

**Ministry of Justice, Vietnam**

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Dear Sir/Madam,

**ICJ Comments and Recommendations on the Draft National Action Plan on Policy and Law Improvement to Promote Responsible Business Practices in Vietnam (Dated 20 February 2023)**

The International Commission of Jurists welcomes the decision by the Ministry of Justice of Vietnam to develop the National Action Plan on Policy and Law Improvement to Promote Responsible Business Practices in Vietnam ('draft NAP'), and the opportunity provided to stakeholders to provide comments on the draft NAP, dated 20 February 2023.

The government has set the timeframe to allow for public consultations between 20 February 2023 and 10 March 2023. Given the limited time available and the complex nature of the issues addressed in the draft NAP, the following comments and recommendations are only of preliminary nature and are not comprehensive. The ICJ would welcome further opportunities to engage and provide comments in the future.

The ICJ notes the commitment of the Vietnamese Ministry of Justice to implementing responsible business practices ('RBP') in accordance with international standards and commitments by developing the draft NAP, for the 5-years period between 2023 and 2027.

Although the draft NAP purports to be "in line with optional international standards, such as United Nations Guiding Principles on Business and Human Rights ('UNGPs')", and other frameworks developed at the International Labour Organization ('ILO') and the Organization for Economic Cooperation and Development ('OECD'),<sup>1</sup> the ICJ underscores that these standards, taken alone, are incomplete. It is critical that Vietnam also take full account of its international human rights law treaty obligations, as interpreted by UN treaty bodies. Under each human rights treaty, including the International Covenant on Civil and Political Rights ('ICCPR'), International Covenant on Economic, Social and Cultural Rights ('ICESCR') and Convention on the Rights of the Child ('CRC'), among others, the State is required to take effective measure to protect people from conduct of businesses enterprises that would impair the enjoyment of individual human rights. These obligations have been clarified in detail by

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<sup>1</sup> The Draft NAP, under PART 1 (II.) (2.) The driving force of RBP and (3.) Basic requirements of RBP

the UN Committee on Economic Social and Cultural Rights in its General Comment No. 24<sup>2</sup> and by the UN Committee on the Rights of the Child in its General Comment No. 16.<sup>3</sup>

The following comments and recommendations aim at strengthening the draft NAP, particularly taking into consideration the UN Working Group on Business and Human Rights ('WGBHR') Guidance on National Action Plans on Business and Human Rights ('WGBHR Guidance').<sup>4</sup>

### *Inclusive and transparent process*

To ensure the legitimacy and effectiveness of a NAP, the draft NAP should be developed and implemented through an inclusive and transparent process.

According to the draft NAP, the consultation process was carried out with "relevant ministries, sectors, agencies and organizations."<sup>5</sup> However, it is unclear if some of the stakeholders identified by the WGBHR Guidance, including members of trade unions and civil society organizations as well as representatives of population groups particularly exposed to and affected by business-related human rights abuse, such as persons belonging to ethnic or religious minorities and indigenous peoples, were among the participants included or invited to contribute to the process.<sup>6</sup>

In addition, the public is expected to register their concerns about the draft NAP through the website of the Ministry of Justice<sup>7</sup> between 20 February 2023 and 10 March 2023 – an unacceptably short period of time that leaves the interested populations with limited time to voice their concerns. Communities in certain areas also have no or limited access or means to participate in online consultations, and many may not have been aware of the process.

### *Use the UNGPs and other UN documents as authoritative documents*

The draft NAP should be founded primarily upon the UNGPs and international human rights treaty law, as the global framework to guide Vietnam's actions to promote responsible business. Other international legal sources, including ILO treaties and recommendations, should also be used and referenced as they carry authority and are relevant to this process.

To bring its draft NAP into line with the UNGPs, Vietnam should use the WGBHR Guidance as a reference guide for all stakeholders. The underlying principles, recommendations and commitments as set out in the Guidance should be explicitly reflected in the draft NAP.

The draft NAP should contain an explicit State commitment to protect against adverse business-related human rights impacts of all kinds and to provide access to effective remedies and reparation to victims of business human rights abuse. It should embed measures implementing the Guiding Principles directed at States (Guiding Principles 1-10, 25-28, 30,

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<sup>2</sup> Committee on Economic Social and Cultural Rights, 'General comment No. 24 (2017) on State obligations in the context of business activities', E/C.12/GC/24, 23 June 2017, available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2017-state-obligations-context>

<sup>3</sup> Committee on the Rights of the Child, 'General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights', CRC/C/GC/16, 17 April 2013, available at: <https://www2.ohchr.org/2english/bodies/crc/docs/crc.c.gc.16.pdf>

<sup>4</sup> WGBHR, 'Guidance on National Action Plans on Business and Human Rights', November 2016, at 4, available at: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf) ('WGBHR Guidance').

<sup>5</sup> The Draft NAP, under PART 3(II)(3.) Scope of the NAP

<sup>6</sup> WGBHR Guidance, at 4.

<sup>7</sup> See: <https://moj.gov.vn/qt/tintuc/Pages/chi-dao-dieu-hanh.aspx?ItemID=3695>

and 31). Further, it should include the clear expectation that business enterprises must respect human rights and measures to ensure the implementation of human rights due diligence ('HRDD'). The measures contemplated should take into account the extraterritorial implications of the activities of business enterprises based in Vietnam, including measures of prevention and remedy of extraterritorial adverse impacts.<sup>8</sup>

Unfortunately, the current draft NAP does not contain those elements.

*Priority areas and action plans must respond to Vietnam's specific challenges*

The draft NAP should respond to specific challenges faced by Vietnam to ensure an acceptable level of responsible business practice.

According to the WGBHR, the NAP's priority areas are based on two criteria: (i) the severity of adverse human rights impacts judged by their scale, scope, and irremediable character; and (ii) the leverage of the Government in bringing about actual change on the ground.<sup>9</sup>

Nevertheless, the immediate priority areas that were identified in the draft NAP include: (i) selective investment attraction; (ii) environmental protection; (iii) labour; (iv) protecting the rights of vulnerable groups; and (v) protection of consumer rights. Vulnerable groups that were considered in the draft NAP, where additional measures will be taken to ensure their protection, included workers in the unofficial or gig economy, children, women, persons with disabilities, and LGBTI.

Such priority areas and vulnerable groups, as well as their respective action plans, failed to include several of the specific challenges faced by Vietnam in relation to business-related human rights abuse. Indigenous peoples, ethnic minorities, as well as human rights defenders do not receive specific attention in the Draft NAP even when they are among those specifically affected by corporate human rights abuses.

Existing challenges that were left out include:

- The growing crackdown on human rights defenders and civil society actors, who face threats, intimidation and physical attacks, to discourage them from carrying out their legitimate activities;<sup>10</sup>
- The challenges around forced eviction and the ambiguities with regard to public and private domains of land ownership, as well as the allegations of land seizure or land transfers from communities to business entities by the government and/or the

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<sup>8</sup> WGBHR Guidance, at ii and 11-12.

<sup>9</sup> WGBHR Guidance, at 4, 12-13

<sup>10</sup> Human Rights Committee, 'Concluding observations on the third periodic report of Viet Nam', CCPR/C/VNM/CO/3, 29 August 2019 ('CCPR/C/VNM/CO/3'); OHCHR and the UN Environment Programme, 'News Release', 22 April 2022, available at: <https://bangkok.ohchr.org/viet-nam-rights-defenders/>; OHCHR, 'Viet Nam: UN experts appalled by the conviction of four human rights defenders', 23 December 2021, available at: <https://www.ohchr.org/en/press-releases/2021/12/viet-nam-un-experts-appalled-conviction-four-human-rights-defenders>; and ICJ, 'https://www.icj.org/vietnam-immediately-release-independent-journalist-and-human-rights-defender-pham-doan-trang/', 26 October 2021, available at: <https://www.icj.org/vietnam-immediately-release-independent-journalist-and-human-rights-defender-pham-doan-trang/>. See also UN General Assembly, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms', 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html>. The Declaration was adopted in 1999 by consensus of the General Assembly and thus represents a unanimous commitment by all UN member States to its implementation.

companies without adequate consultation and effective remedy and reparation, including in the context of the areas of economic zones, hi-tech parks, industrial zones, and urban and rural residential areas;<sup>11</sup>

- The lack of genuine opportunities for the affected communities, including the indigenous peoples,<sup>12</sup> to take part in the decision-making processes with respect to issues affecting their rights, such as the seizure and allocation of land for development projects, or offered appropriate remedies;<sup>13</sup> and
- The undue restrictions on the establishment, management and operation of public associations, including the right to form independent trade unions.<sup>14</sup>

In response to such challenges, the WGBHR Guidance suggests several potential measures,<sup>15</sup> including signing and ratifying international and regional legal human rights instruments; ensuring equal and non-discriminatory protection of all individuals by taking additional and tailored measures to ensure the protection of groups in particular situation of vulnerability; implementing measures with extraterritorial implications; improving enforcement of existing laws; addressing gaps in the legal framework; making business enterprises aware of State's expectations; providing information and support services to companies; encouraging corporations to report on HRDD; and ensuring implementation of UNGPs by State-owned or controlled companies.

## Recommendations

In light of the above, the ICJ offers the following recommendations with a view to strengthening the draft NAP:

1. Conduct on-site consultations on the draft NAP in order to ensure that all stakeholders, including trade unions, civil society organizations, as well as representatives of population groups that may be particularly exposed to and affected by business-related human rights abuse, such as persons belonging to ethnic or religious minorities and indigenous peoples, are meaningfully and genuinely consulted, in a manner that complies with requirements under international law and standards. These include ensuring that relevant information is disseminated by the authorities in advance and stakeholders have sufficient time to understand proposals, prepare and provide meaningful responses without fear of reprisal;
2. The consultation deadline should be extended to ensure transparency and greater participation and meaningful consultation with affected communities;

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<sup>11</sup> Kuaycharoen, P., Longcharoen, L., Chotiwan, P., Sukin, K., Lao Independent Researchers, 'Special Economic Zones and Land Dispossession in the Mekong Region', Bangkok: Land Watch Thai, 2020; see also: UNDP, 'Preliminary Assessment of the Regulatory Framework on Responsible Business Practice in Viet Nam', 19 October 2020, at 64-67, available at: <https://www.undp.org/asia-pacific/bizhumanrights/publications/preliminary-assessment-regulatory-framework-responsible-business-practice-viet-nam>. ('UNDP RBP Report')

<sup>12</sup> UN Declaration on the Rights of Indigenous Peoples, Resolution 61/295 adopted by the UN General Assembly on 13 September 2007, available at: [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

<sup>13</sup> CCPR/C/VNM/CO/3, para 55-56; and UNDP RBP Report, at 88-91.

<sup>14</sup> CCPR/C/VNM/CO/3, para 49-50

<sup>15</sup> WGBHR Guidance, Annex III.

3. Explicitly refer to the UNGPs, UN human rights treaties, and ILO instruments as the authoritative documents on which the draft NAP's action plans are based;
4. Expressly state the commitment to protect against adverse business-related human rights impacts and to provide effective remedies to victims of business human rights abuse;
5. Include measures implementing each of the Guiding Principles directed at States, as illustrated by the WGBHR in Annex III of its Guidance, and the Guiding Principles under pillars II and III;
6. Clearly state the expectation that business enterprises must respect human rights and implement HRDD under pillar II of the UNGPs, as well as the policy and legal measures to ensure business enterprises do so;
7. Include measures to prevent the adverse human rights effects of extraterritorial implications of business operations and provide for redress and accountability;
8. Ensure that the draft NAP responds to the specific challenges of Vietnam identified in consultation with all stakeholders, including civil society and trade unions, and representatives of population groups that may be particularly exposed to and affected by business-related human rights abuse. These include the crackdowns on human rights defenders and civil society actors, the challenges around forced eviction and land ownership, the lack of genuine opportunities for the affected communities to take part in the decision-making processes, and undue restrictions on trade unions; and
9. Recognize indigenous peoples, ethnic minorities, and human rights defenders as vulnerable groups in the draft NAP, where additional measures are necessary to be taken to ensure their protection.

We remain at your disposal for any further information or clarifications you may require.

Yours faithfully,

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