as said above could issue a decision in accordance with its laws and the Central Authority of that country must ensure that the other country was fully informed about the activities carried out (Article 18); Where an offence has been committed and a conviction has been obtained in the requesting country, the assets which have been seized by the requested country may be returned to the requesting country for the purpose of confiscation, in accordance with the domestic law of the Requested Party. The rights claimed by bona-fide third parties over these assets shall be respected. The return shall occur once a final judgment has been rendered in the requesting country. However, the requested country may return the assets before the conclusion of criminal proceedings in

accordance with its domestic law (Article 19); When the requested country seizes or confiscates assets that constitute public funds, whether or not these have been laundered, and which have been embezzled from the requesting country, the requested country shall return the seized or confiscated assets after deducting the costs of realization, to the requesting country. However, the requested country may return that amount of money before terminating the procedure in accordance with its laws. (Article 20); Whereas a country is in possession of confiscated assets and it appears to that country (the Holding Party) that cooperation has been given by the other country (the Co-operating Party), the Holding Party may share those assets with the Co-operating Party (Article 21); The Co-operating Party may make a request for asset sharing to the Holding Party in accordance with the provisions of this Treaty when its co-operation has led, or is expected to lead, to confiscation. A request for asset sharing shall be made within one year from the date of entry into force of the final order of confiscation, unless otherwise agreed between the Parties. A request made under paragraph 1 of this Article shall set out the circumstances of the co-operation to which it relates and shall include sufficient details to enable the Holding Party to identify the case, the assets, and the agency or agencies involved. On receipt of a request for asset sharing made in accordance with the provisions of this Article, the Holding Party shall: (a) consider whether to share assets as set out in Article 21 (Circumstances in which Assets may be Shared) of this Chapter, and (b) inform the requesting Party of the outcome of that consideration. In appropriate cases where there are identifiable victims, consideration of the rights of the victims may take precedence over asset sharing between the Parties (Article 22); Where the Holding Party proposes to share assets with the Co-operating Party, it shall: (a) determine the proportion of the assets to be shared which, in its view, represents the extent of the co-operation afforded by the Co-operating Party; and (b) transfer a sum equivalent to that proportion to the Co-operating Party in accordance with Article 24 (Payment of Shared Assets) of this Chapter. The Parties agree that it may not be appropriate to share where the value of the realized assets or the assistance rendered by the Co-operating Party is *de minimis* (Article 23). Unless otherwise agreed, where the Holding Party transfers any sum pursuant to Article 23 (1) (b) (Sharing of Assets) above, it may not impose on the Co-operating Party any conditions as to the use of that sum, and in particular may not require the Co-operating Party to share the sum with any other Country, organization or individuals (Article 25)".

- The treaty on mutual legal assistance in criminal matters signed between Vietnam and Algeria of 2010 provides that, subject to its domestic laws and without prejudice to the legitimate interests of third parties concerned, the requested country shall carry out the request for seizure, search and transfer of all exhibits collected to the requesting country (Article 12). Mutual legal assistance in respect of the proceedings of freezing, seizing and confiscating is regulated in Article 14 as follows: The Parties agree to assist each other in criminal procedure related to identifying, locating, freezing or seizing of items and tools used to commit crime under the applicable law of the Requested Party. The provisions of this Article shall not prejudice the rights and interests of third parties. The returning of property is regulated in Article 15: When a crime was committed and a sentence was imposed in the territory of the requesting country, the property seized by the requested country may be returned to the requesting country for the purpose of confiscation in accordance with the law of the requested country. The provisions of this Treaty shall not prejudice the rights and interests of third parties. The return of the property shall be made only when a final

judgment is rendered in the territory of the Requesting Party. Article 16 covers the return of public property expropriated: When the requested country conducts the seizure or confiscation of such public property and whether the property is the subject of money laundering or not and diverted to the territory of the requesting country, the requested country shall return the property confiscated or seized after deducting the costs of implementation in the requesting country. The return of the property shall only be made when a final judgment is rendered in the territory of the requesting country.

- The ASEAN treaty on mutual legal assistance in criminal matters provides that the requested Party shall, subject to its domestic laws, endeavour to locate, trace, restrain, freeze, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime for which such assistance can be given provided that the requesting country provides all information which the requested country considers necessary. Where a request is made under paragraph 1, the request shall be accompanied by the original signed order, or a duly authenticated copy of it. A request for assistance under this Article shall be made only in respect of orders and judgments that are made after the coming into force of this Treaty. Subject to the domestic laws of the requested Party, property forfeited or confiscated pursuant to this Article may accrue to the requesting country unless otherwise agreed in each particular case. The requested country shall, subject to its domestic laws, pursuant to any agreement with the requesting country, transfer to the requesting country the agreed share of the property recovered under this Article subject to the payment of costs and expenses incurred by the requested country in enforcing the forfeiture order (Article 22).

**(b) Observations on the implementation of the article**

There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 4**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

645. There is no provision in Vietnamese law prohibiting the competent authorities to exchange information prior to receiving a mutual legal assistance request. In particular, the information could support foreign agencies to conduct or to conclude successful investigations or help the foreign party to submit a formal request. In fact, the competent authorities of Vietnam have been active and flexible in the exchange of information to enhance cooperation in the fight against crime, especially in combating transnational organized crime. In addition, through other channels such as INTERPOL or

ASEANAPOL, the police agencies of Vietnam can coordinate with foreign counterparts in combating crime more effectively, especially in case of emergency. In normal cases, judicial authorities of Vietnam will actively transfer information related to criminals to the central competent agencies of other countries. The following treaties to which Vietnam has adhered contain provisions on the exchange of information between central authorities:

- The treaty between the Socialist Republic of Vietnam and The United Kingdom of Great Britain and Northern Ireland of 2009 provides that: The Central Authority of a Party may, without prior request, forward information to the Central Authority of the other Party, when they consider that the disclosure of such information might assist the receiving Party in relation to criminal proceedings, or might lead to a request by that Party under this Treaty. The providing Party may impose conditions on the use of such information by the receiving Party. The receiving Party shall be bound by those conditions (Article 7).
- The treaty between The Ministry of Home Affairs of The Socialist Republic of Vietnam and The Ministry of Home Affairs of The Kingdom of Cambodia on the prevention and combating crime of 1997, provides in paragraph 1 of Article 2 for the timely exchange of information and documents of mutual interest, and measures for maintaining confidentiality of the information and document exchange.
- The treaty on cooperation and coordination between the Ministry of Public Security of the Socialist Republic of Vietnam and the Security Agency of the Russian Federation of 2001 provides that information must be sent without prior request if the Party having information considers that the information is necessary to the other Party (Article 3).
- The treaty on cooperation between the Ministry of Public Security of the Socialist Republic of Vietnam and the Ministry of Home Affairs of the Russian Federation of 2002 stipulates that both parties shall engage in the following forms of cooperation: exchange of information on cases of mutual interest; exchange of information on the types of drug substances and nerve stimulants being object of illegal transportation, technology to process and substances used to produce drugs; exchange of information on new research methods and evaluation of new kind of drugs and nerve stimulants. (Article 3). The cooperation under this Agreement shall be conducted based on the request of the parties concerned or pursuant to spontaneous provision of information from a party if it deems that such information is beneficial to the other Party.
- The treaty on cooperation between the Government of the Socialist Republic of Vietnam and the Government of Myanmar Federation on prevention and combating crime of 2004 provides that both Parties shall exchange the following information and documents: Information on criminal activities listed in Article 1 of the Treaty to facilitate the prevention, investigation and detection of crimes.
- The memorandum of understanding between the Government of the Socialist Republic of Vietnam and the Government of the Republic of Indonesia on cooperation in preventing and combating crime of 2005 provides the following: To promote cooperation, both Parties, under their domestic law and within the scope of their responsibility, will exchange the following information and documents: information

about criminal activities as defined in Article 2 of this Memorandum of understanding to facilitate the prevention, investigation and detection of crime; information on citizens of a State party who are the offender or the victim of crime occurring within the jurisdiction of the State party; Other information of mutual interest in preventing and fighting the crime (Article 3). When requested, both Parties shall ensure that their police agencies provide information to each other in view to prevent crime, identify and prosecute offenders under national law and within the scope of their responsibilities. It shall not apply if law of the requested party provides that the requests shall be directed to the judicial authorities. Paragraph 1 shall not restrict either Party, under their national law, from providing spontaneously to each other information, in particular information that can be useful for maintaining law and order (Article 8).

- The treaty between the Government of the Socialist Republic of Vietnam and the Government of the Federal Republic of Germany on cooperation in combating dangerous crime and organized crime of 2006 provides in Article 3 paragraph 1 that: under the laws of each country, the two parties shall exchange information about offenses committed, being committed or being prepared, as well as information on organized crime, organized criminal structures and relationships, tools of crime and modes of operation if such information is necessary for the prevention, investigation and blockage of dangerous crime.
- Memorandum of understanding between the Ministry of Public Security of the Socialist Republic of Vietnam and the Australian Federal Police on combating transnational crime and developing police co-operation of 2006 contains the following provisions: The Parties shall share information to solve criminal issues of priority. The Parties recognize the importance of developing sound criminal intelligence capabilities during the course of law enforcement. These capabilities will provide opportunities for the sharing of information, concerning the prioritized criminal issues set out in this Memorandum of understanding. The Parties will jointly develop mechanisms to promote the sharing and management of information concerning the above criminal issues of priority.

646. Vietnam indicated that, if the Law on Mutual Legal Assistance is amended in the future, Vietnam should include provisions permitting it to provide information related to crime at its own initiative (without prejudice to national laws) to competent agencies of other countries, so as to create a legal basis for mutual legal assistance activities and enhance the proactive approach of the competent agencies of Vietnam on international cooperation in combating crime.

**(b) Observations on the implementation of the article**

647. The spontaneous transmittal of information is not addressed in the Law on Mutual Legal Assistance, but is covered in the bilateral treaties concluded by Vietnam. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 5**

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

648. According to Vietnam, in the field of mutual legal assistance, the information which parties exchange or receive must be accompanied by a request for confidentiality. However, Vietnamese laws do not preclude the requested country from disclosing the information or evidence to a convicted person in legal proceedings, because, according to Vietnam's law, when investigating, prosecuting or adjudicating criminal cases, the investigating bodies, prosecutors and courts must prove whether the accused is guilty or not (Article 63 of the Criminal Proceedings Code 2003 on "Matters to be proved in criminal cases").
649. Article 26 of the Law on Mutual Legal Assistance regulates the provision of information: "Upon a request of the competent authority of Vietnam or of a foreign country, the Supreme People's Procuracy shall request the agencies conducting criminal proceedings of Vietnam or of a foreign country to provide information relating to a request for legal assistance in criminal matters, or a copy of the final court judgment or decision against a citizen of the requesting State".
650. In addition, Article 27 of this Law addresses the use of information and evidence in mutual legal assistance in criminal matters: "1. Information or evidence provided by the agencies conducting criminal proceedings of Vietnam shall be used for the purposes specified in the request for legal assistance in criminal matters only, and shall not be disclosed or transmitted to any third party, except with the prior written consent of the competent authority of Vietnam. 2. The agencies conducting criminal proceedings of Vietnam must take appropriate measures to keep confidential the submission of a request for legal assistance in criminal matters, its content and supporting documents, as well as criminal procedural actions to be taken under the request. If the request cannot be executed without breaching confidentiality requirements stipulated by the laws on protection of state secrets, the Supreme People's Procuracy must so inform in writing the requesting State and may agree with the foreign competent authority on alternative measures, if any. 3. In sending a request for legal assistance in criminal matters to a foreign country, the Supreme People's Procuracy must request the foreign competent authority to take the following measures to: a) Keep confidential the information and evidence provided by Vietnam and use that information and evidence solely for the purposes stated in the request; and b) Ensure that the information and evidence are protected against unauthorized alteration, change, disclosure or other misuse."

651. The treaties on mutual legal assistance signed by Vietnam contain the following provisions:

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981: the information transferred, as set out in Article 81 and Article 82 of this Treaty is only to be used for the purposes stated in the request and shall not be transferred to any third Party if the transferring party does not consent (Article 83).
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998: The Requesting Party must keep all documents provided by the Requested Party confidential and use them only for the purposes stated in the request, unless the Parties agree otherwise (Article 23).
- The treaty on mutual legal assistance in criminal matters between Vietnam and Korea of 2003 provides for confidentiality and limitation of use (Article 8) as follows: The Requested Party shall, if so requested, use its best efforts to keep confidential a request for assistance, the contents of the request and its supporting documentation, and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party before executing the request, and the Requesting Party shall advise whether it nevertheless wishes the request to be executed. The Requesting Party shall, if so requested, use its best efforts to keep confidential information and evidence provided by the Requested Party except to the extent that the evidence and information are needed for the criminal matter to which the request relates and where otherwise authorized by the Requested Party. The Requesting Party shall, if so requested, use its best efforts to ensure that the information or evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse. The Requesting Party shall not use information or evidence obtained, nor anything derived from either, for purposes other than those stated in the request without the prior consent of the Requested Party.
- The treaty between the Socialist Republic of Vietnam and The Republic of India on mutual legal assistance in criminal matters of 2007 provides that: The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished or the source of such information or evidence be kept confidential, disclosed or used only subject to such terms and conditions as it may specify. The Requesting Party may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested Party shall so inform the Requesting Party prior to executing the request and the latter shall then determine whether the request should nevertheless be executed. The Requesting Party shall, if so requested, use its best efforts to ensure that the information or evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse (Article 18). The Requesting Party shall not use information or evidence obtained, nor anything derived from either, for purposes other than those stated in a request without the prior consent of the Requested Party (Article 19).
- The treaty between the socialist republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland on mutual legal assistance in criminal matters of 2009

stipulates: The Requested Party shall, upon request, keep confidential any information which might indicate that a request has been made or responded to. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether and the extent to which it wishes the request to be executed. The Requesting Party shall not use or disclose any information or evidence obtained under this Treaty for any purpose other than for the criminal proceedings stated in the request without the prior consent of the Requested Party. Unless otherwise indicated by the Requested Party when executing the request, information or evidence the contents of which have been disclosed in a public judicial proceeding related to the request may thereafter be used for any purpose. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation under the laws of the Requesting Party to use or disclose such information for the purpose of judicial proceedings. The Requesting Party shall, wherever possible, notify the Requested Party in advance of any such disclosure (Article 9 - confidentiality and limitations on use). Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Treaty where the transfer of such data is prohibited under its domestic law. Personal data transferred from one Party to another as a result of the execution of a request made under the Treaty may be used by the Party to which such data have been transferred, only: (a) for the purpose of criminal proceedings to which the Treaty applies; (b) for other judicial and administrative proceedings directly related to the proceedings mentioned under (a); (c) for preventing an immediate and serious threat to public security. Such data may however be used for any other purpose if prior consent to that effect is given by either the Party from which the data had been transferred, or the data subject. Any Party that transfers personal data obtained as a result of the execution of a request made under the Treaty may require the Party to which the data have been transferred to give information on the use made with such data (Article 26 on data protection).

- The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 stipulates: based on the request of one of the parties, the Requested Party shall be responsible for security assistance requests on contents and attached documents. If the request can not be executing without disclosing confidential information, the Requested Party shall immediately notify the Requesting Party and ask whether the request should be executed; the Requesting Party maintains the confidentiality of evidence and information provided in line with the requirements of investigation and judicial proceedings. Without the consent of the Requested Party, the Requesting Party can only use the information and exhibits in the context of such legal proceedings as mentioned in the assistance request.
- The treaty on mutual legal assistance in criminal matters of ASEAN to which Vietnam is party provides as follows: The Requesting Party shall not, without the consent of the Requested Party and subject to such terms and conditions as the Requested Party considers necessary, use or disclose or transfer information or evidence provided by the Requested Party for purposes other than those stated in the request. Notwithstanding paragraph 1, in cases where the charge is amended, the information or evidence may be used, with the prior consent of the Requested Party, in so far as the offence, as charged, is an offence in respect of which mutual legal assistance could be provided under this Treaty, and which is based on the facts with respect of which the request was made (Article 8). The Requested Party shall, subject to its domestic laws,

take all appropriate measures to keep confidential the request for assistance, its contents and its supporting documents, the fact of granting such assistance and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality requirements, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed. The Requesting Party shall, subject to its domestic laws, take all appropriate measures to keep confidential information and evidence provided by the Requested Party, except to the extent that the evidence and information is needed for the purposes described in the request; and ensure that the information and evidence are protected against loss and unauthorized access, use, modification, disclosure or other misuse (Article 9).

652. The agreements and international treaties which Vietnam has signed with other countries also contain provisions on this issue as follows:

- The treaty between the Ministry of Home Affairs of the Socialist Republic of Vietnam and the Ministry of Home Affairs of the Kingdom of Cambodia on the prevention and combating crime of 1997 provides for timely exchange of information and documents of mutual interest, and measures for maintaining confidentiality of the information and document exchange, without any disclosure of the information or documents to third parties (Article 2, Clause 1).
- The treaty on Cooperation between the Ministry of Public Security of the Socialist Republic of Vietnam and the Ministry of Home Affairs of the Russian Federation of 2002 provides for limitation in use of information and documents which are regulated as follows: each Party shall ensure information and data provided by the other Party is kept confidential if the information and documentation are confidential in their nature or if the Requested Party does not want to disclose them. Confidentiality of information and documents is determined by the Requested Party. Without the consent of the Requested Party, the performance required under this Treaty shall not be used for other purposes. In order to provide third parties with the data or information received by a Party under this Treaty, the Requested Party must agree in writing. The provisions of this Article shall not prevent the use or disclosure of information and documents received during the execution of the request, if the law of the Requesting Party so allows. The Requesting Party notifies the Required Party about the possibility and its intent to use or disclose this information and documents (Article 8).
- The treaty between the Government of the Socialist Republic of Vietnam and the Government of the Republic of Poland on cooperation against organizational crime of 2003 stipulates: the Signatory Parties ensure the protection of confidential information is exchanged between each other. Confidentiality of information is determined by the Signatory Party. Such information can only be given to third countries when the consent of the Signatory Party is provided (Article 5). During the processing of personal data in order to implement the Treaty, the Signatory Parties shall observe the following principles: the Signatory Parties which receive the personal data can use this data for the purposes and under the conditions provided by the Signatory Parties; the personal data shall only be used by the competent agencies to perform the duties specified below. The transfer of this data to any related third party can only be effected with the prior consent of the Transferring Party (Article 6).

- The Cooperation Treaty between the Government of the Socialist Republic of Vietnam and the Federal Government of Myanmar of 2004 on prevention and combating crime regulates protection of confidentiality of information as follows: at the request of the parties to provide information and documents, samples or technical means provided under this Treaty, the receiving Party shall take the necessary measures to ensure the confidentiality of these information, documents, samples or technical means. The information, documents, materials and techniques exchanged between the two parties can not be transferred to third parties without the consent in writing of the supplying party (Article 3).
- The Memorandum of Understanding between the Government of the Socialist Republic of Vietnam and the Government of the Republic of Indonesia on cooperation in preventing and combating crime in 2005 stipulates: the Requesting Parties, the National Interpol Bureau (NCB-Interpol) or the other bodies with law enforcement competence, are responsible for ensuring the confidentiality of the information classified by the Requested Party. That information is not transferred to any third party without the prior written consent of the Providing Parties (Article 8). When applying this Memorandum of understanding, the transfer and processing of personal data must comply with the Law of each Party and the current rules in the framework of Interpol. The Receiving Party, if the Transferring Party requests so, shall take the necessary measures to ensure confidentiality of all information, documents, samples or other technical equipment which is provided in the framework of this Memorandum of understanding. The information, documents, samples or other technical equipment to be exchanged under this Memorandum of understanding will not be notified or transferred to third parties without the written consent of the other Party. Without prejudice to paragraph 1 above, the following provisions will apply to the processing of personal data supplied under this Memorandum: Data can only be used by the Receiving Party to serve the purposes of this Memorandum; such data can be used for other purposes if the Transferring Party allows and in accordance with the laws of the Receiving Party; data can only be used by the police or judicial authorities or law enforcement agencies designated by the parties involved; list of these agencies will be notified to the other Party. (Article 9).
- The treaty between the Government of the Socialist Republic of Vietnam and the Government of the Federal Republic of Germany on cooperation in preventing and combating dangerous crime and organized crime of 2006 stipulates: according to the requirements of the Transferring Party, the data, information and documents exchanged under this Treaty will be confidential when a reason for this requirement is given (Article 7).
- The Memorandum of Understanding between the Ministry of Public Security of the Socialist Republic of Vietnam and the Australian Federal Police on combating transnational crime and developing police co-operation of 2006 stipulates: The parties will exchange information pursuant to the Memorandum of understanding in accordance with their respective domestic laws relating to privacy and confidentiality. The Parties understand that the exchange of information outside the purview or control of the respective Parties is subject to the written consent of the authorized agencies in possession of such information. Each Party will protect any information provided by the other Party from unauthorized access or disclosure and will comply with all terms and conditions imposed by the other Party in respect of such information. Information

and criminal intelligence exchanged under the terms of this Memorandum of understanding will not be provided to or used by third parties without the prior written agreement of the provider of the information.

**(b) Observations on the implementation of the article**

653. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 8**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

654. Besides establishing the basic principles for cooperation, Vietnamese law contains provisions on refusal of mutual legal assistance in the Criminal Proceedings Code (Article 342) and the Law on Mutual Legal Assistance (Article 21).

655. Article 342 of the Criminal Proceedings Code regarding the refusal to implement legal assistance requests provides as follows: The bodies with in charge of procedure of the Socialist Republic of Vietnam may refuse to implement legal assistance requests in criminal proceedings in any of the following cases: 1. Legal assistance requests fail to comply with the international agreements which the Socialist Republic of Vietnam has signed or acceded to and the laws of the Socialist Republic of Vietnam; 2. The implementation of legal assistance requests is detrimental to national sovereignty, security or other important interests of the Socialist Republic of Vietnam.

656. Article 21 of the Law on Mutual Legal Assistance provides as follows regarding the refusal or postponement of the execution of a foreign request for legal assistance in criminal matters: 1. A foreign request for legal assistance in criminal matters shall be refused in any of the following circumstances: a) It is not in compliance with the obligations of Vietnam under the international treaties to which Vietnam is a party and Vietnamese laws; b) The execution of the request may jeopardize the sovereignty or national security of Vietnam; c) The request pertains to prosecution of a person for a criminal conduct of which that person has been convicted, acquitted or granted a general or special reprieve in Vietnam; d) The request relates to a criminal conduct for which the statute of limitations has elapsed according to the Penal Code of Vietnam; e) The request relates to a violation of the law which does constitute a criminal offence under the Penal Code of Vietnam. 2. The execution of a foreign request for legal assistance in criminal matters may be postponed if the execution of that request would prejudice the investigation, prosecution, trial, or the enforcement of a judgment in Vietnam. 3. After the decision on the refusal or postponement of the execution of a request under paragraphs 1 and 2 of this Article, the Supreme People's Procuracy shall inform the requesting State of the reasons therefore and measures to be taken".

657. In addition to the above mentioned provisions, Article 22 of Decree No. 74/2005/ND-CP of 7 June 2005 on preventing and combating money laundering provides for the refusal of judicial assistance requests as follows: “1. Competent Vietnamese State agencies shall refuse to satisfy judicial assistance requests if: a) The request cause harm to the sovereignty, national security or other important interests of Vietnam; b) The request do not conform with international treaties which the Socialist Republic of Vietnam has signed or acceded to and Vietnamese laws. 2. Competent Vietnamese State agencies may refuse to comply with judicial assistance requests if: a) The requests fail to meet the conditions specified in Article 21 of this Decree; b) Individuals mentioned in the requests have been or are being investigated, prosecuted, adjudicated or convicted by competent Vietnamese state agencies for money laundering-related offenses under Vietnamese laws. 3. Competent Vietnamese state agencies that refuse to comply with judicial assistance requests shall inform competent authorities of the requesting countries of their refusal”.

658. This matter is also addressed in some treaties and agreements related to mutual legal assistance in criminal matters that Vietnam has signed or acceded to:

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia Republic of 1982: The mutual legal assistance set out in this Treaty can be refused if the Requested Party believes that the legal assistance is detrimental to the national sovereignty, security or its fundamental principles of law (Article 14).
- The treaty between the Socialist Republic of Vietnam and the Republic of India on mutual legal assistance in criminal matters of 2007 also provides as follows: The Requested Party shall promptly inform the Requesting Party of circumstances, when they become known to the Requested Party, which are likely to cause a significant delay in executing the request. The Requested Party shall not refuse to execute a request on the ground of bank secrecy (Article 4).
- The ASEAN treaty on mutual legal assistance in criminal matters: Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or on the ground that the offence is also considered to involve fiscal matters (Article 3).

**(b) Observations on the implementation of the article**

659. The legislation of Vietnam lists bank secrecy as a ground for refusal to render mutual legal assistance. Several bilateral treaties concluded by Vietnam stipulate expressly that assistance should not be refused solely on the ground of bank secrecy. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Subparagraph 9 (a)**

*9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

**(a) Summary of information relevant to reviewing the implementation of the article**

660. Vietnam indicated that it has partially implemented the provision under review. According to Vietnam, dual criminality is one of the fundamental principles of international criminal law, and therefore countries shall refuse to execute requests for cooperation if they relate to the investigation, prosecution or trial of an act or omission which is not considered as a crime under their law. Vietnam's Law on Mutual Legal Assistance of 2007 defines the absence of dual criminality as one of the grounds to refuse or postpone to execute a request for mutual legal assistance. Consequently, the priority to execute a foreign request applies to requests relating to acts or omissions considered as crimes under the Penal Code of Vietnam, including: Embezzlement of property (Article 278); Receiving bribes (Article 279); Abuse of position and/or powers for misappropriation of property (Article 280); Abuse of position and/or powers while performing official duties (Article 281); Abuse of powers while performing official duties (Article 282); Abuse of positions and/or powers to influence other persons for personal profit (Article 283); and Forgery in the course of employment (Article 284).

661. However, in light of the fact that the State of Vietnam is determined to eliminate the crimes of corruption from society, and for the purpose of prevention of transnational crime, Vietnamese authorities may provide information on acts or omissions that are not criminalized under Vietnam's law to networks such as INTERPOL or ASEANAPOL, provided that this conduct shall not prejudice Vietnam's independence, sovereignty and territorial integrity. During the country visit, the reviewing experts were informed that Vietnam has indeed provided such information through the channels of INTERPOL or ASEANAPOL.

662. The treaties on mutual legal assistance in criminal matters which Vietnam has signed recently have focused on this issue. In particular:

- The treaty on mutual legal assistance in criminal matters between Vietnam and Korea of 2003 contains an option in case the request does not respect the dual criminality principle. In this case, the request can be refused (paragraph 2 of Article 5): Before refusing or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority, shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary. If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph 4 (b), it shall comply with those terms and conditions (paragraph 4, 5 of Article 5).
- The treaty between the Socialist Republic of Vietnam and the Republic of India on mutual legal assistance in criminal matters 2007 stipulates: The Signatory Parties shall, in accordance with the provisions of this Treaty, grant each other the widest measure of mutual legal assistance in criminal matters. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in the Requesting Party would constitute an offence under the laws of the Requested Party (Article 1).
- The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom provides that the central authority of the Requested Party may refuse

the assistance if the request fails to satisfy a requirement of the domestic law of the Requested Party requiring the establishment of dual criminality. However, before refusing assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to conditions as the Requested Party deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions (Article 4).

- The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 stipulates that the assistance request can be refused if the dual criminality principle is not respected (paragraph 1 of Article 4). However, before refusing a request, through its Central Authority, the Requested Party must: a) notify the Requesting Party about the reasons for refusal of the request; b) engage in exchange with the Requesting Party to study the possibility of providing assistance under the necessary conditions and duration. If the Central Authority of the Requested Party refuses assistance, it must notify the Central Authority of the requesting party about the reasons for refusal (Article 4).
- Paragraph 1 of Article 3 of the ASEAN treaty on mutual legal assistance in criminal matters to which Vietnam is a party provides: The request related to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Requested Party, would not have constituted an offence against the laws of the Requested Party. The Requested Party may provide assistance in the absence of dual criminality if permitted by its domestic laws. Before refusing a request or postponing its execution pursuant to this Article, the Requested Party shall consider whether assistance may be granted subject to certain conditions (paragraph 7). If the Requesting Party accepts assistance subject to the terms and conditions imposed under paragraph 7, it shall comply with such terms and conditions (Paragraph 8).

**(b) Observations on the implementation of the article**

663. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Subparagraph 9 (b)**

*9.( b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

664. Vietnam indicated that it has partially implemented the provision under review. As analyzed above, the Law on Mutual Legal Assistance, the Criminal Proceedings Code and

other relevant laws, as well as international treaties which Vietnam has signed or acceded to, provide for the possibility to refuse to execute a request if the dual criminality principle is not respected. Such assistance may be refused if the request relates to minor matters or issues for which assistance may be rendered under other provisions of the Convention.

665. However, in light of the fact that the State of Vietnam is determined to eliminate the crimes of corruption from society, and for the purpose of prevention of transnational crime, Vietnamese authorities may provide information on acts or omissions that are not criminalized under Vietnam's law to networks such as Interpol or ASEANAPOL, provided that this conduct shall not prejudice Vietnam's independence, sovereignty and territorial integrity. Such information has never been provided through the official channels, as this would be prohibited by the law, but the channels of INTERPOL and ASEANAPOL have been used in the part for the provision of information in the absence of dual criminality.

666. The Treaties on mutual legal assistance which Vietnam has signed recently regulate strictly this matter. More specifically:

- The treaty on mutual legal assistance in criminal matters between Vietnam and Korea of 2003 contains an option in case the request does not respect the dual criminality principle – the request can be refused (paragraph 2 of Article 5): Before refusing or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority, shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary. If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph 4 (b), it shall comply with those terms and conditions (paragraph 4, 5 of Article 5).
- - The treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007: Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in the Requesting Party would constitute an offence under the laws of the Requested Party. The Signatory Parties shall, in accordance with the provisions of this Treaty, grant each other the widest measure of mutual legal assistance in criminal matters (Article 1).
- The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom 2009 provides that the Central Authority of the Requested Party must refuse assistance if the conduct to which the request relates fails to satisfy a requirement of the domestic law of the Requested Party requiring the establishment of dual criminality (paragraph 1 Article 4); However, before refusing assistance, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be provided subject to such conditions as the Requested Party deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions (Article 4).
- The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 stipulates that the request for assistance can be refused if the dual criminality principle is not respected (paragraph 1 Article 4). However, before refusing a request, through its Central Authority, the Requested Party must: a) notify the Requesting Party about the reasons for refusing the mutual legal assistance

request; b) engage in exchange with the Requesting Party to study the possibility of providing assistance under the necessary conditions and duration . If the Central Authority of the Requested Party refuses assistance, it must notify the Central Authority of the requesting party of the reasons for refusal (Article 4).

- Paragraph 1 of Article 3 of the ASEAN treaty on mutual legal assistance in criminal matters which Vietnam has signed also contains relevant provisions: The request related to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Requested Party, would not have constituted an offence against the law of the Requested Party. The Requested Party may provide assistance in the absence of dual criminality if permitted by its domestic laws. Before refusing a request or postponing its execution pursuant to this Article, the Requested Party shall consider whether assistance may be granted subject to certain conditions (paragraph 7). If the Requesting Party accepts assistance subject to the terms and conditions imposed under paragraph 7, it shall comply with such terms and conditions (Paragraph 8).

**(b) Observations on the implementation of the article**

667. There is partial compliance with this provision. Vietnam reported that it would provide mutual legal assistance in the absence of dual criminality through the channels of INTERPOL and ASEANAPOL. In order to fully implement the provision under review the reviewers recommend that Vietnam introduce in its legislation and applicable bilateral treaties the possibility to afford mutual legal assistance for corruption related offences even when the dual criminality principle is not respected.

**Article 46 Mutual legal assistance**

**Subparagraph 9 (c)**

*9. (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

**(a) Summary of information relevant to reviewing the implementation of the article**

668. Please refer to the answers above under paragraphs 9 (a) and 9 (b).

**(b) Observations on the implementation of the article**

669. Please refer to observations above under paragraphs 9 (a) and 9 (b).

**Article 46 Mutual legal assistance**

**Subparagraph 10 (a)**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes*

*of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

**(a) Summary of information relevant to reviewing the implementation of the article**

670. *With regard to the requirements of Subparagraph 10 (a):* Vietnam noted that the Law on Mutual Legal Assistance 2007 in Article 25 allows Vietnam to execute a request for the transfer of a person in custody or serving a sentence in Vietnam's territory to a requesting country to assist in gathering evidence for the investigation, prosecution and adjudication of crimes. However, this assistance is conditional, first on the free consent of the person concerned and second, on the agreement of the competent authority of the requesting State, which must confirm in writing that it shall ensure the protection of life and health, take care of travel, accommodation and meals, indicate the time and manner of receiving and returning the person and other specific conditions for the surrender specified by the Vietnamese agencies conducting criminal proceedings. This confirmation shall be made in accordance with the provisions of Vietnamese law and international law governing the temporary transfer of a person who is serving his or her sentence to give evidence in a foreign country. The temporarily transferred person must be returned to the Vietnamese agency conducting criminal proceedings at the time indicated (Article 25).

671. This issue is also dealt with in the treaties on mutual legal assistance which Vietnam has signed or acceded to, namely: the treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 (Article 78); the treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982 (Article 9); the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Cuba of 1984 (Article 11); the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985 (Article 7); the treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People's Democratic Republic of 1998 (Article 8); the treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998 (Article 24); the treaty on mutual legal assistance in civil, family, labour, and criminal matters between Vietnam and Belarus of 2000 (Article 86); the treaty on mutual legal assistance in civil and criminal matters between Vietnam and North Korea of 2002 (Article 13); the treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007 (Article 13); the treaty on mutual legal assistance in criminal matters between Vietnam and Korea of 2003 (Article 11); the treaty on mutual legal assistance in criminal matters between Vietnam and India 2003 (Article 13); the treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009 (Article 12); the treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 (Article 9); and the ASEAN treaty on mutual legal assistance in criminal matters (Article 15).

672. ***With regard to the requirements of Subparagraph 10 (b):*** Vietnam indicated that, as analyzed in response to paragraph 3 (h) of article 46 of UNCAC, the Law on Mutual Legal Assistance 2007 allows Vietnam to execute a request for the presence of a person in custody or serving a sentence in Vietnam's territory to a requesting country to assist in gathering evidence for the investigation, prosecution and judgment of crimes. However, the competent authority of the requesting State must confirm in writing that it shall ensure the protection of life and health, take care of travel, accommodation and meals, indicate time and manner of receiving and returning the person and other specific conditions for the surrender specified by the agencies conducting criminal proceedings of Vietnam.
673. This confirmation shall be made according to the provisions of Vietnamese law and international law governing the temporary transfer of a person who is serving his or her sentence to give evidence in a foreign country. The temporarily transferred person must be returned to the agency conducting criminal proceedings of Vietnam at the time confirmed (Article 25).
674. This issue is also dealt with in the treaties on mutual legal assistance which Vietnam has signed or acceded to, namely: the treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 (Article 78); the treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982 (Article 9); the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Cuba of 1984 (Article 11); the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985 (Article 7); the treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People's Democratic Republic of 1998 (Article 8); the treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998 (Article 24); the treaty on mutual legal assistance in civil, family, labour, and criminal matters between Vietnam and Belarus of 2000 (Article 86); the treaty on mutual legal assistance in civil and criminal matters between Vietnam and North Korea of 2002 (Article 13); the treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007 (Article 13); the treaty on mutual legal assistance in criminal matters between Vietnam and Korea of 2003 (Article 11); the treaty on mutual legal assistance in criminal matters between Vietnam and India of 2003 (Article 13); the treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009 (Article 12); the treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 (Article 9); and the ASEAN treaty on mutual legal assistance in criminal matters (Article 15). Most of these treaties have separate provisions on transfer of a person in custody or serving a sentence in other State's territory to assist the requesting State's investigation process, which regulate conditions for the transfer.

**(b) Observations on the implementation of the article**

675. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 11**

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

676. **Regarding paragraph 11(a)** Vietnam noted that in the legislation on mutual legal assistance there is no distinct provision stipulating that the requesting State must “detain” a person transferred temporarily to give evidence or assist in an investigation in its territory. However, the person to be temporarily transferred is considered “in custody or in detention in executing of a judgment” in a prison of Vietnam. Hence, in order for the prisoner to be present in the territory of the requesting State and to be transferred outside the prison or detention facilities of Vietnam, besides satisfying the conditions analyzed above in response to paragraph 3 of article 46 of UNCAC, the competent authorities have to apply strict procedures provided for in Article 35 of the Law on Criminal Judgment Enforcement of 2011 and its guiding documents as follows:

677. “Article 35. Execution of removal of prisoner: 1. The procedure-conducting bodies and procedure-conducting persons, when receiving a request to removal of prisoners, must submit a written request to the Department for the Supervision of the Execution of Criminal Sentences, Provincial division of execution of criminal sentences of the area where the procedure-conducting bodies and procedure-conducting persons receiving the request are located, to require the issuance of a removal order. Upon receiving a request for removal, the Division competent on the execution of criminal sentences must issue the removal order. 2. The competence to remove prisoners to facilitate investigation, prosecution, adjudication shall be implemented as follows: a) The Head of Department for the Supervision of the Execution of Criminal Sentences of the Ministry of Public Security issues a removal order for prisoners in the prison or pretrial detention of the Ministry of Public Security; b) The Head of Department for the Supervision of the Execution of Criminal Sentences of the Ministry of Defense issues a removal order for prisoners in the prison or pretrial detention of Ministry of Defense; The Head of military-zone Division for the Execution of Criminal Sentences issues the removal order for prisoners in the military-zone prison and pretrial; c) The Head of Provincial Division for the Execution of Criminal Sentences issues the removal order for prisoners in custody in prisons managed by the district division of execution of criminal sentences 3. If prisoners are removed to

facilitate education requirement, medical treatment or custodial management, the Director of prison, the Director of pretrial detention, or the Head of District division of execution of criminal sentence issue the removal. 4. Removal orders must include the following elements: a) The agency, full name, position, rank of the order; b) The full name, date of birth, . . . , date of arrest, charges brought against them, time and place where the prisoner is serving his sentence; c) The purpose and duration of removal; d) The body, full name, position, rank of the prisoners removed; e) The person who issues removal orders must specify the date, month, year, and sign and seal the removal order. 5. The Director of prison, the Director of pretrial detention, the Head of District division of execution of criminal sentences are responsible for checking, transferring, keeping record of removed prisoners. The time spent in removal shall be subtracted from the period of serving an imprisonment sentence, except if the prisoner escaped during the removal. The Provincial division of execution of criminal sentences, the Military-zone Division of execution of criminal sentence, where the procedure-conducting bodies and procedure-conducting persons have obtained the removal order, are responsible for receiving, managing and escorting prisoners during the removal. 6. In case the removed prisoner is taken away of the place of the execution of the sentence, The Provincial division for the execution of criminal sentences or the Military-zone Division of execution of criminal sentences receive the removed prisoner and ensure his or her custody;. 7. If the removed prisoner is not taken away out of the place of execution of the sentence, the prison, the pretrial detention, the district division of criminal sentence execution ensure his or her custody; 8. Upon the end of the removal, the entity having received the removed prisoners must notify the Department for supervision of execution of criminal sentence of the Ministry of Public Security, Ministry of Defense, the Provincial division of execution of criminal sentences, the Military-zone Division of execution of criminal sentences, and must return the transferred prisoners to the prison, the pretrial detention, the district division of execution of criminal sentence to continue serving his sentence of imprisonment; in case of necessity to prolong extract”.

678. Vietnam indicated that the Ministry of Public Security has been assigned by the judicial inter-sector to prepare a draft joint circular regulating the removal of prisoners from detention for the purpose of investigation, prosecution and judgment. For the prisoners who are removed from detention in Vietnam to facilitate investigations pursuant to the request of foreign authorities, the competent authority of the requesting State must confirm in writing that it shall ensure the protection of life, health, take care of travel, accommodation and meals, indicate the time and manner of receiving and returning the person and other specific conditions for the surrender specified by the Vietnamese agencies conducting criminal proceedings. This confirmation shall be made according to the provisions of the Vietnamese law and international law governing the temporary transfer of a person who is serving his or her sentence to give evidence in a foreign country. The temporarily transferred person must be returned to the agency conducting criminal proceedings of Vietnam at the time indicated (Article 25 Law on Mutual Legal Assistance).

679. This issue is also dealt with in most of the international treaties relating to mutual legal assistance in criminal matters which Vietnam has signed:

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 provides for the temporary transfer of persons who are serving sentence (Article 78) as follows: If it is necessary

to take testimonies from witnesses who are in custody in the territory of the Requested Party, the competent authorities of that Party shall allow to transfer temporarily that person to the territory of the Requesting Party. This person is to remain in custody and shall be returned after testimony has been taken.

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982 provides for the protection of witnesses and experts (Article 9, Clause 5) as follows: If a person called to give testimony is in custody in the territory of the Requested State, the authorities of this country defined in paragraph 2 of Article 3 of this Treaty, will implement the necessary measures to transfer that person into the territory of the Requesting Country on the condition that this person will remain in custody and shall be returned after testimony has been given.
- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Cuba of 1984 regulates the protection of witnesses and experts (Article 11): If the called witnesses or experts are in custody in the territory of the Requested Party, the competent judicial authority mentioned in Article 58 shall carry out measures to transfer them to the Requesting Party on the condition that they remain in custody and shall be returned in the shortest time after being interrogated..
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People's Democratic Republic of 1998 provides for the protection of witnesses or experts in paragraph 5 of Article 8 as follows: If a witness or expert in custody receives the summons of the Requesting Country, the Requested Country must take the necessary measures to transfer temporarily that person to the Requesting Country. Upon receipt of that person, the Requesting Country shall apply the necessary measures to pursue his/her detention. When the work is completed, the Requesting Country must extradite him back timely as set forth in the agreement between signatory Countries.
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998 provides for summoning and protection of witnesses and experts in Article 24 as follows: If the courts or competent authorities of a Signatory Party consider that it is necessary to take witness testimony of persons in custody in the territory of the other Signatory Party, the Central Authorities referred in Article 4 of this Treaty shall agree to transfer those persons to the territory of the Requesting Party on condition that he remains in custody and shall be returned immediately after testimony has been taken. The cost of transfer must be written in the record of transfer. In special cases where the person referred in Paragraph 2 of this Article can not be transferred, the Requested Party may refuse the transfer.
- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Belarus of 2000 provides for the temporary transfer of a person in custody (Article 86): If the competent authorities of the Signatory Parties require to take witness testimony of a person in custody in the territory of the Requested Party, the competent authorities of the Requesting Party shall submit a written request to the competent authorities of the Requested Party to allow temporary transfer of the person to the territory of the Requesting Party. The temporary transfer of persons in custody to testify on the territory of the Requesting Party shall be conducted only upon the

consent of that person. This person shall remain in custody and be returned to the Requesting Party after testimony has been taken.

- The treaty between the Socialist Republic of Vietnam and South Korea of 2003 provides for the transfer of persons in custody to give evidence as follows (Article 11):  
1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to that Party to give evidence in criminal proceedings. For the purposes of this Article, a person in custody also includes a person not detained in prison but who is subject to a sentence imposed for an offence, not being a sentence of a monetary nature. 2. The Requested Party shall transfer a person in custody to the Requesting Party only if: (a) the person freely consents to the transfer; and (b) the Requesting Party agrees to comply with any conditions specified by the Requested Party relating to the custody or security of the person to be transferred. 3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be released. 4. A person who is transferred pursuant to a request under this Article shall be returned to the Requested Party in accordance with arrangements agreed by the Requested Party as soon as practicable after the evidence has been given or at such earlier time as the person's presence is no longer required. 5. A person transferred shall receive credit for service of the sentence imposed in the Requested Party for the time served in the custody of the Requesting Party.
- The treaty between the Socialist Republic of Vietnam and the Republic of India in criminal matters regulates the transfer of persons in custody to give evidence or assist investigations (Article 13) as follows: 1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to that Party to give evidence in criminal proceedings or assist investigations in that Party. For the purposes of this Article, a person in custody also includes a person not detained in prison but who is subject to a sentence imposed for an offence, not being a sentence of a monetary nature. 2. The Requested Party shall transfer a person in custody to the Requesting Party only if: (a) the person freely consents to the transfer; and (b) the Requesting Party agrees to comply with any conditions specified by the Requested Party relating to the custody or security of the person to be transferred. 3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be released.
- The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009 provides for the transfer of persons in custody (Article 12):  
1. Where a request is received by the Requested Party for the transfer of a person in the custody of that Party to the territory of the Requesting Party for the purpose of providing assistance under this Treaty that person shall be so transferred if he and the Central Authorities of both Parties consent. 2. The Requesting Party shall be responsible for the safety of the person transferred and shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the Requested Party. 5. The period of custody in the territory of the Requesting Party shall be deducted from the period of detention, which the person concerned is or will be obliged to undergo in the territory of the Requested Party.
- The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 provides for the temporary transfer of persons in custody (Article 9):

1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to that Party if the presence of such persons as witnesses or to assist the process of conducting criminal proceedings is required and if the person and the Requested Party consent to the transfer. 2. For the purposes of implementing this Article: a) The transferred person will remain in custody in the territory of the Requesting Party unless the Requested Party allows to release that person; b) The Requesting Party must return the transferred person in custody to the Requested Party as soon as the work is completed; c) When the persons in custody referred to in this provision, have completed serving their sentence and must be released at the Requesting Party, they will be treated as specified in Article 8 of this Treaty. d) The duration of detention on the territory of the Requesting Party will be deducted from the duration of detention which they are supposed to serve in the territory of the Requested Party.

- The ASEAN treaty on mutual legal assistance in criminal matters to which Vietnam is a party provides for the attendance of persons in custody in the Requesting Party (Article 15): 1. The Requested Party may, subject to its domestic laws and practices, agree to allow a person in custody in the Requested Party, subject to his/her consent, to be temporarily transferred to the Requesting Party to give evidence or to assist in the investigations. 2. The person transferred is required to remain in custody under the law of the Requested Party and the Requesting party shall return that person to the Requested Party upon conclusion of the matter in relation to which transfer was sought or at an earlier time when the person's presence is no longer required. 3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be released from custody and be treated as a person referred to in Article 14 of this Treaty. 5. The period during which such person was under the custody of the Requesting Party shall be deducted from the period of his imprisonment or detention in the Requested Party. 6. No transfer under this Article shall be effected unless the Requesting Party gives an undertaking: (a) to bear and be responsible for all the expenses of the transfer of custody; (b) to keep the person under lawful custody throughout the transfer of his custody; and (c) to return him into the custody of the Requested Party immediately upon his attendance before the competent authority or court in the Requesting Party is dispensed with.

680. **Regarding paragraph 11(b).** Vietnam referred to its answers to questions relating to paragraphs 10 and 11 (a) of article 46. Paragraph 2 of Article 25 of the Law on Mutual Legal Assistance of 2007 addresses the issue of temporary transfer of persons in custody to give evidences as follows: The competent authority of the requesting State must confirm in writing that it shall ensure the protection of life, health, take care of travel, accommodation and meals, indicate the time and manner of receiving and returning the person and other specific conditions for the surrender specified by the agencies conducting criminal proceedings of Vietnam. This confirmation shall be made according to the provisions of the Vietnamese law and international law governing the temporary transfer of a person who is serving his or her sentence to give evidence in a foreign country. The temporarily transferred person must be returned to the agency conducting criminal proceedings of Vietnam at the time indicated (Article 25).

681. Moreover, the treaties on mutual legal assistance which Vietnam has signed or acceded to also contain similar provisions:

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 provides for the temporary transfer of persons serving their sentence (Article 78) as follows: If it is necessary to take testimony from witnesses who are in custody in the territory of the Requested Party, the competent authorities of that Party shall allow to transfer temporarily that person to the territory of the Requesting Party. This person will remain in custody and shall be returned after testimony has been taken.

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982 provides for the protection of witnesses and experts (Article 9) as follows: If a person called to give testimony is in custody in the territory of the Requested Party, the agencies of this country, as defined in paragraph 2 of Article 3 of this Treaty, will implement the necessary measures to transfer that person into the territory of the Requesting Party on the condition that this person remains in custody and is returned after testimony has been given.

- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Cuba of 1984 regulates the protection of witnesses and experts (Article 11): If the called witnesses or experts are in custody in the territory of the Requested Party, the competent judicial authority mentioned in Article 58 shall carry out measures to transfer them to the Requesting Party on the condition that they remain in custody and shall be returned in the shortest time after being interrogated..

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People's Democratic Republic of 1998 provides for the protection of witnesses or experts in paragraph 5 of Article 8 as follows: If a witness or expert in custody receives the summons of the Requesting Country, the Requested Country must take the necessary measures to transfer temporarily that person to the Requesting Country. Upon receipt of that person, the Requesting Country shall apply the necessary measures to pursue his/her detention. When the work is completed, the Requesting Country must extradite him back timely as set forth in the agreement between signatory Countries.

- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998 provides for summoning and protection of witnesses and experts in Article 24 as follows: If the courts or competent authorities of a Signatory Party consider that it is necessary to take witness testimony of persons in custody in the territory of the other Signatory Party, the Central Authorities referred in Article 4 of this Treaty shall agree to transfer those persons to the territory of the Requesting Party on condition that he remains in custody and shall be returned immediately after testimony has been taken. The cost of transfer must be written in the record of transfer. In special cases where the person referred in Paragraph 2 of this Article can not be transferred, the Requested Party may refuse the transfer.

- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Belarus of 2000 provides for the temporary transfer of a person in custody (Article 86): If the competent authorities of the Signatory Parties require to take witness testimony of a person in custody in the territory of the Requested Party, the competent authorities of the Requesting Party shall submit a written request to the competent authorities of the Requested Party to allow temporary transfer of the person to

the territory of the Requesting Party. The temporary transfer of persons in custody to testify on the territory of the Requesting Party shall be conducted only upon the consent of that person. This person shall remain in custody and be returned to the Requesting Party after testimony has been taken.

- The treaty between Vietnam and North Korea on mutual legal assistance in civil and criminal matters of 2002 provides for the transfer of a person who is serving his sentence and is requested to give testimony or expertise in Article 13 as follows: If a Signatory Party requests summoning a prisoner as witness or expert, the other Signatory Party has the obligation to transfer this person if the person freely consents to the transfer. The Requesting Signatory Party has the obligation to return this person when agreed.

- The treaty between the Socialist Republic of Vietnam and South Korea of 2003 provides for the transfer of persons in custody to give evidence as follows (Article 11): 1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to that Party to give evidence in criminal proceedings. For the purposes of this Article, a person in custody also includes a person not detained in prison but who is subject to a sentence imposed for an offence, not being a sentence of a monetary nature. 2. The Requested Party shall transfer a person in custody to the Requesting Party only if: (a) the person freely consents to the transfer; and (b) the Requesting Party agrees to comply with any conditions specified by the Requested Party relating to the custody or security of the person to be transferred. 4. A person who is transferred pursuant to a request under this Article shall be returned to the Requested Party in accordance with arrangements agreed by the Requested Party as soon as practicable after the evidence has been given or at such earlier time as the person's presence is no longer required.

- The treaty between the Socialist Republic of Vietnam and the Republic of India in criminal matters regulates transfer of persons in custody to give evidence or assist investigations (Article 13) as follows: 1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to that Party to give evidence in criminal proceedings or assist investigations in that Party. For the purposes of this Article, a person in custody also includes a person not detained in prison but who is subject to a sentence imposed for an offence, not being a sentence of a monetary nature. A person who is transferred pursuant to a request under this Article shall be returned to the Requested Party in accordance with arrangements agreed by the Requested Party as soon as practicable after the evidence has been given or at such earlier time as the person's presence is no longer required.

- The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009 provides for the transfer of persons in custody (Article 12): 1. Where a request is received by the Requested Party for the transfer of a person in the custody of that Party to the territory of the Requesting Party for the purpose of providing assistance under this Treaty that person shall be so transferred if he and the Central Authorities of both Parties consent. The Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred. The Requesting Party shall return the person transferred to the custody of the Requested Party as soon as circumstances permit and in any event no later than the date upon which he would have been released from custody in the territory of the Requested Party, unless otherwise agreed by both Central Authorities and the person transferred.

- The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 also provides for the temporary transfer of persons in custody (Article 9): 1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to that Party if the presence of such persons as witnesses or to assist the process of conducting criminal proceedings is required and if the person and the Requested Party consent to the transfer. 2. For the purposes of implementing this Article: a) The transferred person will remain in custody in the territory of the Requesting Party unless the Requested Party allows to release that person; b) The Requesting Party must return the transferred person in custody to the Requested Party as soon as the work is completed.

- The ASEAN treaty on mutual legal assistance in criminal matters to which Vietnam is a party also provides for attendance of person in custody in the Requesting Party (Article 15): 1. The Requested Party may, subject to its domestic laws and practices, agree to allow a person in custody in the Requested Party, subject to his/her consent, to be temporarily transferred to the Requesting Party to give evidence or to assist in the investigations. 2. The person transferred is required to remain in custody under the law of the Requested Party and the Requesting party shall return that person to the Requested Party upon conclusion of the matter in relation to which transfer was sought or at an earlier time when the person's presence is no longer required. 4. The Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred 6. No transfer under this Article shall be effected unless the Requesting Party gives an undertaking: (a) to bear and be responsible for all the expenses of the transfer of custody; (b) to keep the person under lawful custody throughout the transfer of his custody; and (c) to return him into the custody of the Requested Party immediately upon his attendance before the competent authority or court in the Requesting Party is dispensed with.

682. **Regarding paragraph 11 (c)** Vietnam indicate that Vietnamese law contains relevant provisions as follows:

- Temporary transfer of persons in custody to give evidence for purposes of legal assistance in criminal matters is regulated in Article 25 of the Law on Mutual Legal Assistance of 2007.

- Extradition (the surrender by the requested State to the requesting State of a person alleged to have committed an offence, or of a convicted person who is present in the territory of the requested State for the purpose of prosecution or enforcement of the sentence imposed upon that person in the requesting State) is addressed in Chapter IV of the Law on Mutual Legal Assistance of 2007.

- Transfer of persons who are serving a sentence of imprisonment or life sentence is regulated in Chapter V of the Law on Mutual Legal Assistance.

683. As mentioned in the above articles, the procedure for extradition or transfer of persons serving a sentence of imprisonment or life sentence are strictly regulated. Regarding the transfer of persons serving a sentence of imprisonment to give evidence for the purpose of mutual legal assistance, Article 25 of the Law on Mutual Legal Assistance does not contain any provision on the procedure for the temporary transfer of persons; however, the procedures for extradition or transfer of sentenced persons described above shall not be applied for temporarily transferring or receiving those persons.

684. In addition, the treaties on legal assistance in criminal matters which Vietnam has signed or acceded to also contain relevant provisions, in particular treaties on mutual legal assistance in criminal matters recently signed by Vietnam such as:

- The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom (Paragraph 4 of Article 12): Where a request is received by the Requested Party for the transfer of a person in the custody of that Party to the territory of the Requesting Party for the purpose of providing assistance under this Treaty, that person shall be so transferred if he and the Central Authorities of both Parties consent. The Requesting Party shall return the person transferred to the custody of the Requested Party as soon as circumstances permit and in any event no later than the date upon which he would have been released from custody in the territory of the Requested Party, unless otherwise agreed by both Central Authorities and the person transferred.
- The ASEAN treaty on mutual legal assistance in criminal matters (Paragraph 4 of Article 15): The Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred.

685. **Regarding paragraph 11(d)** Vietnam referred to Paragraph 3 of Article 25 of the Law on Mutual Legal Assistance, which addresses the transfer of persons in custody to give evidence and provides that: “The time period during which the surrendered person stayed in the requesting State shall be deducted from the term of his or her sentence”.

686. Paragraph 3 (b) of this Article further stipulates that: The competent authority of the requesting State must confirm in writing that it shall ensure the protection of life, health, take care of travel, accommodation and meals, indicate the time and manner of receiving and returning the person and other specific conditions for the surrender specified by the agencies conducting criminal proceedings of Vietnam. This confirmation shall be made according to the provisions of the Vietnamese law and international law governing the temporary transfer of a person who is serving his or her sentence to give evidence in a foreign country. The temporarily transferred person must be returned to the agency conducting criminal proceedings of Vietnam at the time indicated.

687. Most of the treaties on mutual legal assistance which Vietnam has signed contain similar provisions, including: The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 (Article 78); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982 (Article 9); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Cuba of 1984 (Article 11); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985 (Article 7); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria of 1987 (Article 76); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Poland of 1993 (Article 13); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People’s Democratic Republic of 1998 (Article 8); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998 (Article 24); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Belarus of 2000 (Article 12, and 86); The treaty on mutual

legal assistance in civil, family and criminal matters between Vietnam and Mongolia of 2000 (Article 7); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Ukraine of 2000 (Article 11); The treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007 (Article 13); The treaty on mutual legal assistance in criminal matters between Vietnam and Korea of 2003 (Article 11); The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009 (Article 12); The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 (Article 9); The ASEAN treaty on mutual legal assistance in criminal matters (Article 15).

**(b) Observations on the implementation of the article**

688. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 12**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

689. Vietnam noted that the Law on Mutual Legal Assistance of 2007 provides as follows: “Article 8. Summon and protection of witnesses and experts: 1. During a proceeding, the competent Vietnamese agency which is conducting the proceedings may summon a witness or an expert in a foreign country according to this Law and international treaties to which Vietnam is a party. 2. The summon shall specify conditions for acting as a witness or an expert and include the commitment to protect the witness’s or expert’s life and health and cover his or her travel, meal and accommodation expenses. 3. The witness or the expert shall be entitled to simplified entry and exit procedures. 4. The witness or the expert summoned to Vietnam shall not be arrested, detained or prosecuted for the following acts committed prior to arrival in Vietnam: a) Giving testimonies or expert opinion on the case for which he or she has been summoned to Vietnam; b) Criminal offences committed in Vietnam; c) Relationship with the person who is under criminal investigation, prosecution or trial; d) Involvement in any other civil or administrative lawsuit in Vietnam. 5. The protection referred to in paragraph 4 of this Article shall cease if the person does not leave the territory of Vietnam within 15 days from the date of receipt of written notice from the competent authority of Vietnam that his or her presence in Vietnam is no longer necessary. This time limit does not include the time during which the person was not able to leave Vietnam due to unavoidable reasons.”

690. Article 25: “Temporary transfer of persons in custody to give evidence: 1. A person who is serving his or her prison sentence in Vietnam may be transferred temporarily to the

competent authority of the requesting State to give evidence in a criminal case in the requesting State. 2. The agencies conducting criminal proceedings of Vietnam shall transfer a person who is serving his or her prison sentence under paragraph 1 of this Article only if the following conditions are met: a) The person consents to the transfer and to give evidence in the requesting State; b) The competent authority of the requesting State must confirm in writing that it shall ensure the protection of life, health, take care of travel, accommodation and meals, indicate the time and manner of receiving and returning the person and other specific conditions for the surrender specified by the agencies conducting criminal proceedings of Vietnam. This confirmation shall be made according to the provisions of the Vietnamese law and international law governing the temporary transfer of a person who is serving his or her sentence to give evidence in a foreign country. The temporarily transferred person must be returned to the agency conducting criminal proceedings of Vietnam at the time confirmed. 3. The time period during which the surrendered person stayed in the requesting State shall be deducted from the term of his or her sentence.”

691. The treaties on mutual legal assistance which Vietnam recently signed and those signed before the entry into force of the Law on Mutual Legal Assistance contain similar provisions. These treaties include: The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 (Article 8); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982 (Article 9); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Cuba of 1984 (Article 11); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985 (Article 7, 8); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria of 1987 (Article 76); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Poland of 1993 (Article 13); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People’s Democratic Republic of 1998 (Article 8); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998 (Article 13, 14, 24); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Belarus of 2000 (Article 12); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia of 2000 (Article 7); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Ukraine of 2000 (Article 11); The treaty between the Socialist Republic of Vietnam and The People’s Democratic Republic of North Korea on mutual legal assistance in civil and criminal matters of 2002 (Article 11, 12); The treaty on mutual legal assistance in criminal matters between Vietnam and Korea of 2003 (Article 11, 12, 13); The treaty on mutual legal assistance in criminal matters between Vietnam and India 2007 (Article 13, 14, 15); The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009 (Article 11, 12); The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 (Article 8, 9); The treaty on mutual legal assistance in criminal matters ASEAN (Article 14, 15, 16).

**(b) Observations on the implementation of the article**

692. There is adequate compliance with this provision.

## Article 46 Mutual legal assistance

### Paragraph 13

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

693. As noted above, Vietnam made the following declaration dated 1 December 2009 upon ratification of the Convention regarding its central authority for mutual legal assistance under article 46 (13): “The Ministry of Justice, Ministry of Security and the Supreme People’s Procuracy of the Socialist Republic of Viet Nam are national authorities, which may receive requests for mutual legal assistance in accordance with the Vietnamese law”.

694. In addition, Vietnam referred to the Law on Mutual Legal Assistance of 2007 which provides as follows: “Article 64. Responsibility of the Supreme People’s Procuracy: 1. Receive, submit, monitor and urge the execution of requests for mutual legal assistance in criminal matters; consider and decide on execution and request the appropriate People’s Procuracy or investigation agency to execute requests for mutual legal assistance in criminal matters; refuse or postpone the execution of a request for mutual legal assistance within its competence; 2. Exercise the power of prosecution and supervision of mutual legal assistance activities within its competence; 3. Provide guidance to the People’s Prosecutors at all levels on how to carry out mutual legal assistance in criminal matters. 4. Make proposals for conclusion of, accession to and implementation of international treaties concerning mutual legal assistance; make proposals for amendments and improvement of Vietnamese legislation concerning mutual legal assistance; and 5. Report every six months and annually to the Ministry of Justice on the state of execution of requests for mutual legal assistance in criminal matters;”

695. “Article 65: Responsibility of the Ministry of Public Security: 1. Receive, submit, consider and execute foreign requests for extradition and transfer of persons who are

serving sentences of imprisonment; consider and transmit dossiers of request to the appropriate People's Prosecutor and the People's Court and conduct mutual legal assistance activities within its competence. 2. Make proposals for conclusion of, accession to and implementation of international treaties concerning extradition and transfer of persons who are serving sentences of imprisonment; Make proposals for amendments and improvement of Vietnamese legislation on mutual legal assistance; and 3. Report every six months and annually to the Ministry of Justice on the status of execution of requests for extradition and transfer of persons who are serving sentences of imprisonment;”

696. “Article 66. Responsibility of the Ministry of Foreign Affairs: 1. Take the lead and coordinate with concerned ministries and agencies to decide whether to provide assistance on the basis of reciprocity to the foreign state concerned. 2. Make proposals for conclusion of, accession to and implementation of international treaties concerning mutual legal assistance; Make proposals for amendments and improvement of Vietnamese legislation on mutual legal assistance; 3. Report every six months and annually to the Ministry of Justice on the status of application of the reciprocity principle in mutual legal assistance with concerned states.”

697. Moreover, during the country visit, the reviewing experts were informed that the Ministry of Justice has the overall responsibility for managing mutual legal assistance matters. The Ministry of Justice is also vested with the responsibility for processing mutual legal assistance requests in civil matters. Vietnam could require that the request for mutual legal assistance be submitted through diplomatic channels, if this is provided for in the applicable bilateral treaty.

698. The Law on Prevention and Combating of Corruption of Vietnam stipulates as follows: “Article 90.- Responsibility to implement international cooperation: 1. The Government Inspectorate shall coordinate with the Ministry of Foreign Affairs, the Ministry of Public Security and concerned agencies in implementing international cooperation on research, training, policy formulation, information exchange, financial support, technical assistance, exchange of experiences in preventing and fighting corruption. 2. The Supreme People's Procuracy, the Ministry of Justice, the Ministry of Public Security shall, within the ambit of their respective tasks and powers, perform the tasks of international cooperation on legal assistance in preventing and fighting corruption”.

699. Vietnam reported that according to the relevant provisions of applicable treaties on assistance in criminal matters, the Central Authority of Vietnam is the People's Supreme Procuracy. However, the ASEAN treaty on mutual legal assistance in criminal matters provides that the Central Authority of Vietnam is the Ministry of Public Security. In addition, according to Vietnamese law, the focal agencies receiving and executing mutual legal assistance in criminal matters relating to corruption include the Supreme People's Procuracy, the Government Inspectorate, the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Public Security.

700. On 15 July 2010, the Minister of Public Security issued Decision No. 2708/QD-BCA-V19 designating the Legal Department to be the focal point of the Ministry of Public Security to receive, transfer, and make recommendations on execution of requests for mutual legal assistance, extradition, and transfer of sentenced persons relating to the implementation of the Convention.

**(b) Observations on the implementation of the article**

701. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 14**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

**(a) Summary of information relevant to reviewing the implementation of the article**

702. As noted above, Vietnam made the following declaration dated 1 December 2009 upon ratification of the Convention regarding its central authority for mutual legal assistance under article 46 (14): “English is the acceptable language for the Socialist Republic of Viet Nam with respect to requests for mutual legal assistance.”

703. In addition, Vietnam reported that the Law on Mutual Legal Assistance contains relevant provisions as follows: “Article 5. Languages used in mutual legal assistance: 1. In case an international treaty on mutual legal assistance exists between Vietnam and a foreign state, language used in mutual legal assistance shall be the language stipulated in the international treaty. 2. In case no international treaty on mutual legal assistance exists between Vietnam and a foreign state, the request for mutual legal assistance and supporting documents shall be accompanied by a translation of the request and the supporting documents into the language acceptable to the requested state. 3. The agency making a request for mutual legal assistance to the competent agency of a foreign state shall translate the request into the language stipulated in paragraphs 1 and 2 of this Article;”

704. “Article 6. Request and form of executing a request for mutual legal assistance: 1. Request for mutual legal assistance is a written request by a Vietnamese or foreign competent agency for executing one or more actions of legal assistance provided for by the law of the state concerned or international treaties to which Vietnam is a party. 2. Mutual legal assistance shall be provided upon request of a Vietnamese or foreign competent agency;”

705. “Article 18. Dossier of request for legal assistance in criminal matters: 1. A dossier of request for legal assistance in criminal matters shall include the following documents: a) A letter of the competent agency conducting criminal proceedings requesting for legal assistance in criminal matters; and b) The request for legal assistance in criminal matters stipulated in Article 19 of this Law. 2. The dossier of request for legal assistance in

criminal matters shall be submitted in three copies as stipulated by this Law and the law of the requested State. The dossier shall be presented in the language stipulated in Article 5 of this Law”.

706. The treaties on mutual legal assistance in criminal matters which Vietnam has signed or acceded to also provide that a request for mutual legal assistance shall be submitted in writing and determine the language to be used in the requests. Those treaties include: The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 (Article 4, 6); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982 (Article 4, 5); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Cuba of 1984 (Article 8, 17, 75); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985 (Article 5); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria of 1987 (Article 4, 6); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Poland of 1993 (Article 2, 7); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People’s Democratic Republic of 1998 (Article 6); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998 (Article 5, 7); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Belarus of 2000 (Article 4, 6, and paragraph 3 of article 65); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia of 2000 (Article 5, 14); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Ukraine of 2000 (Article 5, 6, 7); The treaty between the Socialist Republic of Vietnam and the People’s Democratic Republic of North Korea on mutual legal assistance in civil and criminal matters of 2002 (Article 5, paragraph 1 of 6); The treaty on mutual legal assistance in criminal matters between Vietnam and Korea of 2003 (paragraph 3, 5 of Article 4); The treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007 (paragraph 4 of Article 5, and Article 21); The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009 (paragraph 1 of Article 5); The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 (paragraph 1 of Article 3, and Article 19); The treaty on mutual legal assistance in criminal matters ASEAN (paragraph 1 of Article 5 and paragraph 3 of Article 6).

707. Thus, it is quite clear that a request for legal assistance to Vietnam shall be made in writing and in a language determined in the relevant international treaties on mutual legal assistance. In the case there is no international treaty on mutual legal assistance, the language used shall be the language of the requested State or any other language that is accepted by the requested State.

**(b) Observations on the implementation of the article**

708. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraphs 15 & 16**

15. *A request for mutual legal assistance shall contain:*

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

16. *The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

709. **Regarding paragraph 15:** Vietnam referred to the Law on Mutual Legal Assistance which provides the following: “Article 18. Dossier of request for legal assistance in criminal matters: 1. A dossier of request for legal assistance in criminal matters shall include the following documents: a) A letter of the competent agency conducting criminal proceedings requesting for legal assistance in criminal matters; and b) The request for legal assistance in criminal matters stipulated in Article 19 of this Law. 2. The dossier of request for legal assistance in criminal matters shall be submitted in three copies as stipulated in this Law and the law of the requested State. The dossier shall be presented in the language stipulated in Article 5 of this Law;”

710. “Article 19. Request for legal assistance in criminal matters: 1. A request for legal assistance in criminal matters shall include the following particulars: a) Date of and place of the request; b) Name and address of the agency submitting the request; c) Name and address or head office of the requested agency; d) Full name and address of residence or working place of the individual; name and address or head office of the agency or organization directly relating to the request; and e) Purposes of the request - a brief description of the criminal case and related circumstances, the applicable legal provisions and punishment, progress of the investigation, prosecution and trial, and time limit within which compliance with the request is desired.”

711. “Article 19. Request for legal assistance in criminal matters: 2. A request for legal assistance in criminal matters may, in addition to the particulars listed in paragraph 1 of this Article, and depending on each particular case, according to the requirement by the Vietnamese or foreign competent agency, include the following particulars: a) Identity, nationality and whereabouts of the person sought or of those who are in possession of information relating to the case; b) For a request for collection of evidence, the issues to be examined and questions to be posed to that person; a description of the documents, records or exhibits to be provided and, if possible, a description of the identity of the person requested to produce those documents, records or exhibits; c) Actions to be done by, and questions to be posed to the witness or expert to be summoned; d) For a request for search, seizure, tracing or confiscation of assets of crime, a description of the asset

sought and place where the asset may be found; grounds on which the requesting State believes that the asset of crime is located in the requested State and may be under the jurisdiction of that State; e) For a request for legal assistance in criminal matters, which may lead to the discovery and recovery of proceeds of crime, measures to be taken; f) Requirements and procedures that the requesting state wants to be followed to ensure successful execution of the request and methods or modes of providing exhibits or articles; g) Requirement to keep the request confidential; h) If a competent person of the requesting State must travel to the territory of the requested State for purposes relating to the request for legal assistance in criminal matters, the purpose, estimated time and schedule of the travel; and i) The criminal judgment or court decision and related documents, evidence or other information necessary for the execution of the request.”

712. “Article 19. Request for legal assistance in criminal matters: 3. If the information contained in the request for legal assistance in criminal matters under paragraphs 1 and 2 of this Article is insufficient for the request to be executed, the competent agency of the requested State may require in writing additional information from the requesting State and shall fix a deadline for the provision of such additional information.”

713. Moreover, treaties on mutual legal assistance which Vietnam has signed or acceded to also contain similar provisions. These treaties include: The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Socialist Republic of the Soviet Union of 1981 (Article 6, 59); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Czechoslovakia of 1982 (Article 5, 60); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Cuba of 1984 (Article 6, 75); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985 (Article 5, 77); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria of 1987 (Article 6); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Poland of 1993 (Article 7, 77); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People’s Democratic Republic of 1998 (Article 6, 55); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and China of 1998 (Article 7); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Belarus of 2000 (Article 6, 65); The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia of 2000 (Article 5, 71); The treaty on mutual legal assistance in civil and criminal matters between Vietnam and Ukraine of 2000 (Article 7, 49); The treaty between The Socialist Republic of Vietnam and The People’s Democratic Republic of North Korea on mutual legal assistance in civil and criminal matters of 2002 (Article 6); The treaty on mutual legal assistance in criminal matters between Vietnam and Korea 2003 (paragraph 1, and 2 of Article 4); Treaty on mutual legal assistance in criminal matters between Vietnam and India 2007 (Article 5); Treaty on mutual legal assistance in criminal matters between Vietnam and United Kingdom 2009 (paragraph 2, 3 of Article 5); Treaty on mutual legal assistance in criminal matters between Vietnam and Algeria 2010 (paragraph 2 and 3 of Article 3); ASEAN Treaty on mutual legal assistance in criminal matters (Article 6).

714. Regarding the content of the request, Vietnam noted that its legislation is flexible and provides for both compulsory and optional elements in order to facilitate Vietnam in negotiating the content of a request. While the treaties which Vietnam has signed or acceded to (before and after the Law on Mutual Legal Assistance came to effect) address

this issue in different ways, generally the legal assistance requests shall have the following basic information: name of the competent authority of the requesting country; name of the competent authority of the requested country; the content of request (the purpose and necessary conditions of execution of the request for assistance); a brief statement of the facts of the case; the related details; applicable legal provisions and sanctions; progress of the investigation, prosecution and judgment; time period of executing the request for legal assistance; name, age, nationality and if available, exact address, profession, and career of involved parties, witnesses and other persons relating to the case. Vietnam considers this basic information to be consistent with the provisions of the Convention.

715. **Regarding paragraph 16:** Vietnam reported that the Law on Mutual Legal Assistance of 2007 regulates the matter in Paragraph 3 of Article 19, which provides as follows: “3. If the information contained in the request for legal assistance in criminal matters under paragraphs 1 and 2 of this Article is insufficient for the request to be executed, the competent agency of the requested State may require in writing additional information from the requesting State and shall fix a time limit for the provision of such additional information.”

716. In addition, a number of treaties which Vietnam has signed or acceded to before becoming a party to the Convention also contain provisions on this issue, in particular: Treaty on mutual legal assistance and legal issues of civil and criminal cases between the Socialist Republic of Vietnam and North Korea in 2002 (Paragraph 2 of Article 9); Treaty on mutual legal assistance in criminal matters between Vietnam and South Korea in 2003 (paragraph 4 of Article 4); Treaty on mutual legal assistance in criminal matters between Vietnam and India in 2007 (paragraph 3 of Article 5); Treaties on mutual legal assistance in criminal matters between Vietnam and UK in 2009 (paragraph 5 of Article 6); ASEAN Treaty on mutual legal assistance in criminal matters (paragraph 4 of Article 6).

**(b) Observations on the implementation of the article**

717. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

**(a) Summary of information relevant to reviewing the implementation of the article**

718. Vietnam noted that this issue is addressed in the legislation of Vietnam, in particular in the Criminal Proceedings Code of 2003 and the Law on Mutual Legal Assistance of 2007. Article 341 of the Criminal Proceedings Code of 2003 provides as follows: “When providing judicial assistance, the bodies as well as persons with procedure-conducting competence of the Socialist Republic of Vietnam shall apply the provisions of relevant

international agreements which the Socialist Republic of Vietnam has signed or acceded to and the provisions of this Code”.

719. Article 4 of the Law on Mutual Legal Assistance of 2007 on the principles of mutual legal assistance stipulates: “1. Mutual legal assistance shall be carried out in line with the principle of respect for each other’s independence, sovereignty and national territorial integrity, non-intervention in each other’s internal affairs, equality and mutual benefit, as well as in compliance with the Constitution and law of Vietnam, and treaties to which Vietnam is a party. 2. In case Vietnam and the foreign state concerned have not yet signed or acceded to any treaty concerning mutual legal assistance, the legal assistance shall be performed on the principle of reciprocity, provided that this does not contradict Vietnamese laws and in line with international law and practice.”

720. Thus, requests for mutual legal assistance will often be executed in accordance with Vietnamese laws. However, to a certain extent and without prejudice to the Vietnamese laws, they will also be executed in accordance with international law and practices. It is also stipulated in multilateral or bilateral treaties on mutual legal assistance to which Vietnam is a party that Vietnam shall implement the legal assistance requests under the procedures specified in the request.

721. All bilateral and multilateral treaties on mutual legal assistance in criminal matters which Vietnam has signed or acceded to contain relevant provisions. More specifically:

- Article 7 of the treaty on mutual legal assistance and legal issues of civil and criminal nature between Vietnam and the Socialist Republic of the Soviet Union of 1981 on execution of requests for legal assistance provides as follows: When executing a request for legal assistance, the Requested authorities shall apply their domestic law. Upon request of a requesting authority, the Requested authority may apply the procedural rules of the requesting Signatory, provided that the rules do not contradict the laws of the Requested Signatory.
- The treaty on mutual legal assistance of civil and criminal matters between Vietnam and Czechoslovakia of 1982 regulates execution of requests for legal assistance as follows: upon request of the requesting Party, the Requested Party may execute the request in the way specified in the request, provided that this is not contrary to the law of the requested Party.
- The treaty on mutual legal assistance in civil, family, labour and criminal matters between Vietnam and Cuba of 1984 provides that when executing requests for mutual legal assistance, the requested party shall apply its domestic laws. However, at the request of the requesting authority, the requested authority may apply the law of the other signatory State, provided that this is not contrary to its domestic law (Article 7).
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary of 1985 stipulates that: The requested party shall execute the request for mutual legal assistance in accordance with its domestic law. However, at the request of the requesting authority, the requested authority may apply special procedural rules, provided that this is not contrary to compulsory provisions of its domestic laws (Article 6 on ways of execution of requests for mutual legal assistance).

- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria of 1987 stipulates: when implementing the request for mutual legal assistance, the requested authority shall apply its domestic laws. At the request of a requesting authority, the requested authority may apply provisions of legal proceedings of the other signatory State, provided that these provisions do not contradict its national law (Article 7 on Methods of implementing judicial request).
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Poland of 1993 provides that: the requested authority implements requests for mutual legal assistance under its domestic laws. However, at the request of the requesting authority, the requested authority may apply the procedural provisions of the requesting State, if these provisions are not contrary to the procedural law of their country (Article 8 on implementing judicial request).
- The treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People's Democratic Republic of 1998 stipulates: When implementing request for mutual legal assistance, judicial bodies of the requested State shall apply their domestic laws. Upon request from judicial authorities of the signatory State, judicial bodies of the requested State may apply the laws of the requesting signatory State, if the law applied is not contrary to the law of the requested State (Article 7 on Method of implementing judicial request).
- The treaty on mutual legal assistance on civil and criminal matters between Vietnam and China of 1998 regulates: the requested signatory shall implement requests for mutual legal assistance under its domestic laws. The requested signatory may implement requests for legal assistance in the way suggested by the requesting signatory, provided that this is not contrary to its domestic laws (Article 8 on implementing requests for legal assistance).
- The treaty on mutual legal assistance and legal issues of civil, family, labour and criminal matters between Vietnam and Belarus of 2000 stipulates: When implementing requests for mutual legal assistance, the requested authority applies its domestic laws. However, at the request of the requesting authority, the requested authority may apply the procedural rules of the requesting signatory party, if these rules are not contrary to the laws of the requested signatory (Article 7 on Methods of implementing requests for legal assistance).
- The treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia of 2000 stipulates: When implementing legal assistance, the requested authority shall apply its domestic laws. However, at the request of the requesting authority, the requested authority may apply procedural rules of the requesting signatory if these regulations are not contrary to its national laws (Article 6 on Methods of implementing legal assistance).
- The treaty on mutual legal assistance and legal issues in civil and criminal matters between Vietnam and Ukraine in 2000 stipulates: When implementing judicial requests, the requested judicial authority shall apply its domestic laws. However, at the request of the requesting authority, the requested authority may apply the procedural provisions of the requesting signatory, if these provisions are not contrary

to the laws of the requested signatory (Article 8 on Methods of implementing judicial requests).

- The treaty between the Socialist Republic of Vietnam and North Korea on mutual legal assistance and legal issues in civil and criminal matters of 2002 stipulates: When implementing requests for mutual legal assistance, the requested judicial authority shall apply its domestic law. However, at the request of the requesting authority, the requested authority may apply the provisions on procedure of the requesting Signatory, if these provisions are not contrary to its own laws. (Article 15 on Laws applicable in the implementation of mutual legal assistance).
- The treaty on mutual legal assistance in criminal matters between Vietnam and South Korea of 2003 provides as follows: The requested party shall implement appropriate requests for assistance in a prompt manner in accordance within the scope of its laws, in the way proposed by the requesting party (Article 6 on implementing requests for assistance).
- The treaty on mutual legal assistance in criminal matters between Vietnam and India of 2007 stipulates: The requested party shall implement the requests for assistance in accordance with its domestic laws, and to the extent not contrary to its law, in the manner proposed by the requesting party (Article 4).
- The treaty on mutual legal assistance in criminal matters between Vietnam and the United Kingdom of 2009 provides that: The requested party shall comply with the procedures proposed by the requesting party except otherwise stipulated in this treaty, provided that the procedures are not contrary to the laws of the requested party (Article 6 on implementation of requests).
- The treaty on mutual legal assistance in criminal matters between Vietnam and Algeria of 2010 stipulates: the central authority of the requested party shall promptly implement the request for assistance in accordance with its domestic laws. If the requesting party requests an emergency assistance in judicial proceedings, the requested party shall grant assistance in accordance with their domestic laws (Article 5).
- The ASEAN treaty on mutual legal assistance in criminal matters provides as follows: Requests for assistance shall be carried out promptly, in the manner provided for by the laws and practices of the requested party. Subject to its domestic laws and practices, the requested party shall carry out the request in the manner specified by the requesting party. The requested party may ask the requesting party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the requested party in order to give effect to the request received from the requesting party (Article 7).

**(b) Observations on the implementation of the article**

722. Vietnam will execute only those requests for mutual legal assistance that are not contrary to its legislation. It is also stipulated in multilateral or bilateral treaties on mutual legal assistance to which Vietnam is a party that Vietnam shall implement the legal

assistance requests under the procedures specified in the request. There is adequate compliance with this provision.

## **Article 46 Mutual legal assistance**

### **Paragraph 18**

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

723. The Criminal Proceedings Code of 2003 contains no provisions for taking testimony by online conversation or by video conference, because the infrastructure in Vietnam does not meet this requirement.

724. Vietnam further noted that UNICEF in Vietnam has assisted several investigating bodies (in Hai Phong City, Ho Chi Minh City and Dong Thap province) to pilot friendly investigating rooms to enhance the protection of the rights of the accused, and ensure better conditions and protection for juvenile defendants, victims, witnesses who are children. In addition, among the Ministry of Public Security, the Ministry of Defense, the Supreme People's Procuracy and the Supreme People's Court, the Ministry of Public Security is the authority assigned to draft the joint circular providing guidance on the protection of witnesses, reporting persons and victims during criminal investigations. Moreover, Article 1 of the treaty on mutual legal assistance in criminal matters with the United Kingdom of Great Britain and Northern Ireland provides for mutual legal assistance through online conversations or video conference. It was confirmed that these special investigating rooms could also be used in corruption cases.

#### **(b) Observations on the implementation of the article**

725. During the country visit, it was confirmed that there are no provisions in the Vietnamese legislation permitting the hearing of witnesses by video conference. Vietnam has not implemented this optional provision.

## **Article 46 Mutual legal assistance**

### **Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions*

*or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

726. Vietnam noted that in the area of mutual legal assistance, especially cooperation in the investigation, prosecution and trial of criminal cases, securing or restricting the use of the information provided is one of the key requirements. For Vietnam, the confidentiality of the necessary information relevant for the investigation, prosecution and adjudication of criminal cases is specified in the legislation on criminal procedure, legislation on protection of State secrets, and especially in the international treaties to which Vietnam is a signatory.

727. As regards national legislation, the matter is addressed in the Ordinance on the Protection of State Secrets of 2000, the Penal Code of 1999 and the Criminal Proceedings Code of 2003. With regard to international treaties related to mutual legal assistance in criminal matters, extradition, transfer of persons serving a sentence, crime prevention and defense, the provisions relating to security or restricting the use of information have been included as a binding rule for the competent authorities. In particular:

- Under Article 18 of the treaty on legal assistance in criminal matters between the Socialist Republic of Vietnam and the Republic of India, in consultation with the requesting party, the requested party may propose that the disclosure or use of the information and evidence provided or of any source of information or evidence must comply with the conditions set forth. The requesting party can propose to keep secret the contents of the request for assistance and supporting documents together with the request for assistance. If the request for assistance can only be executed by breaching the conditions of confidentiality, the requested party shall inform the requesting party before implementing the request for assistance and the requesting party will determine whether to execute the request for assistance or not. As proposed, the requesting party must ensure that the information or evidence will be protected without any loss, misuse, use, modification, unauthorized disclosure or access.
- Article 9 of the treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland provides for confidentiality and limited use of information as follows: “1. The Requested Party shall, if requested, keep confidential all information relating to the request for assistance which has been submitted or met. 2. If the request cannot be executed without disclosing secrets, the requested Party must immediately notify the requesting party which will determine whether to execute the request in the case or not, and to what extent to execute. 3. The requesting Party cannot use or disclose information or evidence obtained under this Treaty for other purposes without prior consent of the requesting Party, apart from the procedural purposes stated in the request for assistance. 4. Unless the requested party has another opinion when

implementing the request, information or evidence which has been published before the public trial concerning the request for assistance will be used for any other purposes at that time. 5. No provision of this Article prevents the use or disclosure of information to the extent determined by the law of the requesting party which is compulsory to be used or disclosed to serve a trial. The requesting Party, whenever possible, notifies the Requested Party of the disclosure”.

- Article 6 of the Treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the Democratic and the People’s Republic of Algeria stipulates that: “The Requested Party shall have responsibility for keeping confidential a request for assistance, its content and attached documents. If the request cannot be executed without breach of confidentiality, the requested party shall promptly notify the requesting party to determine whether to proceed with the request or not. The requesting party maintains the confidentiality of evidence and information provided in relation to requests for investigation and judicial proceedings. Without the consent of the Requested Party, the requesting party only uses and transfer information and exhibits to serve legal proceedings as notified in the request for assistance”.

728. There is no provision under Vietnamese law to prevent the requesting State from disclosing the information or evidence to vindicate a person convicted in the judicial process. Article 63 of the Criminal Proceedings Code of 2003, entitled “Facts required to be proved in a criminal case” stipulates that in the course of investigation, prosecution and adjudication of a criminal case, the investigating body, prosecutor, court must prove both guilt and innocence.

**(b) Observations on the implementation of the article**

729. During the country visit, it was confirmed that the Vietnamese authorities would respect the confidentiality of information contained in requests for mutual legal assistance. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 20**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

730. Vietnam reported that Article 27 of the Law on Mutual Legal Assistance provides on the use of information and evidence in legal assistance in criminal matters as follows: “1. Information or evidence provided by the Vietnamese authorities conducting criminal proceedings shall be used only for the purposes specified in the request for legal assistance in criminal matters, and shall not be disclosed or transmitted to any third party,

except with the prior written consent of the competent authority of Vietnam. 2. The Vietnamese authorities conducting criminal proceedings must take appropriate measures to keep confidential the fact of a request for legal assistance in criminal matters, its contents and supporting documents, as well as criminal procedural actions to be taken under the request. If the request cannot be executed without breaching confidentiality requirements stipulated by the legislation on protection of state secrets, the Supreme People's Procuracy must so inform in writing the requesting State and may agree with the foreign competent authority on alternative measures, if applicable. 3. When a request for legal assistance in criminal matters is submitted to a foreign country, the Supreme People's Prosecutor must request the foreign competent authority to take the following measures: a) Keep confidential the information and evidence provided by Vietnam and use that information and evidence solely for the purposes stated in the request; and b) Ensure that the information and evidence are protected against unauthorized modification, change, disclose or other misuse”.

731. As stipulated in Article 18 of the treaty on legal assistance in criminal matters between the Socialist Republic of Vietnam and the Republic of India, after examination of the request, the requested party may request that information or evidence provided, or the source of the information or evidence, be kept confidential; the disclosure or use must comply with the conditions stipulated. The requesting party can request to keep secret the content of the request for assistance and the supporting documents and works together with the request for assistance. If the request for assistance cannot be executed without breaching the conditions of confidentiality, the requested party shall inform the requesting party before implementing the request for assistance and the requesting party will determine whether the request for assistance shall be carried out. As proposed, the requesting party must ensure that the information or evidence will be protected from loss, modification, and unauthorized disclosure, access or use.
732. Article 9 of the treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland provides on confidentiality and limitation of use as follows: “1. The Requested Party shall, upon request, keep confidential any information which might indicate that a request has been made or responded to. 2. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether and the extent to which it wishes the request to be executed. 3. The Requesting Party shall not use or disclose any information or evidence obtained under this Treaty for any purpose other than for the criminal proceedings stated in the request without the prior consent of the Requested Party. 4. Unless otherwise indicated by the Requested Party when executing the request, information or evidence the contents of which have been disclosed in a public judicial proceeding related to the request may thereafter be used for any purpose. 5. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation under the laws of the Requesting Party to use or disclose such information for the purpose of judicial proceedings. The Requesting Party shall, wherever possible, notify the Requested Party in advance of any such disclosure.
733. Article 6 of the Treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and People's Democratic Republic of Algeria regulates confidentiality as follows: “The Requested Party shall be responsible for keeping confidential the content of requests for assistance and accompanying documentation. If

the request cannot be executed without breaching confidentiality, the requested party promptly notifies the requesting party, which shall then determine whether it wishes the execution of the request to continue or not. The requesting party maintains the confidentiality of evidence and information provided in relation to a request for investigation and judicial proceedings. Without the consent of the Requested Party, the requesting party shall only use and transfer information and exhibits for the purpose of legal proceedings as notified in the request for assistance”.

**(b) Observations on the implementation of the article**

734. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 21**

*21. Mutual legal assistance may be refused:*

*(a) If the request is not made in conformity with the provisions of this article;*

*(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

*(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

*(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

**(a) Summary of information relevant to reviewing the implementation of the article**

735. **Regarding paragraph 21(a):** The Criminal Proceedings Code of Vietnam allows Vietnam discretionary choice to refuse to implement requests for legal assistance in Article 342. Accordingly, the competent authorities of Vietnam may refuse to implement requests for legal assistance related to criminal procedure in case such requests are inconsistent with the law of Vietnam or other treaties that Vietnam has signed or acceded to. Under the provisions of paragraph 1 of Article 21 of the Law on Mutual Legal Assistance of 2007, a foreign request for legal assistance in criminal matters shall be refused in one of the following circumstances: “a) It is not in conformity with the obligations of Vietnam under the international treaties to which Vietnam is a party and Vietnamese laws; b) The execution of the request may jeopardize the sovereignty or national security of Vietnam; c) The request is for prosecution of a person for a criminal conduct for which that person has been convicted, acquitted or granted a general or special reprieve in Vietnam; d) The request relates to a criminal conduct for which the statute of limitations has elapsed according to the Penal Code of Vietnam; e) The request relates to a

violation of the law which does not constitute a criminal offence under the Penal Code of Vietnam”.

736. Although the above provision does not define “clearly” that the legal assistance may be refused if the request for judicial assistance is inconsistent with the provisions of the legislation of Vietnam, it can be inferred that if the foreign request for judicial assistance in criminal matters is beyond the scope of judicial assistance in criminal matters or falls under one of the above categories, the competent authorities of Vietnam shall refuse to execute.

737. **Regarding paragraph 21(b):** According to Vietnam, one of the most important requirements in international relations (or in concrete action such as in prevention and combating against crime, mutual legal assistance in criminal matters, extradition or transfer of sentenced persons) is that the parties shall undertake to respect their respective independence, sovereignty and territorial integrity. The State has absolute priority in the legislative, executive and judiciary fields on its territory and no one can interfere in its territory. Any individual or organization in the territory of one State is required to act in compatibility with the laws of that State. Therefore, as in other States, the laws of Vietnam regulate the supreme principle of protection of its sovereignty and territorial integrity.

738. In the legal system of Vietnam on mutual legal assistance in criminal matters, the first reason for refusal to execute requests of foreign countries is when “the execution of the request may jeopardize the sovereignty or national security of Vietnam”. This supreme principle is also confirmed in many bilateral treaties which Vietnam has signed. Article 342 of the Criminal Proceedings Code of Vietnam provides that the competent authorities may refuse to execute requests for assistance in case the implementation of the requests shall prejudice sovereignty, national security or the vital interests of the Socialist Republic of Vietnam. Moreover, point b, Clause 1, Article 21 of Law on Mutual Legal Assistance of 2007 stipulates that a request for mutual legal assistance in criminal matters from a foreign country is refused if it prejudices the sovereignty and national security of Vietnam.

739. The Vietnamese legislation does not expressly refer to the refusal of the request in case it may affect public order or other essential interests. However, this issue is addressed in many mutual legal assistance treaties which Vietnam has signed as follows:

- According to point a, clause 1, Article 4 of the treaty on legal assistance in criminal matters between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland, “the implementation of requests will violate the sovereignty, security, public order or other practical benefits of the Requested Party”.

- According to point a, clause 1, Article 4 of the treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the People’s democratic Republic of Algeria: “The implementation of requests violates the sovereignty, security or public order”.

- According to point c, clause 1, Article 6 of the treaty on mutual judicial assistance in criminal matters between the Socialist Republic of Vietnam and the Republic of India: “A

request for assistance, if implemented would cause serious harm to the sovereignty, security and order public order or the fundamental interests of the Requested Party” .

- According to point d, clause 1, Article 5 of the treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the Republic of Korea: “A request for assistance, if implemented would cause serious harm to the sovereignty, security and order public order or the fundamental interests of the Requested Party”.

- According to article 12 of the treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the Republic of Poland: “If the implementation of judicial request likely encroaches upon the sovereignty, security or public order of the Contracting State requested, the State can refuse to implement such request”.

- According to paragraph 1 of Article 19 of the treaty on legal assistance and legal issues of civil, family, labour and criminal matters between the Socialist Republic of Vietnam and the Republic of Belarus: “Legal Assistance can not be provided, if implementation of requests for mutual legal assistance may prejudice the sovereignty or security or the basic principles of current legislation of the Contracting Party which is required”.

- According to article 17 of the treaty on mutual legal assistance and legal issues of civil and criminal cases between the Socialist Republic of Vietnam and Russia: ‘The judicial assistance may be denied if the request for assistance may be prejudicial to the sovereignty, security or other important benefits, as well as contrary to the principle of the law or international commitments of the Contracting Parties”.

- According to article 16 of the treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and Mongolia, “The mutual legal assistance may be refused if it may prejudice the sovereignty, security or is contrary to the fundamental principles of law of the Contracting Party requested”.

- According to article 14 of the treaty on mutual legal assistance and legal issues of civil and criminal matters between the Socialist Republic of Vietnam and the Socialist Republic of Czechoslovakia: “There may be refusal to implement mutual legal assistance referred to in this Treaty if the requested Contracting Party considers that the assistance would violate the sovereignty or security or the basic principles of its domestic law”.

- According to article 9 of the treaty on mutual legal assistance in civil and criminal matters between the Socialist Republic of Vietnam and the People's Republic of China, “Judicial Assistance may be refused if the requested Contracting Party deems that the implementation of requests will prejudice the sovereignty, security, public order or principles of law and the fundamental interests of his State. The requested Contracting Party requested notifies the requesting contracting party of the reason of refusal”.

- According to article 17 of the treaty on mutual legal assistance and legal problems of civil and criminal matters between the Socialist Republic of Vietnam and Ukraine: “If the implementation of mutual legal assistance requests may violate the sovereignty or security or is contrary to the constitutional principles of the Contracting Party requested, the Contracting Party shall refuse to implement such legal assistance”.

740. **Regarding paragraph 21(c):** Vietnam reported that, according the provisions of paragraph 1 of Article 21 of the Law on Mutual Legal Assistance of 2007, it refuses to execute requests for legal assistance if the request is about prosecuting a person for criminal conduct for which that person has been convicted, acquitted or granted a general or special reprieve in Vietnam (point c). Furthermore, many treaties on mutual legal assistance which Vietnam has signed also cover this issue.

741. **Regarding paragraph 21(d):** Article 342 of the Criminal Proceedings Code of 2003 gives Vietnam the option to refuse to execute requests for legal assistance. Accordingly, competent Vietnamese authorities may refuse to execute requests for legal assistance related to criminal proceedings if the request is inconsistent with the laws of Vietnam and international treaties which Vietnam has signed or acceded to. As stipulated in clause 1 of Article 21 of the Law on Mutual Legal Assistance of 2007, Vietnam shall refuse to execute a request if it is not consistent with international treaties to which Vietnam is a party or is not compatible with the law of Vietnam. Thus, that the request for mutual legal assistance of foreign countries must comply with the law of Vietnam is “a provision of immutability” for Vietnam.

**(b) Observations on the implementation of the article**

742. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 22**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

743. Vietnam affirmed that the law of Vietnam does not contain provisions regarding the refusal of requests for legal assistance only because the offence is also considered related to fiscal issues.

**(b) Observations on the implementation of the article**

744. The grounds for refusal of requests for mutual legal assistance in Vietnam do not include refusal of request on the sole ground that the offence is also considered to involve fiscal matters. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 23**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

**(a) Summary of information relevant to reviewing the implementation of the article**

745. According to Vietnamese law, refusal of a request for mutual legal assistance means that the competent authorities of Vietnam shall not execute the requests of the competent authorities of the other country and promptly inform the requested authorities in writing. Paragraph 3 of Article 21 of the Law on Mutual Legal Assistance of 2007 stipulates that, after it has been decided to refuse or postpone the execution of a request under paragraphs 1 and 2 of the Article, the Supreme People's Procuracy shall inform the requesting State of the reasons thereof and measures to be taken. This is a compulsory provision, an indispensable procedure. This provision ensures compliance with the transparency policy in any decision of refusal of the competent authorities of Vietnam.

746. Moreover, the refusal of execution of a request shall be decided in accordance with the Constitution and the law of Vietnam, without room for any personal purpose or motivation.

747. Many treaties which Vietnam has signed contain provisions on the refusal to execute a request for assistance, and some of them also contain related provisions requiring promptly notification of the foreign competent authorities of the reason of refusal. As examples, Vietnam cited Paragraph 2 of Article 19 of the treaty on legal assistance and legal problems in civil, family and criminal matters between Vietnam and Belarus, and Article 9 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and China.

**(b) Observations on the implementation of the article**

748. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

**(a) Summary of information relevant to reviewing the implementation of the article**

749. The Law on Mutual Legal Assistance of Vietnam of 2007 regulates the timeframe for receiving and handling judicial request of foreign countries as follows: "a) 1. Within 15 days of receipt of a request for legal assistance in criminal matters sent by a foreign competent authority, the Supreme People's Procuracy shall record it in the Register of requests for legal assistance in criminal matters, check its validity and transmit it to the

agency conducting criminal proceedings of Vietnam for execution. If the request is not valid, the Supreme People's Procuracy shall return it to the competent authority of the requesting State and shall specify reasons thereof. (Article 23). b) Point e, Clause 1, Article 19 of this law deals with judicial requests for documents referring to the progress of a criminal investigation, prosecution, trial, and the time limit within which compliance with the request is desired. c) Within 5 working days of receipt of a request from the competent authority of a foreign country for investigation against a foreign citizen residing in Vietnam, the Supreme People's Procuracy shall transmit the request to the competent investigating agency of Vietnam for investigation. The results of the investigation shall be transmitted to the Supreme People's Procuracy to be send to the requesting State. (Article 30. Execution of foreign requests for investigation against foreign citizens in Vietnam). d) In case the judicial request in criminal matters is not executed or not answered within the period for which foreign States demand or need additional information, related documents, the authorities of Vietnam conducting criminal proceedings must inform in writing the Supreme People's Procuracy and specify reasons thereof. The Supreme People's Procuracy will inform the competent authorities of the requesting party."

750. "In case the requesting party wants to summon witnesses and experts who are residing in Vietnam, it must send the summons to the Supreme People's Procuracy within ninety days before the intended day the persons must be present at the requesting State. Procedures for receiving the summons for witnesses and experts shall comply with the provisions of Article 23 of this Law (Article 24. Service of documents at foreign request); the Agency serving the summons must send immediately to the Supreme People's Procuracy certified documents proving the service and then the Supreme People's Procuracy forwards them to the requested State; in case the service is not effected, the Supreme People's Procuracy must notify in writing the reasons".
751. In addition, with respect to particular requests for legal assistance the period of time will depend on the provisions of specific laws of Vietnam on corresponding criminal proceedings (such as in the temporary detention, seizure and investigation period). During the country visit, officials of the Supreme People's Procuracy stated that they always strive to execute requests for mutual legal assistance within the time limits prescribed by the requesting State. They also noted that the time needed to process a request generally ranges from one month to one year, depending on the complexity of the case.
752. Several mutual legal assistance treaties which Vietnam has signed regulate this issue. More specifically: Paragraph 1, Article 7 of the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria; Paragraph 1, Article 7 of the Treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People's Democratic Republic; Paragraph 1, Article 7 of the Treaty on mutual legal assistance and legal issues of civil, family, labor and criminal matters between Vietnam and Belarus.
753. Also, Paragraph 2 of Article 23 of the Law on Mutual Legal Assistance provides that within five working days after receiving the documents of the competent agency conducting criminal proceedings in Vietnam, which notify of the result of execution of the request for legal assistance, the Supreme People's Procuracy will transfer the documents to the competent authorities of the requesting State in accordance with international treaties of which Vietnam and the requesting State are parties or through diplomatic

channels. Article 26 of Law on Mutual Legal Assistance provides that “At the request of the competent agencies of Vietnam or foreign countries, the Supreme People’s Procuracy requests the competent authorities of foreign countries or competent agencies conducting criminal proceedings of Vietnam to provide information relating to requests for legal assistance in criminal matters or copies of judgments and decisions of criminal courts which have legal effect on the citizens of the requesting State”.

**(b) Observations on the implementation of the article**

754. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 25**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

**(a) Summary of information relevant to reviewing the implementation of the article**

755. Vietnam cited paragraph 2 of Article 21 of the Law on Mutual Legal Assistance of 2007, according to which the request for assistance in criminal matters can be postponed if the execution obstructs the progress of the investigation, prosecution, trial or enforcement of a judgment in Vietnam.

756. Moreover, the mutual legal assistance treaties in criminal matters which Vietnam has signed contain provisions to postpone the execution of a request for assistance if there are grounds to prove that the execution of the request would cause obstacles to the investigation, prosecution, trial, or the enforcement of a judgment in Vietnam. Such provisions can be found in Paragraph 6 of Article 3 of the ASEAN treaty on mutual legal assistance in criminal matters; Clause 3, Article 6 of the mutual legal assistance treaty on criminal matters with the Republic of India; and Clause 3, Article 5 of the treaty on mutual legal assistance in criminal matters with the Republic of Korea.

**(b) Observations on the implementation of the article**

757. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 26**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems*

*necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

758. Article 21 of the Law on Mutual Legal Assistance of 2007 provides for the refusal or postponement of execution of a foreign request in the following circumstances: “a) The request is not in conformity with the obligations of Vietnam under the international treaties to which Vietnam is a party and Vietnamese laws; b) The execution of the request may jeopardize the sovereignty or national security of Vietnam; c) The request is for prosecution of a person for a criminal conduct for which that person has been convicted, acquitted or granted a general or special reprieve in Vietnam; d) The request relates to a criminal conduct for which the statute of limitations has elapsed according to the Penal Code of Vietnam; e) The request relates to a violation of the law which does not constitute a criminal offence under the Penal Code of Vietnam”. The execution of a foreign request for legal assistance in criminal matters may be postponed if the execution of that request would cause obstacles to the investigation, prosecution, trial, or the enforcement of a judgment in Vietnam. (paragraph 2). After it has decided to refuse or to postpone the execution of a request under paragraphs 1 and 2 of this Article, the Supreme People's Procuracy shall inform the requesting State of the reasons thereof and measures to be taken (paragraph 3 of Article 21 of Law on mutual legal assistance in 2007).

759. International treaties to which Vietnam is a party also address the issue: Point b of Paragraph 2 of Article 4 of mutual legal assistance in the treaty between the Socialist Republic of Vietnam and People's democratic Republic of Algeria stipulates: before refusing a request for legal assistance, through the central agencies, the Requested Party shall engage in exchange with the requesting party and study the possibility of providing assistance in the conditions and duration that are deemed necessary by the requested Party. Moreover, paragraph 2 of Article 4 of the mutual legal assistance treaty between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland provides that “before refusing assistance pursuant to this Article, the Central Authority of the Requested Party shall exchange with the Central Authority of the Requesting Party to consider whether the assistance can be provided or not on the basis of meeting the conditions which the Requested Party deems necessary. If the requesting Party approves of the assistance under these conditions, it must comply with the terms and conditions.”

**(b) Observations on the implementation of the article**

760. During the country visit, the reviewing experts were informed that it is not mandatory under Vietnamese law to consult with the requesting State prior to refusing a request for mutual legal assistance. Vietnam noted that its practice is not to refuse requests for mutual legal assistance and, in a spirit of close cooperation with international counterparts, to ask for additional information before refusing a request in an attempt to provide the assistance requested.

**Article 46 Mutual legal assistance**

**Paragraph 27**

27. *Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

**(a) Summary of information relevant to reviewing the implementation of the article**

761. Vietnam cited Article 8 of the Law on Mutual Legal Assistance of Vietnam of 2007, which provides for summon and protection of witnesses and experts. According to this provision, during the proceedings, the relevant Vietnamese authority that is conducting the proceedings may summon a witness or an expert from a foreign country according to the law of Vietnam and international treaties to which Vietnam is a party. The summon shall specify conditions for acting as a witness or an expert and commitment to protect the witness's or expert's life and health and to provide him or her with travel, meal and accommodation expenses. The witness or the expert shall be entitled to simplified entry and exit procedures. The witness or the expert summoned to Vietnam shall not be arrested, detained or prosecuted for the following acts which they have committed prior to their arrival in Vietnam: Giving testimony or expert opinions on the case for which they have been summoned to Vietnam; criminal offences committed in Vietnam; Relationship with the person who is under criminal investigation, prosecution or trial; Involvement in any other civil or administrative lawsuit in Vietnam. The protection referred to in paragraph 4 of this Article shall cease if these persons do not leave the territory of Vietnam within 15 days as from the date of receiving written notice from the competent authority of Vietnam that their presence in Vietnam is no longer necessary. This time limit does not include the time during which these persons were not able to leave Vietnam due to unavoidable reasons.

762. Moreover, Article 25 of the same Law stipulates that a person who is serving his or her prison sentence in Vietnam may be transferred temporarily to the competent authority of the requesting State to give evidence in a criminal case in the requesting State only if the following conditions are met: The person consents to the transfer and to give evidence in the requesting State; and the competent authority of the requesting State must confirm in writing that it shall ensure the protection of life, health, take care of travel, accommodation and meals, indicate the time and manner of receiving and returning the person as well as other specific conditions for the surrender specified by the Vietnamese authorities conducting criminal proceedings of Vietnam. This confirmation shall be made according to the provisions of the Vietnamese law and international law governing the temporary transfer of a person who is serving his or her sentence to give evidence in a foreign country. The temporarily transferred person must be returned to the agency

conducting criminal proceedings of Vietnam at the time confirmed. The period of time during which the surrendered person stayed in the requesting State shall be deducted from the term of his or her sentence.

763. Mutual legal assistance treaties that Vietnam has signed with other countries also contain provisions on the protection of witnesses and experts, which refer to the rights of not being arrested, detained or prosecuted for the acts committed in a certain period of time, for example in paragraphs 4 and 5 of Article 13 of the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Poland. According to Article 8 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People's Democratic Republic, the time period after which the persons are not entitled to protection if they do not leave Vietnam is 15 days after receiving the notice, whereas Article 14 of the mutual legal assistance treaty on civil and criminal matters between Vietnam and China provides for period of 7 days.

**(b) Observations on the implementation of the article**

764. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of the article**

765. Pursuant to Article 31 of the Law on Mutual Legal Assistance of 2007, the costs of mutual legal assistance between Vietnam and foreign countries will be paid by the requesting party, unless otherwise agreed. Article 48 and Article 60 of Law on Mutual Legal Assistance also stipulate that the costs of a request for extradition and the transfer will be paid by the requesting party unless otherwise agreed. Thus, the requesting State will bear the financial responsibility for the implementation of a request unless the States concerned have other treaties in place. Vietnam indicated that this does not mean that Vietnam does not comply with the provision of the Convention under review, because the measures specified include the proviso "unless otherwise agreed".

766. Moreover, paragraph 28 of Article 46 of the Convention provides that "If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne". Most mutual legal assistance treaties which Vietnam has signed provide that expenses are borne by the requesting State, except for the mutual legal assistance arrangement between Vietnam and China, which is at no cost to each other.

767. Relevant provisions are contained in Paragraph 1 of Article 11 of the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Bulgaria, and clause 1 of Article 16 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People's Democratic Republic. Also a number of other mutual legal assistance treaties provide that the contracting parties shall bear all costs of execution of legal assistance on their territory – see for example clause 1 of Article 15 of the mutual legal assistance treaty on civil, family and criminal matters between Vietnam and Mongolia and clause 1 of Article 13 of the treaty on mutual legal assistance and legal issues of civil and criminal matters between Vietnam and Ukraine. Although the treaties stipulate that each contracting party shall bear the costs of requests for assistance on their respective territory, ultimately the requested State will bear the cost of execution of the request for mutual legal assistance because the legal assistance requests are implemented on the territory of the requested State.

**(b) Observations on the implementation of the article**

768. During the country visit, it was clarified that most bilateral treaties concluded by Vietnam provide that the State that executes a mutual legal assistance request in its territory will bear the cost of the execution. There is adequate compliance with this provision.

**Article 46 Mutual legal assistance**

**Subparagraph 29 (a)**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

**(a) Summary of information relevant to reviewing the implementation of the article**

769. Vietnam has cited Article 26 of the Law on Mutual Legal Assistance of 2007 which provides that upon a request of the competent authority of Vietnam or of a foreign country, the Supreme People's Procuracy shall request the agencies conducting criminal proceedings of Vietnam or of a foreign country to provide information relating to a request for legal assistance in criminal matters, or a copy of the final court judgment or decision against a citizen of the requesting State. Apart from this, there is no provision in the law of Vietnam to prevent the supply of government records, documents or information that are available to the general public.

**(b) Observations on the implementation of the article**

770. During the country visit, it was clarified that the concept of “information” to be provided in response to a request for mutual legal assistance in criminal matters, encompasses documents other than final court judgments or decisions which are the only

documents expressly cited in Article 26 of the Law on Mutual Legal Assistance. There is adequate compliance with this provision.

## **Article 46 Mutual legal assistance**

### **Subparagraph 29 (b)**

*29. The requested State Party:*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

771. Vietnam has again cited Article 26 of the Law on Mutual Legal Assistance of 2007, which provides as follows: Upon a request of the competent authority of Vietnam or of a foreign country, the Supreme People's Procuracy shall request the agencies conducting criminal proceedings of Vietnam or of a foreign country to provide information relating to a request for legal assistance in criminal matters, or a copy of the final court's judgment or decision against a citizen of the requesting State. However, in sending a request for legal assistance in criminal matters to a foreign country, the Supreme People's Procuracy must request the foreign competent authority to take the following measures: "a) keep confidential the information and evidence provided by Vietnam and use that information and evidence solely for the purposes stated in the request; and b) Ensure that the information and evidence are protected against unauthorized modification, change, disclosure or other misuse".

#### **(b) Observations on the implementation of the article**

772. Vietnam has not provided examples of cases where documents not available to the public were provided to a requesting State. However, it appears that under Article 26 of the Law on Mutual Legal Assistance, Vietnam could provide documents that are not available to the general public. There is adequate compliance with this provision.

## **Article 46 Mutual legal assistance**

### **Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

773. Vietnam noted that it is implementing a policy to increasingly negotiate, sign, ratify and accede to international treaties on prevention and combating of crime, and in

particular international treaties on mutual legal assistance in criminal matters. The Law on mutual legal assistance of 2007 assigns to the Ministry of Justice, the Ministry of Foreign Affairs and to the Supreme People's Procuracy the responsibility to make proposals for signing, joining and implementing international treaties on mutual legal assistance, as well as for amendments, supplements and improvements of the legislation of Vietnam on mutual legal assistance (Clause 4, Article 62, Clause 2, article 66 and Clause 4, article 63). The Ministry of Public Security is assigned with the responsibility to make proposals for signing, joining and implementing international treaties on extradition and transfer of persons serving prison sentences, as well as for amendments, additions and improvements of the law of Vietnam on mutual legal assistance (Clause 2, Article 65).

774. At the time of the review, Vietnam has promulgated the Law on Mutual Legal Assistance of 2007 and signed 18 mutual legal assistance treaties on this matter with other countries, as well as a number of treaties and protocols on preventing and combating crime with the Republic of Philippines, the People's Republic of China and others. The provisions of Vietnamese law, the treaties on mutual legal assistance and treaties on preventing and combating crime which Vietnam has signed with other countries show that Vietnam is in full support and committed to implement this provision of the Convention. Vietnam provided the following specific information:

775. Provisions of the Law on Mutual Legal Assistance:

- Article 25 of the Law provides for the temporary transfer of persons in custody to give evidence;
- Article 23, Article 38, Article 56 and the provisions of Chapter VI of the Law deal with the responsibilities of State agencies engaging in legal assistance activities, ie the central authority for mutual legal assistance;
- Article 5, Article 18, Article 19, Article 36, Article 37, Article 52, Article 53 of the same Law pertain to the language, records and documents required for legal assistance;
- Article 27 of the Law provide that the requesting country cannot transfer or use information or evidence provided by the requested country for investigations, prosecution and trial other than those specified in the request without prior consent from the requesting country;
- Article 21 of the Law pertains to the refusal or suspension of execution of legal assistance;
- Article 8 of this Law relates to the right of witnesses or experts transferred to another State for purposes of testimony not to be arrested, detained or under investigation, prosecution and trial in a certain period of time;

776. The results of the review of 18 mutual legal assistance treaties which Vietnam has signed also show that these treaties relate to the purposes of the Convention. At the time of the review, Vietnam indicated that it was about to negotiate and sign mutual legal assistance treaties with additional countries.

**(b) Observations on the implementation of the article**

777. Vietnam has concluded a significant number of bilateral treaties on mutual legal assistance in criminal matters, which can also apply to offences established in accordance with the Convention. There is adequate compliance with this provision.

**(c) Technical assistance needs related to article 46**

778. Vietnam indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Other assistance: Vietnam indicate that training for public officials of agencies such as the Ministry of Public Security and the Supreme People's Procuracy in terms of expertise skills and foreign languages would be of assistance.

None of these forms of technical assistance has been provided Vietnam to date.

**Article 47 Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

779. Vietnam noted that there were many concrete cases in legal assistance relations between Vietnam and other countries where the criminal proceedings could not be accomplished because the offender had escaped to a country with which Vietnam had not signed a treaty on extradition or on transfer of sentenced persons. In some cases, the offenders escaped to the country of their nationality in order to abuse of the principle on no extradition of nationals and to evade punishment by law. In order to ensure that justice is done and that all offences are punished, Vietnamese law allows the possibility to transmit criminal cases among States to prosecute a crime, including offences established in accordance with the Convention.

780. Article 345 of the 2003 Criminal Proceedings Code of Vietnam regulates the transfer of records and exhibits of the case. This provision makes clear that the competent authorities in charge of a criminal proceeding which cannot be carried out because the offender is abroad can forward the case file to the Supreme People's Procuracy to transmit it to the foreign countries' respective competent authorities.

781. The 2007 Law on Mutual Legal Assistance of Vietnam contains clear provisions on the transfer of criminal cases or prosecution of citizens of Vietnam in Vietnam as follows: "Article 28 - Request for criminal prosecution, handing over of files and exhibits of a criminal case to a foreign country: a) For a criminal case involving a foreign national, who has committed an offence in the territory of Vietnam and has escaped to a foreign country and the competent authority of that foreign country refuses to extradite the person to Vietnam, the agency conducting criminal proceedings of Vietnam, which is dealing with the case, shall transmit the case file to the Supreme People's Procuracy for the latter to request the competent authority of the foreign state, where the foreign national is present, to prosecute him/her. In deciding to transfer the case file, the Supreme People's Procuracy may decide to transfer the exhibits of the case. b) The Supreme People's Procuracy shall

stipulate specific conditions for the receipt and handing over of the files and exhibits of a criminal case.”

782. “Article 29 - processing foreign requests for prosecution of a Vietnamese citizen in Vietnam: The Supreme People's Procuracy shall consider a request of the foreign competent authority for further criminal prosecution of a Vietnamese who has committed an offence in the foreign country and is currently present in Vietnam, according to the following procedures: a) If the case is in the investigation stage and within the jurisdiction of an agency conducting criminal proceedings of the province or city under central government (hereafter referred to as 'at the provincial level'), the request shall be transmitted to the People's Procuracy at the provincial level, where the Vietnamese citizen had his or her last place of residence before leaving Vietnam, for requesting the investigation agency at the same level to investigate the case; if the case is within the jurisdiction of an investigation agency of the Ministry of Public Security, the request shall be transmitted to that agency for investigation. b) If the case is in the prosecution stage and within the jurisdiction of a People's Procuracy at the provincial level, the request shall be transmitted to the People's Procuracy at the provincial level, where the Vietnamese citizen had his or her last place of residence before leaving Vietnam, for prosecution. c) The investigation, prosecution and trial of a case stipulated in this Article shall be conducted according to the provisions of the criminal procedural laws of Vietnam.

**(b) Observations on the implementation of the article**

783. There is adequate compliance with this article.

**(c) Technical assistance needs**

784. Vietnam has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

3. Summary of good practices/lessons learned;
4. Other assistance: Vietnam indicate that training for public officials of agencies such as the Ministry of Public Security and the Supreme People’s Procuracy in terms of expertise skills and foreign languages would be of assistance.

None of these forms of technical assistance has been provided to date.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (a)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all*

*aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

**(a) Summary of information relevant to reviewing the implementation of the article**

785. Vietnam referred to the 2007 Law on Mutual Legal Assistance which regulates the matter of focal points as follows: (i) The Supreme People's Procuracy is the focal point for receiving, transferring, monitoring and supervising the implementation of mutual legal assistance requests in criminal matters; considering and deciding on the implementation of the requests and requesting the People's Procuracy or competent investigation agencies to execute mutual legal assistance requests in criminal matters; and refusing or postponing to execute mutual legal assistance requests in criminal matters within its authority (Clause 1, Article 64). (ii) The Ministry of Public Security is the focal point for receiving, transferring, considering and dealing with foreign requests for extradition and transfer of persons serving a sentence; reviewing and transferring the file to the People's Procuracy and People's Court and implementing legal assistance activities within its authority (Clause 1, Article 65). (iii) The Ministry of Foreign Affairs shall take the lead in coordinating with concerned ministries and agencies to decide whether to provide assistance on the basis of reciprocity to the foreign State concerned (Clause 1, Article 66).

786. The treaties on mutual legal assistance in criminal matters, extradition and transfer of persons serving a sentence which Vietnam has signed designate the People's Procuracy as the central authority, with the exception of the treaty on mutual legal assistance in Criminal matters among ASEAN countries, which defines the Ministry of Public Security as the central body under the treaty.

787. The Ministry of Public Security is the central authority to implement treaties on extradition and transfer of persons serving a sentence. The central agencies of Vietnam and foreign partners contact each other directly, although diplomatic channels were also identified as one of the communication channels. In addition, some treaties specify INTERPOL as a channel of communication in case of emergency.

**(b) Observations on the implementation of the article**

788. During the country visit, the reviewing experts were informed that law enforcement authorities in Vietnam cooperate regularly with their counterparts abroad, either at the ministerial level or at the local level. Officials of the Ministry of Public Security underlined that they endeavor as much as possible to assist foreign law enforcement authorities. Such cooperation is based on memoranda of understanding signed between senior officials, or even on mechanisms of cooperation established at the local / provincial level with bordering countries. An example of such mechanisms of cooperation are arrangements signed between local authorities in north-eastern Vietnam and their counterparts in western China.

789. There is adequate compliance with this provision.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (b)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

**(a) Summary of information relevant to reviewing the implementation of the article**

790. **Regarding subparagraph 1 (b)(i):** Mutual legal assistance with foreign countries concerning the identity, whereabouts and activities of persons suspected to relate to offences covered by the Convention, or the location of the individuals involved as provided in subparagraph 1 (b) (i) of Article 48 of the Convention, has been defined as one of the fields of mutual legal assistance in criminal matters by Vietnamese law. Moreover, treaties on mutual legal assistance in criminal matters to which Vietnam is a party contain such provisions. More specifically:

- Paragraph 4 of Article 7 and Article 14 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Russian Federation specifies that in case they do not have a clear picture of the whereabouts of persons mentioned in mutual legal assistance requests, requested agencies will take all necessary measures to find out the correct address of the person.

- Article 78 of the treaty on mutual legal assistance in civil, labour, family and criminal matters between Vietnam and Cuba contains a provision on sending fingerprints for identification and verification of objects.

- Clause 2, Article 7 of the treaty on mutual legal assistance in civil and criminal matters between Vietnam and the Lao People's Democratic Republic regulates how to execute judicial requests.

- Paragraph 3, Article 6 of the treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia.

791. **Regarding subparagraph 1(b)(ii):** Vietnam indicated that in order to strengthen international cooperation in combating crime, especially the crime of corruption, Vietnam has improved its domestic laws and international law by issuing a series of legal instruments. Furthermore, the State and Government also endeavour to increasingly negotiate, sign and accede to international treaties in many areas, such as: mutual legal

assistance in criminal matters, extradition, transfer of persons sentenced to imprisonment, cooperation in preventing and combating crime.

792. Regarding cooperation with other States parties in the investigation of crimes covered by the Convention and the movement of proceeds of crime or property derived from the commission of such offences, the Law on Mutual Legal Assistance of 2007 provides in Article 19 for the content of the requests for legal assistance, which shall include: d) a description of the property and where to find assets; a basis to determine that the assets acquired through the offense are in the requested country and that they can be under the jurisdiction of the requesting country; the execution of judgments and decisions of the courts to request the search, seizure and confiscation of assets acquired through crime; e) measures that should be applied pursuant to the request of criminal justice which can lead to the discovery or recovery of property acquired through crime.
793. **Regarding subparagraph 1(b)(iii):** To strengthen international cooperation in combating crime, especially the crime of corruption, Vietnam noted that it has improved its domestic law and international law by issuing a series of legal instruments. Furthermore, the State and Government also endeavour to increasingly negotiate, sign and accede to international treaties in many areas, such as: mutual legal assistance in criminal matters, extradition, transfer of persons sentenced to imprisonment, cooperation in preventing and combating crime...
794. Regarding cooperation with other States parties in investigative activities and exchange of information on the movement of property, equipment or tools used or destined to be used in the execution of crime, the Law on Mutual Legal Assistance of 2007 provides in Article 19 for the content of requests for legal assistance, which shall include: d) a description of the property and where to find assets; a basis to determine that the assets acquired through the offense are in the requested country and that they can be under the jurisdiction of the requesting country; the execution of judgments and decisions of the courts to request the search, seizure and confiscation of assets acquired through crime; e) measures that should be applied pursuant to the request of criminal justice which can lead to the discovery or recovery of property acquired through crime.

**(b) Observations on the implementation of the article**

795. Direct cooperation between law enforcement agencies presented in subparagraph 1 (a) encompasses the aspects mentioned in subparagraph 1 (b). It appears therefore that there is sufficient compliance with the requirements of this provision.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (c)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

**(a) Summary of information relevant to reviewing the implementation of the article**

796. Vietnam noted that within the scope of mutual legal assistance in criminal matters, the Law on Mutual Legal Assistance (Article 17) allows the competent authorities of Vietnam to provide or require assistance in the collection and provision of evidence, exchange of information and any other assistance in criminal matters.

**(b) Observations on the implementation of the article**

797. Vietnam did not provide concrete examples of cooperation involving measures such as those cited in article 48 paragraph 1 (c), but it appears that such measures could be encompassed by direct cooperation between law enforcement agencies presented in subparagraph 1 (a). There is adequate compliance with this provision.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (d)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

**(a) Summary of information relevant to reviewing the implementation of the article**

798. The exchange of information with other States parties on the means and methods used to commit offences covered by the Convention, including the use of fake personal documents, falsified documents and other tricks to cover up illegal activities is one of the fields of legal assistance in criminal matters stipulated in the Law on Mutual Legal Assistance, as well as criminal law regulations and criminal procedure in Vietnam. The exchange of information can be carried out through diplomatic channels, directly through the central authorities or the INTERPOL and ASEANAPOL channels.

**(b) Observations on the implementation of the article**

799. There is adequate compliance with this provision. .

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (e)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

**(a) Summary of information relevant to reviewing the implementation of the article**

800. Vietnam noted that the policy to strengthen cooperation in the fight against crime has been set by Vietnam as an objective and crucial requirement. Resolution No. 49-NQ/TW dated 2 June 2005 of the Politburo on the judiciary reform strategy to 2020 identified the following tasks: “Organizing to implement correctly international treaties Vietnam has engaged in... strengthening the mutual co-ordination in the fight against international crimes”.

801. While creating favourable conditions for effective coordination among agencies, organizations and departments with the relevant partners, the State of Vietnam also advocated strengthening the negotiation and conclusion of international treaties (for the international treaties concerned, please refer to the above answers). In addition, the Law on Prevention and Combating of Corruption defines the responsibility of each branch for international cooperation as follows: “Article 90. Responsibility to implement international cooperation: 1. The Government Inspectorate shall coordinate with the Ministry of Foreign Affairs, the Ministry of Public Security and concerned agencies in implementing international cooperation on research, training, policy formulation, information exchange, financial support, technical assistance, experience exchange in preventing and combating corruption. 2. The Supreme People's Procuracy, the Ministry of Justice, the Ministry of Public Security shall, within the ambit of their respective tasks and powers, perform the tasks of international cooperation on judicial assistance in preventing and combating corruption”.

802. The exchange of information on preventing corruption in Vietnam is carried out through diplomatic channels, directly through the central authorities (the Supreme People's Procuracy and the Government Inspectorate of Vietnam) or INTERPOL and ASEANAPOL channels. In addition, several bilateral cooperation treaties between the Government of Vietnam and foreign counterparts provide for an arrangement of liaison officers (please refer to the above answers).

**(b) Observations on the implementation of the article**

803. There is adequate compliance with this provision.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (f)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

804. Vietnam indicated that it has created a mechanism for exchanging information on mutual legal assistance in criminal matters effectively by appointing the Supreme People's Procuracy as the focal point for mutual legal assistance in criminal matters in general and in the fight against corruption in particular. Moreover, the cooperation channels of INTERPOL and ASEANPOL are systems of exchange of information on preventing and combating crime quickly and efficiently.

**(b) Observations on the implementation of the article**

805. There is adequate compliance with this provision.

**Article 48 Law enforcement cooperation**

**Paragraph 2**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

806. Vietnam noted that it advocated the strengthening of negotiation, signing, ratification and accession to international treaties concerning preventing and combating crime. To date, Vietnam is a member of several multilateral treaties and has signed many bilateral international treaties related to preventing and combating crime (please refer to the above answers). The international treaties are important legal bases for direct cooperation between law enforcement agencies of Vietnam and other relevant partners. In the field of prevention and fight against corruption, Vietnam considers the Convention as the most important legal basis for multilateral cooperation.

807. Within ASEAN, Vietnam has, together with other nine ASEAN countries, signed treaties of multilateral cooperation in Southeast Asia on preventing and combating corruption. The ASEAN countries often hold consultations or meetings to exchange experiences and strengthen partnerships among law enforcement agencies of the participants. In the future, Vietnam will continue to negotiate and conclude bilateral and regional international treaties with other countries and participate in various forums, dialogues, regional, bilateral and multilateral meetings.

**(b) Observations on the implementation of the article**

808. During the country visit, officials of the Ministry of Public Security noted that Vietnam has signed a number of arrangements and memoranda of understanding on direct cooperation between its law enforcement agencies and law enforcement agencies in other States. These arrangements aim at reinforcing international cooperation among police authorities and are concluded either between senior officials of the competent ministries, or at the local / provincial level, mainly with bordering countries. Vietnamese officials gave the example of arrangements signed between local law enforcement authorities in six provinces of north-eastern Vietnam and their counterparts in western China. They also referred to Memoranda of Understanding signed in 2010 with the Metropolitan Police of London and with the Committee of Command of the Police of the United Kingdom, respectively. Finally, Vietnam noted that before signing the extradition treaty with Australia in 2011, the police forces of the two countries had engaged in cooperation in view of the prevention and suppression of crime.

809. In view of the above information, there is adequate compliance with this provision.

**Article 48 Law enforcement cooperation**

**Paragraph 3**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

**(a) Summary of information relevant to reviewing the implementation of the article**

810. Clause 11, Article 14 of Law on People's Police of Vietnam of 2004 stipulates that the Police force studies and applies scientific and modern technology in protecting national security, maintaining social order and safety. The State of Vietnam is in the process of perfecting its institutions, aiming to establish the rule of law. Given its inadequate resources, as a poor country, the use of modern technology in order to deal with crime and in particular with the crime of corruption should be applied gradually.

811. In the Decision No. 445/QĐ-TTg dated 7 April 2010 of the Prime Minister approving the Plan of Implementation of the Convention and the National Strategy on Preventing and Combating corruption towards 2020, the Government of Vietnam has set targets to:

- Strengthen equipment, improve professional knowledge and criminal investigation techniques of corruption crimes, and exchange experience and support with other

countries; as well as research and organize innovative and targeted training programs for staff employed in the anti-corruption field.

- Study provisions relating to the exchange of information, documents and data for analysis in anti-corruption; cooperate with experts of other countries, share experiences, establish assessment systems to evaluate and measure corruption; and publicize the results of assessments of corruption and anti-corruption measures. In the context of this plan, the Ministry of Public Security was assigned to take the lead in building a project for enhancing facilities and improving professional knowledge on criminal investigation techniques of corruption crimes, as well as cooperation and exchange of experience and support with other States parties to the Convention.

**(b) Observations on the implementation of the article**

812. Although Vietnam presented the broader network of international cooperation that it has established, it has not given any specific example of international cooperation in order to respond to corruption-related offences committed through the use of modern technology. Vietnam has not implemented this provision.

**(c) Technical assistance needs related to article 48**

813. Vietnam has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

5. Summary of good practices/lessons learned;
6. Other assistance: Vietnam indicated that training for public officials of specialized agencies in terms of expertise skills and foreign languages would be of assistance.

**Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

**(a) Summary of information relevant to reviewing the implementation of the article**

814. Vietnam indicated that it had not implemented this provision.

**(b) Observations on the implementation of the article**

815. Vietnam has not implemented article 49 of the Convention.

**(c) Challenges related to article 49**

816. Vietnam has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequate resources for implementation (e.g. human/financial/other)

817. Vietnam specified that currently, its domestic laws as well as bilateral treaties have no provisions on joint investigations. This is a new field, and although it is not inconsistent with the principles of Vietnamese law, Vietnam does not have much experience thereon and should study to be able to apply this provision in the context of Vietnam's legislative framework. The practice of legal assistance with regard to criminal investigations is that judicial authorities of Vietnam often receive foreign judicial requests and conduct investigations in accordance with the laws of Vietnam to ensure proactive, direct and independent investigations, and then announce the results to foreign counterparts.

818. In Decision No. 445/QĐ-TTg, dated 7 April 2010 of the Prime Minister approving the Plan of Implementation of the United Nations Convention Against Corruption and national Strategy on Prevention and Combating of Corruption towards 2020, the Government of Vietnam has planned to propose, amend, supplement and promulgate laws, decrees, circulars and decisions, which will address the topic of "studying and proposing conditions of the possibility of a joint investigation: establishing regulations, determine the content of cooperation treaties to ensure coordination and active, independent investigation and report on results; continue to research, suggest capabilities and conditions to be met by Vietnam in order to coordinate joint investigations".

**(d) Technical assistance needs related to article 49**

819. Vietnam indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Other assistance: Vietnam indicated that training for public officials, especially those of public security forces, in terms of expertise skills and foreign languages would be of assistance.

None of these forms of technical assistance has been provided Vietnam to date.

## **Article 50 Special investigative techniques**

### **Paragraph 1**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

**(a) Summary of information relevant to reviewing the implementation of the article**

820. These special investigative techniques are not recognized in the Criminal Proceedings Code or the Law on Criminal Investigations of Vietnam. They were not specifically defined in the Criminal Proceedings Code in 2003 and the Ordinance on Organizing Criminal Investigations in 2004.
821. Currently, the Criminal Proceedings Code only provides for investigative measures and acts such as interrogation of the accused, testimony of witnesses, victims, civil plaintiffs and defendants, as well as the rights and obligations involved in the case; arrest, custody, detention, search, seizure, seizure of property detained; and examination of crime scenes, corpses, confrontation, identification, experimental investigation and expertise. Paragraph 6 of Article 14 of the Law on People's Police in 2005 recognizes only that the police force can apply measures to mobilize the masses; legal, diplomatic, economic, scientific - technical, business and measures to protect national security, maintain social order and safety. In addition, Clause 1 of Article 15 of the Law on National Security of 2004 stipulates measures to protect the national security, including mobilizing the masses as well as legal, diplomatic, economic, scientific–technical and professional measures.
822. In Decision No. 445 / QD-TTg, dated 7 April 2010 of the Prime Minister approving the Plan of Implementation of the United Nations Convention Against Corruption and national Strategy on Prevention and Combating of Corruption towards 2020, the Government of Vietnam has planned to propose, amend, supplement and promulgate draft laws, decrees, circulars and decisions, including on areas such as “Researching on application of special investigation techniques; researching and studying special investigation methods of other countries; regulations governing the application of special investigation techniques in a closed process of a number of cases as necessary”. The Ministry of Public Security is developing and implementing a research project on the implementation of special investigative techniques by other countries in accordance with Article 50 of the Convention, pursuant to tasks assigned in the context of implementation of the Convention in People’s Police force, issued together with Decision No. 2708/QD-BCA-V19 15 July 2010 of the Minister of Public Security.

**(b) Observations on the implementation of the article**

823. During the country visit, officials of the Ministry of Public Security confirmed that there is no provision in the legislation of Vietnam addressing the issue of special investigative techniques. Vietnam aims at introducing such techniques into its legal system following research into the matter to be conducted by the Ministry of Public Security. Also, the legislation of Vietnam does not allow for the admissibility in court of evidence derived from special investigative techniques (see response below under article 50 paragraph 2). Vietnam has not implemented this provision.

**Article 50 Special investigative techniques**

**Paragraph 2**

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative*

*techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

**(a) Summary of information relevant to reviewing the implementation of the article**

824. Vietnam indicated that it had partially implemented the provision under review. Vietnam noted that although its policy is to strengthen the negotiation and conclusion of treaties on mutual legal assistance in criminal matters, prevention and fight against crime, and that treaties to which Vietnam is a party show that Vietnam will afford the widest measure of cooperation to discover, investigate and verify crime, there are areas relating to the application of special investigation techniques which are not addressed for the following reasons: (i) As discussed above, the current laws of Vietnam do not regulate special investigative techniques as recommended by the Convention; (ii) Until now, States with which Vietnam has signed bilateral treaties have not requested the application of special investigative techniques.

825. Moreover, the domestic laws of many States do not have provisions on the application of special investigative techniques. Thus, this issue has not been raised as an urgent demand in negotiating and signing bilateral treaties with Vietnam. In many requests for mutual assistance, there were also no request for the application of special investigative techniques. Furthermore, assuming that there are requests to apply these methods, the application is not feasible because the technical capacity of Vietnam does not meet the requirements. Also, Vietnam cannot consider the “evidence” obtained through the use of these techniques to qualify as “evidence approved by Courts” because the domestic laws does not contain provisions on this.

826. Currently, in the Decision No. 445/QĐ-TTg, dated 7 April 2010 of the Prime Minister approving the Plan of Implementation of the United Nations Convention Against Corruption and the National Strategy on Prevention and Combating of Corruption towards 2020, the Government of Vietnam has planned to propose, amend, supplement and promulgate draft laws, decrees, circulars and decisions, including in the field of “Researching on application of special investigation techniques; researching and studying specific investigation methods of other countries; regulations governing the application of special investigation with close process to some cases necessary”.

**(b) Observations on the implementation of the article**

827. Vietnam has not concluded international agreements or arrangements for using special investigative techniques. Vietnam has not implemented this provision.

**Article 50 Special investigative techniques**

**Paragraph 3**

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when*

*necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

**(a) Summary of information relevant to reviewing the implementation of the article**

828. Vietnam indicated that it had partially implemented the provision under review. In many cases judicial requests from foreign countries do not contain a request to apply special investigative techniques; furthermore, assuming that there is a request to apply them, the application is not feasible because Vietnam does not meet the requirement in terms of technical capacity. At the same time, due to a lack of relevant regulations, the “evidence” getting from these techniques cannot yet be seen as “the evidence accepted by Courts”.

829. Currently, in the Decision No. 445/QĐ-TTg, April 7, 2010 of the Prime Minister approving the Plan of Implementation of the United Nations Convention Against Corruption and the National Strategy on Prevention and Combating of Corruption towards 2020, the Government of Vietnam has planned to propose, amend, supplement and promulgate draft laws, decrees, circulars and decisions, including in the field of “Researching on application of special investigation techniques; researching and studying specific investigation methods of other countries; regulations governing the application of special investigation with close process to some cases necessary”.

**(b) Observations on the implementation of the article**

830. Vietnam has not implemented this provision.

**Article 50 Special investigative techniques**

**Paragraph 4**

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

**(a) Summary of information relevant to reviewing the implementation of the article**

831. Vietnam indicated that it has partially implemented the provision under review. The concept of controlled delivery as defined in clause (i) of article 2 of the Convention is also stipulated in the United Nations Convention on illegal trafficking of drugs and psychotropic substances of 1988, of which Vietnam is a party and the UN Convention against Transnational Organized Crime of 2000, which Vietnam has signed and is currently in the process of approving. However, like special investigative techniques, measures on controlled delivery have not been specified in the laws of Vietnam and there are no specific provisions on the authority to conduct, procedure and acceptance of results of special investigative measures as evidence before court in criminal cases.

**(b) Observations on the implementation of the article**

832. During the country visit, officials of the Ministry of Public Security confirmed that there is no provision in the legislation of Vietnam addressing the issue of special investigative techniques. Vietnam aims at introducing such techniques into its legal system following research into the matter to be conducted by the Ministry of Public Security. Vietnam has not implemented this provision.

**(c) Technical assistance needs related to article 50**

833. Vietnam has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Model agreement(s)/arrangement(s);
3. Other assistance: Vietnam indicated that training for public officials especially those of public security forces, in terms of expertise skills and foreign languages would be of assistance.

None of these forms of technical assistance has been provided to date.

## **Annex I – Summary of anti-corruption policies and legal documents of Vietnam**

1. 1992 Constitution (amended and supplemented in 2002)
2. 1999 Penal Code and 2009 Laws on amending and supplementing several articles of the Penal Code
3. 2003 Laws on Criminal Procedures
4. 2005 Civil Laws
5. 2004 Laws on Civil Procedures
6. 2000 Laws on Preventing and Combating Drugs and 2008 Laws on amending and supplementing of several articles of the Laws on Preventing and Combating Drugs
7. 2002 Laws on Organization of People’s Procuracy
8. 2002 Laws on Organization of People’s Courts
9. 2004 Laws on People’s Security
10. 2005 Laws on People’s Public security
11. 2005 Laws on Prevention and Combating of Corruption
12. 2007 Amnesty Law
13. 2007 Mutual Legal Assistance Law
14. 2009 Law on State Compensation Liability
15. 2010 Law on Enforcement of Criminal Judgements
16. 2010 Law on Enforcement of Civil Judgements
17. 2010 Law on Public Employees 2010
18. 2010 Law on Inspection
19. 1998 Laws on Complaints and Denunciations, amended and supplemented in 2004 and 2005
20. 2008 Laws on Public servants
21. 2003 Laws on Supervision of the National Assembly, amended and supplemented in 2007
22. 2005 Laws on State Audit
23. 2002 Ordinance on handling of Administrative Violations and 2008 Ordinance Amending and Supplementing a Number of Articles of the Ordinance on handling of Administrative Violations
24. 2002 Ordinance on Prosecutors of the People’s Procuracies and 2011 Ordinance Amending and Supplementing a Number of Articles of the Ordinance on Prosecutors of the People’s Procuracies
25. 2002 Ordinance on Judges and Jurors of the People’s Court and 2011 Ordinance Amending and Supplementing a Number of Articles of the Ordinance on Judges and Jurors of the People’s Court
26. 2004 Ordinance on Organization of Criminal Investigations and 2009 Ordinance Amending and Supplementing a Number of Articles of the Ordinance Organization of Criminal Investigations
27. Resolution No. 1039/2006/NQ-UBTVQH11 dated 27/9/2007 of the National Assembly’s Standing Committee on the organization, duties and powers of the Central Steering Committee on Anti-Corruption
28. Resolution No. 294A/2007/UBTVQH12, dated 27/9/2007 of the National Assembly Standing Committee on the organization, duties and powers and operation regulations of the Steering Committee of provinces and cities under central authority on anti-corruption
29. Resolution No. 21/NQ-CP dated 12/5/2009 of the Government on the enactment of the National Strategy on the Preventing and Combating Corruption toward 2020.

30. Decree No. 120/2006/NĐ-CP of the Government stipulating in details and guiding the implementation of several articles of 2005 Law on Prevention and Combating of Corruption
31. Decree No. 47/2007/NĐ-CP of the Government stipulating in details and guiding the implementation of several articles of 2005 Law on Prevention and Combating of Corruption regarding Roles, Responsibilities of the society in anti-corruption work
32. Decree No. 37/2007/NĐ-CP dated 09/3/2007 of the Government on Transparency of assets and income
33. Decree No. 68/2011/NĐ-CP dated 08/8/2011 of the Government amending, supplementing several articles of Decree No. 37/2007/NĐ-CP dated 09/3/2007 of the Government on Transparency of assets and income
34. Decree No. 158/2007/NĐ-CP of the Government stipulating list of working positions of public servants that requires periodical rotations and periods of time for rotation
35. Decree No. 102/2007/NĐ-CP of the Government stipulating period of time within which public servants are not allowed to conduct businesses in the areas under their management after ceasing holding the position
36. Decision No. 950/2009/QĐ-CTN dated 30/6/2009 of the State President on the ratification of UNCAC
37. Decision No. 445/QĐ-TTg dated 07/04/2010 of the Prime Minister approving the UNCAC Implementation Plan
38. Decision No. 64/2007/QĐ-TTg of the Prime Minister enacting Regulation on offering, receiving and handing over gifts by agencies, organizations and units which use budget from the State and by public officials
39. Instruction No. 20/2007/CT-TTg of the Prime Minister on the payment of salary through bank accounts for people who are not paid by the state budget
40. Decree No. 107/2006/NĐ-CP of the Government stipulating charges of responsibilities of the heads of agencies and units when corruption occurs within their scope of management
41. Decree No. 19/2008/NĐ-CP of the Government stipulating mechanism of payment of responsibility subsidy in anti-corruption work
42. Circular No. 2442/2007/TT TTCP dated 13/11/2007 of the Inspector General guiding the implementation of several articles of Decree No. 37/2007/NĐ-CP dated 09/3/2007 of the Government on Transparency of assets and income
43. Decree No. 70/2000/ND-CP, dated 21/11/2000 of the Government on keeping secrets, store and supply information relating to deposits and assets of clients
44. Decree No. 74/2005/ND-CP, dated 07/6/2005 of the Government on Anti-money laundering
45. Decree No. 65/2008/ND-CP, dated 20/05/2008 of the Government on functions, duties, powers and organizational structure of the Government Inspectorate
46. Decision No. 15/2003/QĐ-TTg, dated 20/01/2003 of the Prime Minister on the list of State's secrets and top secrets in banking sector
47. Decision 1424/2006/QĐ-TTg, dated 31/10/2006 of the Prime Minister on the establishment of the Anti-Corruption Bureau of the Government Inspectorate
48. Decision No. 1592/2008/QĐ-TTg dated 06/8/2008 of the General Inspector of the functions, duties, powers and organizational activities of the Anti-Corruption Bureau
49. Decision 13/2007/QĐ-TTg, dated 24/01/2007 of the Prime Minister on the establishment, functions, duties, powers, organization and operational regulations of the Office of the Central Steering Committee on Anti- Corruption

50. Decision No. 138/2009/QD-TTg, dated 12/09/2009 of the Prime Minister on the organization, name, duties and operation regulations of departments assisting the Steering Committees of provinces and cities under Central on Anti-corruption
51. Circular No. 02/2001/TT-NHNN dated 04/04/2001 of the State Bank guiding the implementation of Decree No. 70/2000/ND-CP dated 21/11/2000 of the Government of confidentiality, store and supply information relating to deposits and assets of clients
52. Circular No. 10/2009/TT-NHNN dated 05/08/2009 of the State Bank on amending and supplementing to Decision No. 45/2007/QD-NHNN dated 17/12/2007 of the State Bank on confidential levels of each document, object carrying State secrets in banking sector
53. Circular No. 22/2009/TT-NHNN dated 17/11/2009 of the State Bank guiding the implementation of Anti- money laundering measures
54. Circular No. 01/2011/TT-NHNN dated 21/02/2011 of the State Bank providing for ensuring safety and security of the information technology system in banking operation
55. Joint Circular No. 01/2006/TTLT-BTC-NHNN dated 04/01/2006 of the Ministry of Finance and the State Bank guidelines on exchange and provision of information between tax bodies and banks and credit institutions
56. Joint Circular No. 102/2010/TTLT-BTC-NHNN dated 14/7/2010 of the Ministry of Finance and the State Bank, replacing Joint Circular No. 01/2006/TTLT-BTC-NHNN dated 04/01/2006, guiding on exchange and provision of information between tax bodies and banks and credit institutions
57. Decision No.1004/2001/QD-NHNN dated 08/08/2001 of the State Bank providing amendments to part 2.2, Section II of Circular No. 02/2001/TT-NHNN of the State Bank dated 04/04/2001 guiding Decree No. 70/2000/ND-CP, dated 21/11/2000 of the Government on keeping secrets, store and supply information relating to deposits and assets of clients
58. Decision No. 121/QD-VKSTC-V9 dated 26/09/2006 of the Heads of the Supreme People's Procuracy on the establishment of a number of departmental units under the Supreme People's Procuracy, including The Department of Public prosecution rights and Investigations of corruption cases
59. Decision No. 01/2007/QD-BCA (X13), dated 02/01/2007 of the Minister of Public Security on functions, duties, powers and organization of the Police Department on Corruption investigation
60. Decision No. 44/2007/QD-NHNN dated 17/12/2007 of the State Bank on Regulation for Speaking and providing information by the State Bank to the press
61. Decision No. 45/2007/QD-NHNN dated 17/12/2007 of the State Bank on confidential levels of each document, object carrying State secrets in banking industry - Treaty on mutual legal and judicial assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the Socialist Republic of the Soviet Union (signed in Moscow on 10/12/1981, ratified on 01/22/1982)
62. Treaty on mutual legal and judicial assistance in civil and criminal matters between the Socialist Republic of Vietnam and the Socialist Republic of Czechoslovakia - now the Czech Republic and Slovakia inherits (signed in Prague on 12/10/1982, ratified on 30/03/1983)
63. Treaty on mutual legal assistance in civil, family, labor and criminal matters between the Socialist Republic of Vietnam and the Republic of Cuba (signed at Habana on 30/11/1984, ratified on 26/03/1985 and entered into force on 08/19/1987)

64. Treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the People's Republic of Hungary (signed in Hanoi on 18/01/1985 and ratified on 03/26/1985)
65. Treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the People's Republic of Bulgaria ( signed in Sophia)
66. Treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Viet Nam and the Republic of Poland (signed on 22/3/1993 in Warsaw, ratified on 8/3/1994)
67. Treaty on mutual legal assistance in civil and criminal matters between the Socialist Republic of Viet Nam and the Republic of China 1998
68. Treaty on mutual legal assistance in criminal and civil matters between the Socialist Republic of Vietnam and the Lao People's Democratic Republic (signed on 06/07/1998; ratified on 06/07/1999)
69. Treaty on mutual legal and judicial assistance in civil and criminal matters between the Socialist Republic of Vietnam and the Russian Federation (signed on 25th August 1998 in Moscow and ratified on 3 June 1999)
70. Treaty on mutual legal assistance in civil and criminal matters and between the Socialist Republic of Vietnam and Ukraine (signed on 06/04/2000 in Kiev)
71. Treaty on mutual legal assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and Mongolia (signed on 04/17/2000 in Ulanbataar, ratified on 5/6/2000)
72. Treaty on mutual legal and judicial assistance in civil, family and criminal matters between the Socialist Republic of Vietnam and the Republic of Belarus (signed on 14/09/2000 in Minsk)
73. Treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the Republic of Korea 2003 (signed on 15/9/2003 in Seoul, Korea)
74. Treaty on extradition between the Socialist Republic of Vietnam and the Republic of Korea 2003 (signed on 15/9/2003 in Seoul, Korea)
75. Treaty on mutual legal assistance in civil and criminal matters between the Socialist Republic of Vietnam and the People's Democratic Republic of Korea (signed on 3/5/2002 in Pyongyang, ratified on 24/2/2004)
76. Cooperation Arrangements between the Socialist Republic of Vietnam and the Federal Government of Myanmar in combating crimes 2004 (signed on 9/8/2004 in Hanoi)
77. Agreement on judicial assistance on criminal matters of ASEAN (signed on 29/11/2004 in Kuala Lumpur, Malaysia)
78. Memorandum of Understanding between the Socialist Republic of Vietnam and the Republic of Indonesia on cooperation to prevent and combat crimes (signed on 30/5/2005 in Hanoi)
79. Cooperation Arrangements between the Socialist Republic of Vietnam and the Republic of Germany in cooperation to prevent and combat serious crimes and organized crimes 2006 (signed 31/8/2006 in Berlin, Germany)
80. Treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the Republic of India 2007 (signed on 8/10/2007 in Hanoi)
81. Treaty on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland 2009 (signed on 13/1/2009 in Hanoi)
82. Treaty on mutual legal assistance on criminal matters between Vietnam and Algeria 2010 (signed on 14/4/2010 in Alger)

83. Treaty on Extradition between the Socialist Republic of Vietnam and Algeria 2010 (signed on 14/4/2010 in Alger)
84. Treaty on Cooperation and Collaboration between Ministry of Public Security of the Socialist Republic of Vietnam and Security Agency of the Russian Federation (signed on 2/2/2001 in Moscow)
85. Treaty on Cooperation and Collaboration between Ministry of Public Security of the Socialist Republic of Vietnam and Ministry of Home Affairs of the Russian Federation 2002 (signed on 27/3/2002 in Hanoi)
86. Resolution of the 3rd Meeting of the Party's Central Executive Committee of the Xth tenure, dated 21/8/2006 on enhancing the leadership of the Party towards the work of anti-corruption and anti-wastefulness
87. Resolutions of the Party Congress of XI, X, IX, VIII, VII- Sections on Assessment and Instructions of the Communist Party of Vietnam in anti-corruption work.

**Annex II – Penalties in corruption cases received and tried by all courts of first instance**

**2009**

Penal Code Article	Crime	Cases						Case Analysis								Pending Cases						
		Remaining		New		Total		Cases to be transferred		Suspended		Case sent back to Procuracy			Tried		Total		Temporarily suspended			
		Case	Defendant	Case	Def.	Case	Def.	Case	Def.	Case	Def.	Case	Def.	Total		Case denied to be received back	Total		Case	Def.	Case	Def.
														Case	Def.		Case	Def.				
278	Embezzling property	18	73	216	503	<b>234</b>	<b>576</b>			4	6	64	204	2	154	339	<b>12</b>	<b>27</b>		1		
279	Receiving bribe	3	12	35	90	<b>38</b>	<b>102</b>					7	14		25	55	<b>6</b>	<b>33</b>				
280	Abusing positions and/or powers to appropriate property	9	15	84	131	<b>93</b>	<b>146</b>					23	40	5	66	99	<b>4</b>	<b>7</b>				
281	Abusing positions and/or powers while performing official duties	5	21	68	300	<b>73</b>	<b>321</b>	1	1			21	80	1	44	199	<b>7</b>	<b>41</b>				
282	Abusing powers while performing official duties	0	0	6	17	<b>6</b>	<b>17</b>					1	3		4	12	<b>1</b>	<b>2</b>				
283	Abusing positions	0	0	5	10	<b>5</b>	<b>10</b>					4	9		1	1						

	and/or powers to influence other persons for personal profits																			
284	Forgery in the course of employment	0	0	12	28	12	28	2	2			4	15		5	9	1	2		
<b>Total</b>		<b>35</b>	<b>121</b>	<b>426</b>	<b>1079</b>	<b>461</b>	<b>1200</b>	<b>3</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>124</b>	<b>365</b>	<b>8</b>	<b>299</b>	<b>714</b>	<b>31</b>	<b>112</b>	<b>0</b>	<b>1</b>

Penalty Analysis (of the above-listed cases)															
P.C. Article	Crime	Innocence	Exemption	Reformatory school or commune education	Expulsion	Warning	Fine	Non-custodial reform	Suspended sentence	Less than 3 years of imprisonment	3 - 7 years of imprisonment	7 - 15 years of imprisonment	15 - 20 years of imprisonment	Life imprisonment or capital punishment	Augmented penalty from 20 to 30 years of imprisonment
278	Embezzling property														1
279	Receiving bribe			3					13	14	15	9	1		
280	Abusing positions and/or powers to appropriate property		1					1	33	30	21	12	1		1
281	Abusing positions and/or powers	2	1			5		5	85	69	29	2	1		

	while performing official duties																	
282	Abusing powers while performing official duties								1	7	2	2						
283	Abusing positions and/or powers to influence other persons for personal profits											1						
284	Forgery in the course of employment									2	7							
278	Embezzling property	3	2	3	6	8	0	8	249	216	128	67	21	3	2			

**2010**

Penal Code Article	Crime	Cases						Case Analysis						Pending Cases					
		Remaining		New		Total		Cases to be transferred		Suspended		Case sent back to Procuracy		Tried	Total		Temporarily suspended		
		Case	Def.	Case	Def.	Case	Def.	Case	Def.	Case	Def.	Total	Case denied to be received back	Total	Case	Def.	Case	Def.	

												Case	Def.		Case	Def.				
278	Embezzling property	8	23	197	461	<b>205</b>	<b>484</b>					58	172	1	135	237	<b>12</b>	<b>75</b>	1	1
279	Receiving bribe	5	31	26	67	<b>31</b>	<b>98</b>					9	52		16	36	<b>6</b>	<b>10</b>		2
280	Abusing positions and/or powers to appropriate property	4	7	58	83	<b>62</b>	<b>90</b>					9	11		48	73	<b>5</b>	<b>6</b>		
281	Abusing positions and/or powers while performing official duties	7	41	61	237	<b>68</b>	<b>278</b>					22	75	2	39	165	<b>7</b>	<b>38</b>		
282	Abusing powers while performing official duties	1	2	22	55	<b>23</b>	<b>57</b>					7	21	1	16	36	<b>0</b>	<b>0</b>		
283	Abusing positions and/or powers to influence other persons for personal profits			1	2	<b>1</b>	<b>2</b>					1	2				<b>0</b>	<b>0</b>		

284	Forgery in the course of employment	1	2	7	36	8	38	1	2			1	11		5	23	1	2		
<b>Total</b>		<b>26</b>	<b>106</b>	<b>372</b>	<b>941</b>	<b>398</b>	<b>1047</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>107</b>	<b>344</b>	<b>4</b>	<b>259</b>	<b>570</b>	<b>31</b>	<b>131</b>	<b>1</b>	<b>3</b>

**Penalty Analysis (of the above-listed cases)**

<b>P.C. Article</b>	<b>Crime</b>	Inno- cence	Exem- ption	Reforma- tory school or commune education	Expul- sion	War- ning	Fine	Non- custo- dial reform	Suspen- ded sentence	Less than 3 years of imprison- ment	3 - 7 years of imprison- ment	7 - 15 years of imprison- ment	15 - 20 years of imprison- ment	Life imprison- ment or capital punish- ment	<i>Augmen- ted penalty from 20 to 30 years of imprison- ment</i>
278	Embezzling property	1	2				1	1	78	75	45	21	12	1	2
279	Receiving bribe								12	9	11	4			
280	Abusing positions and/or powers to appropriate property							2	32	15	12	11	1		
281	Abusing positions and/or powers while performing official duties	4				5	4	13	63	30	24	22			
282	Abusing powers while performing								16	11	8	1			

	official duties																	
283	Abusing positions and/or powers to influence other persons for personal profits																	
284	Forgery in the course of employment							1	7	8	7							
278	Embezzling property	5	2	0	0	5	5	17	208	148	107	59	13	1	2			

**2011**

Penal Code Article	Crime	Cases						Case Analysis								Pending Cases						
		Remaining		New		Total		Cases to be transferred		Suspended		Case sent back to Procuracy			Tried		Total		Temporarily suspended			
		Case	Def.	Case	Def.	Case	Def.	Case	Def.	Case	Def.	Case	Def.	Total		Case denied to be received back	Total		Case	Def.	Case	Def.
														Case	Def.		Case	Def.				
278	Embezzling property	10	68	176	406	186	474			1	1	46	180	1	122	254	17	39		1		
279	Receiving bribe	6	10	22	50	28	60	2	4			6	12		18	34	2	10				
280	Abusing positions and/or powers to	3	4	36	72	39	76	1	1			9	20		29	55	0	0				

	appropriate property																			
281	Abusing positions and/or powers while performing official duties	6	35	59	170	65	205			1	1	24	88	1	36	86	4	30		
282	Abusing powers while performing official duties	0	0	7	17	7	17					2	6		5	11	0	0		
283	Abusing positions and/or powers to influence other persons for personal profits			1	2	1	2					1	2				0	0		
284	Forgery in the course of employment	0	0	12	68	12	68					1	20		10	45	1	3		
<b>Total</b>		<b>25</b>	<b>117</b>	<b>313</b>	<b>785</b>	<b>338</b>	<b>902</b>	<b>3</b>	<b>5</b>	<b>2</b>	<b>2</b>	<b>89</b>	<b>328</b>	<b>2</b>	<b>220</b>	<b>485</b>	<b>24</b>	<b>82</b>	<b>0</b>	<b>1</b>

**Penalty Analysis (of the above-listed cases)**

<b>P.C. Article</b>	<b>Crime</b>	Inno- cence	Exem- ption	Reforma- tory school or commune education	Expul- sion	War- ning	Fine	Non- custodial reform	Suspen- ded sentence	Less than 3 years of imprison- ment	3 - 7 years of imprison- ment	7 - 15 years of imprison- ment	15 - 20 years of imprison- ment	Life imprison- ment or capital punish- ment	<i>Augmen- ted penalty from 20 to 30 years of imprison- ment</i>
278	Embezzling property	5	2	1		1	3		92	49	47	39	12	3	2
279	Receiving bribe									18	10	5		1	
280	Abusing positions and/or powers to appropriate property							2	21	14	9	7	2		1
281	Abusing positions and/or powers while performing official duties		6					4	38	30	8				
282	Abusing powers while performing official duties		1			1		3	2	1	3				
283	Abusing positions and/or powers to influence														

	other persons for personal profits														
284	Forgery in the course of employment							1	7	8	7				
278	Embezzling property	5	2	0	0	5	5	17	208	148	107	59	13	1	2

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