



# The Responsibility to Protect in Viet Nam: Challenges, Opportunities and Cases for Implementation

Working Paper on Viet Nam  
The Responsibility to Protect in Southeast Asia Program

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28 May 2011



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## Executive Summary

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This report examines the Responsibility to Protect (R2P) in Viet Nam by evaluating some of the successes and challenges the country has faced for implementing the R2P mandate. Viet Nam's history of violence, war, social upheaval and economic hardship make the prevention of future mass atrocities critical for the country itself and for the region. The aim of this report is to present a background of relevant issues that have restrained the country's capacity to implement the R2P and to offer recommendations for principle implementations and capacity improvement. The report provides specific insight into the weaknesses of Viet Nam's human rights status, the vulnerabilities of ethnic minorities to human rights abuses and the potential for these abuses to escalate into the commission of mass atrocities. The overall purpose of this report is to provide useful information for professionals and practitioners with an interest in Viet Nam who may be unfamiliar with the country's current political developments and human rights status that are relevant to the implementation of the R2P.

This report begins with a short summary of Viet Nam's turbulent modern history and how this has led to efforts by the Vietnamese authorities to improve the country's socioeconomic development and foreign affairs through the implementation of Doi Moi renovations. **Section one** briefly discusses the concept of R2P adopted at the 2005 World Summit and the commitment of States outlined in the World Summit Outcome Document.<sup>1</sup> Viet Nam and the Responsibility to Protect is addressed by discussing Viet Nam's political agenda and commitment with regard to each of the three pillars in the three-pillar strategy expanded in the UN Secretary General's report on 'Implementing the Responsibility to Protect'.<sup>2</sup>

**Section two** discusses some of the challenges Viet Nam currently faces in its efforts to implement the R2P. The report examines specific concerns regarding the Vietnamese legal system and mechanisms that contribute to the government's impunity for the commission of human rights abuses and corruption that could subsequently contribute to collective violations of human rights. This section then examines Viet Nam's performance of governance through its capacity to uphold the protection of its civilians, in which specific reference is made to human rights abuses experienced by ethnic minority groups (Christian Montagnards and Khmer Kampuchea Krom Peoples). Acknowledgement is made of the active efforts that the Vietnamese government has made to address the needs and rights of its minorities, but in agreement with the response of the United Nations OHCHR to Viet Nam's most recent Universal Periodic Review and the UN Independent Expert on Minority Issues, Ms Gay McDougall, this report raises concerns for the well-being of minority groups in Viet Nam. The representation of the people and civil society in Viet Nam

and also how the Vietnamese Communist Party addresses challenges to its political legitimacy are then discussed to demonstrate how patterns of authoritarian political thinking and heavy-handed rule used to maintain political power have overshadowed improving the country's capacity to implement the responsibility to protect its population.

The overall conclusion of this report is that the population of Viet Nam would ultimately benefit from the strengthening of the R2P principle in Viet Nam. Undoubtedly, the country's efforts to develop economically and open its doors to the rest of the world have advanced the well-being of its population. In spite of this and in order for the Vietnamese government to live up to its commitment to the Responsibility to Protect, it is essential for its authorities to implement international human rights standards domestically as outlined by the United Nations OHCHR and maintain a growing and cooperative involvement in international relations. It is also important for the Vietnamese authorities to implement mechanisms that guarantee legitimate equity and social justice through the rule of law and socio-economic development. The report offers recommendations on how to achieve this.





## Section One: Viet Nam and the Responsibility to Protect

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### **A Better Future for the Vietnamese People: Renovation**

At many points in modern Vietnamese history, the Socialist Republic of Viet Nam has demonstrated concerted efforts to advance the wellbeing of its people as articulated by Ho Chi Minh, the country's revolutionary leader. The country's constitutional pledge is, "a State of the people, by the people, for the people" (*cua dan, do dan, vi dan*)<sup>3</sup>. These efforts have been immutably tied to a desire to rebuild after decades of human atrocities associated with a history of colonisation, wars and arduous revolutionary struggle.

From the Indochina War (French War) against the French from 1945 to 1954 and the Vietnam War (American War) during the 1960s and early 1970s, the country's people have faced numerous challenges to reunify and survive. After reunification of the north and south in 1976, the country was left desperately poor with a million people made homeless and as many as one-eighth of the population injured.<sup>4</sup> After the war, the United States froze \$150 million Vietnamese assets in the United States and imposed a trade embargo on Viet Nam (and Cambodia) which ruled out normal business transactions between any American companies and Viet Nam. Not only did the embargo eliminate Viet Nam's hopes for an American contribution to postwar reconstruction and concession, it also aimed to hinder the recovery of Viet Nam's postwar economy.<sup>5</sup> To rebuild the country, the Vietnamese government embarked upon the socialization of industry and agriculture, modeled on the constitutions of the Soviet Union and the People's Republic of China, and which sadly involved the brutal repression of those who protested.<sup>6</sup> Hundreds of thousands of people, many ethnic Chinese, fled the country either over the mountains to China or as "boat people", heading for China, Hong Kong or overseas as refugees.<sup>7</sup>

Aside from domestic instability, border clashes with Cambodia led to Vietnam's invasion of Cambodia in 1978 (Cambodian–Vietnamese War) which resulted in the fall of the Khmer Rouge led by Pol Pot, but also led to China, in support of Cambodia, launching a brief invasion of Viet Nam in 1979.<sup>8</sup> From 1979 to 1989, Viet Nam occupied Cambodia in an effort to control the country. Eventually, Viet Nam's inability to eliminate Cambodian resistance groups combined with a decline in Soviet economic aid led to the withdrawal of Vietnamese forces from Cambodia.<sup>9</sup> This signaled the end of the Cold War in Southeast Asia, and encouraged hope that the exhausted Vietnamese economy might be reinvigorated. A change in thinking among the leadership of the Vietnamese Communist Party and the reinstatement to the politburo of Nguyen Van Linh, an avid supporter of greater liberalization of the economy, coincided with the rise of power of Mikhail Gorbachev in 1985 as general secretary of the Communist Party in the Soviet Union.<sup>10</sup> The VCP were interested in

regenerating their stagnant economy along the lines of Gorbachev's policies of 'Glasnost' (openness) and 'Perestroika' (restructuring), but with a Vietnamese distinctiveness.<sup>11</sup>

Since 1986, Viet Nam has embraced a new policy direction or 'renovation' process, known as 'Doi Moi', which was implemented to promote the country's socioeconomic development and integration with the rest of the world.<sup>12</sup> Renovation brought about three great changes to the country's traditional planned economy and political and economic isolation. Primarily, authorities made a shift from a bureaucratic centralized planned economy to a multi-sector economy that operated as an open-market but with state management and a socialist orientation.<sup>13</sup> Renovation also included democratizing social life and building a legal state centred on the needs of the people of Viet Nam. Authorities also implemented an open door policy with the international community and has now established diplomatic relations with 172 nations and signed trade agreements with 76 countries.<sup>14</sup> The liberalization of the country's domestic markets has resulted in the rapid growth of agricultural and manufacturing production. The new market policy has also opened its economy to trade and foreign investment, and has welcomed flows of tourists, businesspersons, students, and scholars.<sup>15</sup> The UN Millennium Development Goal Monitor as of 2008 showed that Viet Nam had already met the target of halving extreme poverty and hunger with only 2.2 per cent of the population now living below the purchasing power parity (PPP) of \$1 per day.<sup>16</sup> Viet Nam is also on track to achieve five of the eight Millennium Development Goals to be reached by 2015.<sup>17</sup> As a result, Viet Nam has recovered substantially from its troubled past while Doi Moi has produced strong economic growth and noticeable improvements to the alleviation of poverty and the improvement of the human well-being of its population.

While the Vietnamese Communist Party (VCP) has permitted a growing mid-level private sector and has undertaken fundamental institutional changes to improve its economy, it continues to hold a firm grip on power and has rejected domestic and international requests for political reform and pluralism.<sup>18</sup> There continues to be concerns regarding particular human rights issues and high levels of corruption that have impeded the pace of social and political reform in comparison to the economic progress achieved since the implantation of Doi Moi.<sup>19</sup> These failures undermine the country's ability to fulfil its Responsibility to Protect (R2P) its civilians.

### **The Responsibility to Protect and Viet Nam**

The international community has recognized the urgency to prevent the kinds of atrocity crimes experienced in Cambodia, the former Yugoslavia and Rwanda. On the recommendation of the then UN Secretary-General Kofi Annan and vocal advocacy from several countries, the concept of the Responsibility to Protect was adopted in the 2005 World Summit and the commitment of States outlined in the World Summit Outcome Document in paragraphs 138, 139 and 140 as follows.

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against

humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capacity.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

140. We fully support the mission of the Special Advisor of the Secretary-General on the Prevention of Genocide.<sup>20</sup>

In a follow-up to the World Summit Outcome, a three-pillar strategy to implement the Responsibility to Protect was outlined in the Report of the current UN Secretary-General, Ban Ki-moon, at the 63<sup>rd</sup> Session of the General Assembly on 12 January 2009. A summary of the three pillars is as follows:

*Pillar one:* It is the responsibility of the State to protect its population, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement. From the pre-existing obligation of State sovereignty, the responsibility lies first and foremost with the State.

*Pillar two:* It is the responsibility of the international community to assist States in meeting their obligations to protect by forging a policy, procedure and practice that can apply preventive and capacity-building measures.



*Pillar three:* It is the responsibility of Member States to respond collectively and in a timely and decisive manner when a State fails or is unable to protect. This may involve a broad range of measures under Chapter VI (Pacific Settlement Disputes), Chapter VII (Action with Respect to Threats to the Peace, Breaches of Peace, and Acts of Aggression), or Chapter VIII (regional Arrangements) of the UN Charter.<sup>21</sup>

### **Viet Nam and Pillar One**

Part of the R2P principle depends upon the ability and determination of Member States to fulfill their responsibility to protect civilians from mass atrocity crimes through preventive measures as a defining attribute of sovereignty and statehood in the twenty-first century.<sup>22</sup> Viet Nam has committed itself to fulfill this obligation.<sup>23</sup> Vietnamese authorities recognize the significance of Viet Nam's support of the Responsibility to Protect as the country becomes a growing economic and diplomatic force in the Association of Southeast Asian Nations (ASEAN) and the Asia-Pacific region. Today, Viet Nam recognizes the success of implementing the Responsibility to Protect norm is contingent on its reception and the degree of acceptance amongst the actors involved and commits to proactively and constructively working with members of the region and international community to ensure its success.<sup>24</sup> Viet Nam endorsed at the UN General Assembly Debate on the Responsibility to Protect on 24 July 2009, that "each individual State has the responsibility to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity and from their incitement".<sup>25</sup> This is in agreement with paragraph 138 of the 2005 World Summit Outcome Document and Pillar One of the 2009 Secretary-General's Report, 'Implementing the Responsibility to Protect'.<sup>26</sup>

It has been stressed by the Secretary-General, Ban Ki-moon that R2P is grounded in the UN Charter, existing human rights' treaties and international humanitarian law.<sup>27</sup> Specific measures to prevent mass atrocities such as the ratification of human rights treaties, the adoption of accountability measures, the strengthening of the United Nations and regional organizations in their early warning mechanisms, stand-by abilities and mediation capacities are all important tools for each UN Member State.<sup>28</sup> In accordance with pillar one, Viet Nam has and continues to progress as an active member in the international community and continues to improve domestic affairs in areas that demonstrate good-governance, and cooperation with the United Nations.

Viet Nam has joined many of the international conventions on human rights including specific treaties that are core to the Responsibility to Protect. For example, in the early 1980s, Viet Nam became party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and also the Declaration on the Elimination of Violence Against Women. Viet Nam also ratified the Convention on the Rights of the Child in 1990.

In addition to signing up to numerous international treaties, Viet Nam has also improved the protection of human rights domestically. In accordance with the standards of international human rights as stipulated in the UN Declaration of Human Rights, the 1992 Vietnamese Constitution states that the civil, political, economic, social and cultural rights of every citizen must be respected and stipulates that the Vietnamese Constitution and the country's domestic laws must be in conformity with international treaties.<sup>29</sup> Since the implementation of Doi Moi in 1986, Viet Nam has issued and amended approximately 13,000 laws and by-law documents, by which civil and political rights have been established more specifically and comprehensively.<sup>30</sup> In doing so, Viet Nam has demonstrated efforts to protect its civilians through domestic mechanisms manifested through the rule of law in accordance with international human rights' standards. However, Viet Nam has been encouraged by the United Nations and ASEAN Members to reassess its efforts and strategies to establish an independent National Human Rights Commission (NHRC) so as to improve its human rights performance. Viet Nam's collaboration within the UN and AICHR has offered the Vietnamese authorities the opportunity to engage in a commitment to work with other states to address related issues raised by the United Nations Human Rights Commission (UNHRC) and other non-governmental organisations. In particular, this collaboration offers Viet Nam the opportunity to address the country's prevailing challenges pertaining to accountability and transparency on human rights issues and to provide necessary support to prevent and redress many past and current abuses. Areas of concern are in relation to the harmonisation and implementation of laws regarding non-discrimination (particularly relating to the non-discrimination against indigenous peoples), equal participation, the right to freedom of expression, opinion and the press, the right to freedom of religion and belief, the rights of women, labour rights and the rights concerning detention conditions, ill-treatment of prisoners and the death penalty.<sup>31</sup> The United States Congress has provided assistance and capacity-building towards Viet Nam's human rights' maintenance and performance as a result of these concerns.

In light of these issues, Viet Nam has been working with other States on improvements in these areas. The United States Congress, for example, has provided assistance and capacity building towards Viet Nam's human rights' maintenance and performance as a result of these concerns. Viet Nam also engages biannually in human rights dialogue with the United States. The Vietnam Human Rights Act of 2009 was introduced to the US Congress with the purpose of promoting freedom and democracy in Viet Nam by the American government by withholding non-humanitarian assistance until basic civil rights are restored.<sup>32</sup> This assistance comes as a welcome change in the economic relationship between the two countries, which has developed substantially since the end of the US trade embargo with Viet Nam in 1994. The United States Congress agreed to Viet Nam becoming an official member of the World Trade Organization in 2006, amidst assurances that the government of Viet Nam would steadily improve its human rights record. The United States Congress, however, has found that Viet Nam's transition toward greater economic freedom and trade has not been matched by greater political freedom and substantial improvements in basic human rights for Vietnamese citizens. The

Vietnam Human Rights Act, therefore, was partly intended by the US to encourage Viet Nam to improve its human rights record.<sup>33</sup> The United States has put in place a prohibition on increased non-humanitarian assistance to the government of Viet Nam unless assistance supports the creation and facilitation of human rights training, civil society capacity building, non-commercial rule of law programming, and exchange programs between the Vietnamese National Assembly and the United States Congress. The Government of Viet Nam must respond by making substantial progress towards upholding all human rights to international standards and especially the rights which have drawn concern.

As a state party to major international human rights instruments, Viet Nam has binding obligations to incorporate human rights' guarantees into its legal system, to comply with the Universal Periodic Review outcome requirements, and to extend invitations to UN Special Rapporteurs. While Viet Nam has voiced its commitment to human rights, its performance is restricted by its broadly-defined provisions in the country's Criminal Code which is controlled by the Vietnamese Communist Party whose political monopoly is enshrined in the Constitution. The provision of the Criminal Code and the Constitution restricts the exercise of basic human rights, because it excludes all forms of pluralism or alternative thought outside those advocated by the Vietnamese Communist Party.<sup>34</sup> The country's capacity to protect its civilians against mass atrocity crimes is therefore also restricted. However, Viet Nam's participation in the UN and ASEAN is encouraging to the country's continual social and political progress and demonstrate the aim to improve human rights standards. Until that happens, Viet Nam's domestic laws and practices are in contradiction to its commitment and obligations to international human rights standards.

### **Viet Nam and Pillar Two**

Viet Nam has gained support from and has offered assistance for capacity building for the prevention of mass atrocity crimes within the international community. Viet Nam has shown this commitment to R2P's second pillar by working with the UN and within regional organizations, such as ASEAN, as well as with their Member States to create overarching human rights institutions and mechanisms to prevent and resolve conflict. H.E. Ambassador Bui The Giang, Deputy Permanent Representative of Viet Nam, endorsed a commitment to work with the international community and the United Nations system to obtain assistance and to assist countries to implement the R2P in accordance with pillar two outlined in the mandate for 'Implementing the Responsibility to Protect'.<sup>35</sup> As it stands, Viet Nam is willing to encourage, help and assist States to meet their responsibility to protect.<sup>36</sup>

In 2008-2009, Viet Nam was a non-permanent Member on the United Nations Security Council (UNSC) where it stated that it aspired to promote multilateralism and dialogue among the international community so as to create a more sustainable foundation for common peace, international security, justice and development. During its month acting as president of the Council in July 2008, Viet Nam also took the opportunity while holding the presidency to affirm the central role of the UNSC in global governance and stated that it hoped to enhance international cooperation

and the strengthening of the Security Council's role in conflict prevention, while reaffirming the principles of refraining from the threat or use of force to resolve civil and international disputes.<sup>37</sup>

Viet Nam displayed its willingness to uphold and provide leadership on these issues on numerous occasions during its time on the Security Council. For example, Viet Nam led the Delegation at the Security Council briefing on Somalia on 8 October 2009.<sup>38</sup> At the Delegation, Viet Nam supported an initiative to establish a Commission for Security and Pacification tasked to reform Somalia's security forces and law enforcement agencies and also supported the implementation of the Djibouti Agreement as a means of conflict resolution in war-torn Somalia.<sup>39</sup> Ultimately, Viet Nam called for close cooperation and effective partnership between the UN, the international community, the African Union (AU) and the League of Arab States to assist in repelling the onslaught of extremist forces intent on destroying a peace process in Somalia that threatened the protection of countless civilians.<sup>40</sup>

On 15 October 2009, Viet Nam also supported the critical role of the United Nations Interim Administration Mission in Kosovo (UNMIK) to facilitate cooperation between Belgrade and Pristina. Viet Nam encouraged negotiated solutions to differences within the framework of the Security Council resolution 1244 (1999) to ensure peace and security in the Balkans as a whole.<sup>41</sup> Viet Nam also participated on 14 October 2009 in the Security Council open debate to address persistent challenges in achieving a two-state solution to the Israel-Palestine conflict and promoted a peaceful settlement of Arab-Israel conflicts. Viet Nam encouraged all parties to fulfill their mutual obligations under the Road Map, the Madrid terms of reference, the Arab Peace Initiatives and relevant Security Council resolutions including 1701 (2006), 1850 (2008), and 1860 (2009).<sup>42</sup>

On 21 December 2009, Viet Nam participated as a permanent representative at the Security Council debate of the African Union (AU) panel on Darfur, which engaged in finding a lasting solution to the Darfur conflict. Viet Nam supported the AU's central role in promoting the Darfur peace process in close coordination with the UN, the UN-AU Joint Chief Mediator, the African Union/United Nations Hybrid operation in Darfur (UNAMID) and regional states so that conflict in Darfur and the sub-region could be resolved by a political solution achieved through peaceful negotiations. Viet Nam's Delegation stressed that a balanced approach would be required to fight against impunity of violent crimes.<sup>43</sup>

Before its membership on the Security Council also, Viet Nam hosted the UN Workshop in 2005 on Implementing Security Council Resolution 1540, which imposes binding obligations on all States to establish domestic controls to prevent the proliferation of nuclear, chemical and biological weapons, and their means of delivery, including establishing appropriate controls over related materials. The Resolution also encourages enhanced international cooperation on such efforts, in accord with and promoting universal adherence to existing international non proliferation treaties.<sup>44</sup> Overall, Viet Nam's involvement in the Security Council and

UN leadership roles have promoted multilateralism on the basis of respect for the fundamental principles of international law and the Charter of the United Nations.<sup>45</sup>

As a member of the Association of Southeast Asian Nations (ASEAN), Viet Nam has made great effort to contribute to the success of the Association in addressing the political security, economy and socio-culture of the region.<sup>46</sup> Viet Nam has fostered effective partnerships promoting regional peace and security through cohesive and rule-based institutional frameworks through the ASEAN + 3 process, the East Asian Summit and the ASEAN Regional forum (ARF). ASEAN itself was granted observer status in the United Nations General Assembly in 2006 and the ASEAN Charter came into force in 2008. In terms of ASEAN's relationship with the UN, ASEAN cooperated closely with the UN in response to Cyclone Nargis in Myanmar in 2008. The Association also signed a Memorandum of Understanding and Cooperation which provides an institutionalised framework for enhanced ASEAN-UN relations and cooperation while allowing ASEAN to make a greater contribution to the promotion of global peace and stability.<sup>47</sup> In 2008, ASEAN established the Commission on the Promotion and Protection of the Rights of Women and Children. In 2009, ASEAN established the Intergovernmental Commission on Human Rights (AICHR) to promote and protect human rights and regional cooperation on human rights. As recently as October 2010, Viet Nam hosted the 2010 ASEAN-United Nations Summit.<sup>48</sup> As an active member in ASEAN, Viet Nam has contributed to multilateral diplomacy that has improved the region's capacity to protect its civilians as outlined in pillar two.

Viet Nam also promotes peacekeeping and conflict prevention while adhering to the principles that respect territorial integrity, national sovereignty, non-interference in the internal affairs of other States, and the engagement in the peaceful settlement of disputes.<sup>49</sup> Viet Nam's participation in conflict prevention includes a continued effort to address the proliferation of weapons of mass destruction, and most significant to R2P, Viet Nam supports the restrictions of the importation, exportation and transfer of conventional arms. In accordance with international standards, the Vietnamese authorities have put in place an Action Program on preventing, combating and eradicating the illicit trade in small arms and light weapons (SALW).<sup>50</sup> In the context of the R2P, the availability of firearms has played an important role in shaping the onset, duration and severity of violence. There is particular concern for the misuse of arms or police equipment by repressive regimes who are failing in their responsibility to prevent mass atrocity crimes or in situations where an ongoing conflict threatens to escalate into the commission of violations relating to the responsibility to protect.<sup>51</sup> Viet Nam cooperates closely with other countries at the sub-regional, regional and international levels regarding illicit SALW trafficking to prevent violent conflict, to strengthen anti-terrorist activities, to contribute to the fight against trans-national crime and to maintain international security.<sup>52</sup>

### **Viet Nam and Pillar Three**

Pillar three requires a wide range of collective action by the international community to fulfil the responsibility to protect populations. It includes the responsibility of the international community, through the United Nations, to use appropriate diplomatic,



humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>53</sup> Viet Nam has expressed concerns regarding pillar three saying that the R2P could potentially be misused by some to claim legitimacy for unilateral coercive measures or intervention in the internal affairs of states. This point raises some fundamental questions about Viet Nam's interpretation of its own unilateral intervention into Cambodia in late 1978. Viet Nam was harshly criticised for this intervention, despite the fact that it brought to an end the Khmer Rouge's reign which had presided over the deaths of nearly two million people. While it is questionable that Viet Nam carried out its intervention into Cambodia on humanitarian grounds, it nevertheless has sought recognition for the humanitarian benefits of this action.<sup>54</sup> With regard to the issue of future interventions on the basis of R2P, however, Viet Nam has expressed the fear about the potential bias of the Permanent Five Security Council Members and their use of their veto power for domestic sovereign purposes over the responsibility to protect civilians.<sup>55</sup> When considering pillar three, Viet Nam has stressed the necessity to base timely and decisive responses to diverse circumstances. This is to include an equal emphasis and consideration of the voluntary engagement of States, the application of timely and decisive collective action, the 'case by case basis', the conformity with the UN Charter, including Chapter VII, and the cooperation with relevant regional organisations, as affirmed in paragraph 139 of the 2005 World summit Outcome.<sup>56</sup> Viet Nam sees a necessity for these five components to be equally considered so as to eliminate an opportunity of politicization, selectivity and double standards when intervention is to be enforced.<sup>57</sup> Viet Nam has also emphasized the importance of ensuring non-selectivity of the Security Council and calls for the Permanent Five Security Council Members to refrain from employing their veto power in cases involving mass atrocities.<sup>58</sup>

Overall, Viet Nam has endorsed its strongest support where the General Assembly could only progress on action to protect under the primary support for States to protect their own populations (pillar one), and the international community's responsibility to assist States to build their capacity to protect their populations (pillar two). Only with the consideration of the principles, rules and doctrine guiding the application of coercive force, can Viet Nam accede to and see the R2P's three-pillar application of the responsibility to protect being most effective. Thus, these concerns notwithstanding, Viet Nam has committed to work proactively and constructively with other members of the international community to ensure the success of the responsibility to protect.



## Section Two: Challenges Viet Nam Faces in Implementing R2P

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The purpose of this section is to draw attention to the present challenges Viet Nam currently faces in its efforts to implement the R2P. Secretary General Ban Ki-moon has emphasized that the prevention and response to genocide, war crimes, ethnic cleansing and crimes against humanity should be ‘narrow but deep’.<sup>59</sup> In this context, upholding the Responsibility to Protect should employ a wide array of prevention and protection mechanisms available to Member States, the United Nations system, regional and sub-regional organizations and their civil society partners that include measures aimed at preventing another case of genocide or mass atrocity crimes.<sup>60</sup> Such measures involve, for example, a state upholding the rule of law to address impunity, promoting and protecting human rights, maintaining sustainable social and economic development assistance, good governance capacity-building, strengthening legal protections and judicial systems, fighting corruption, and promoting civil society and strong civil institutions.<sup>61</sup>

In relation to these mechanisms and measures, this section of the report will discuss the inefficiencies of Viet Nam’s legal standards and mechanisms and their subsequent contributions to collective violations of human rights and to the potential commission of mass atrocity crimes, which are crucial for the implementation of R2P. The Vietnamese government’s incapacity to address human rights violations is further exacerbated by the lack of political space for civilians to voice and address their needs and concerns. In order for Viet Nam’s to fulfill its obligation to protect its populations, it is essential that authorities create political solutions to peacefully address conditions contributing to discontent. It is also important that the Vietnamese government recognize the necessity of implementing appropriate legal standards to end the government’s impunity for human rights abuses and corruption. Until a comprehensive domestic system of mechanisms compatible with international human rights’ standards is incorporated in Viet Nam, the government’s demonstration of international cooperation can only be conceived as lip service and obstructive to the country’s capacity to protect its civilians from genocide, war crimes, ethnic cleansing and crimes against humanity.

### *Current Concerns*

There are growing concerns regarding the government’s methods of retaliation to social discontent demonstrated by peaceful demonstrators and the continual culture of the Vietnamese authority’s impunity for human rights violations. These may escalate as the Vietnamese Communist Party struggles to balance a market economy with communist ideology and socialist values. As it stands, Viet Nam faces growing labour problems and militancy in respect of low minimum wages and poor working conditions.<sup>62</sup> There is also growing disillusionment over Doi Moi with the entrenchment of a widening gap between the rich and poor.<sup>63</sup> In the last decade,

struggles between reformers and conservatives within the VCP Politburo's Central Committee, the centre of political power in Viet Nam, have contributed to disharmony and internal party division which have, in turn, prompted speculations concerning the effectiveness of government.<sup>64</sup> Pervasive corruption also tarnishes the Party's legitimacy. With the end of the Cold War, Vietnamese authorities tightened control on society by arbitrarily arresting, imprisoning, detaining and restricting persons for their peaceful advocacy for democracy and their human rights.<sup>65</sup> The people of Viet Nam are requesting social justice in a climate of intense political control combined with cultural and growing social fragmentation. In the context of R2P, concerns regarding Viet Nam's government's response of repression to demands for social justice are based on an understanding of the causes of genocide and mass atrocities. Specific preconditions of genocide and mass atrocities that have allowed conflicts to escalate into genocide and mass atrocities in the past are present today in Viet Nam.

Historically, genocide and mass atrocities have predominantly been crimes of governments or their agents with the purpose of eliminating or suppressing a group; in the case of genocide, national, ethnic, racial or religious groups.<sup>66</sup> The consensus behind R2P is that the deliberate and calculated political choice of governments to commit mass violence against civilians depends on the institutional framework of the state concerned and this framework's capabilities to minimize the possibility to choose mass violence over cooperation.<sup>67</sup> Therefore, if a government has institutionalized a domestic process of good governance so as to limit (or eliminate) its impunity for gross abuses of human rights, it is less likely to choose a path of violence as a means of addressing civil conflict, revolution or opposition. Good governance, in the context of R2P, would include the domestic implementation of mechanisms that promote the rule of law, a competent and independent judiciary, the protection of human rights, security sector reform, a robust civil society, and an independent press and political culture which favours tolerance, dialogue and mobility over the rigidities and injustices of identity politics.<sup>68</sup> Good governance also includes the provision of plural space to avoid the dominance of exclusionary ideologies and centralized power that could provide the justification for arbitrary mass killing and human rights' abuses.<sup>69</sup> The function of such mechanisms is to maintain a representative balance and unbiased position to give legitimacy when monitoring and maintaining political stability, human rights and economic prosperity. Overall, balanced state-society relations provide a framework where good governance is enhanced. Furthermore, a state's civil society can provide details of state failures in the function of mechanisms and representation. With this in mind, this section will examine Viet Nam's performance of governance through its capacity to monitor the protection of its civilians, the representation of the people and civil society in Viet Nam and also how the VCP addresses challenges to its political legitimacy.

## Monitoring the Protection of Civilians in Viet Nam

### *Human Rights in Viet Nam*

As pointed out in Section One, Viet Nam has implemented many mechanisms and fundamental institutional changes while the Vietnamese Communist Party has gradually opened up to regional and international influences as part of a transitional process in line with Doi Moi. However, recorded human rights abuses call into question the actual function of these mechanisms. While Viet Nam's 1992 Constitution has allowed for the 'rule of law' to provide respect for human rights, the reality is that the government continues to use the rule of law selectively and restricts individual rights on the grounds of national security through provisions made in the 1999 Penal Code and 2003 Criminal Procedure.<sup>70</sup> Provisions in the 1999 Penal Code and 2003 Criminal Procedure are broadly interpreted by the Vietnamese authorities so as to protect the socialist regime and the interests of the State and often over-rule human rights provided for in the country's Constitution. For example, there is no distinction made between acts of violence, such as terrorism and the peaceful acts of expression to allow freedom of expression or religion as outlined in the country's Constitution in Articles 69.<sup>71</sup> Where terrorism would compromise national security, the latter, peaceful acts of expression, question the monopoly of power of the Vietnamese Communist Party.<sup>72</sup> However, the final sentence in Article 70 of the Constitution states, "no one has the right to infringe on the freedom of faith and religion or take advantage of the latter to violate State laws and policies."<sup>73</sup> In practice, some scholars have argued that the Vietnamese Communist Party rules rather than governs while controlling the entire structure of Vietnamese society in a Leninist-style polity of playing the 'leading role' through repression.<sup>74</sup> Vietnamese authorities have demonstrated little tolerance of democratic discussion while imposing severe restrictions on human rights on the grounds of violating state law and policies. Violations of human rights are most predominantly committed by the authorities in regards to the rights to speech, opinion, religion, the press, as well as the right to assembly, forming associations, and holding demonstrations. In such situations, there is little protection against arbitrary action by government and political authorities.

The current state of protections for human rights in Viet Nam requires improvement if the country is to uphold fully its responsibility to protect its civilians. To the detriment of human rights in Viet Nam, the country does not have a national human rights institution accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).<sup>75</sup> The Vietnamese authorities have expressed their interest in building a comprehensive legal system to promote and guarantee human rights by pursuing a consistent policy of respecting and ensuring rights as enshrined in the country's latest Constitution of 1992.<sup>76</sup> However, at many points in the last decade, these rights have been regularly and significantly violated. Contrary to UN protocol, the Vietnamese government has not extended or agreed upon a standing invitation to all thematic special procedures regarding the above rights since 1998 when a Special Rapporteur, in accordance with the Commission on Human Rights resolution 1998/18, was appointed to examine, monitor, advise and report on the civil and political rights and the question of

religious intolerance in Viet Nam.<sup>77</sup> Since then, special requests made in 2006 regarding summary executions, in 2008 regarding freedom of religion and the rights to food and water and sanitation have not been agreed upon by the Vietnamese authorities.<sup>78</sup> Many violations concerning these rights have been committed towards people belonging to Viet Nam's ethnic minority groups by the Vietnamese authorities. Recorded incidents made by Human Rights Watch and Amnesty International relate to the commission of torture of religious leaders in Vietnamese prisons draws attention to a lack of sufficient mechanisms to address the impunity of human rights violations made by the Vietnamese authorities.<sup>79</sup> In addition, the government has yet to become party to the Convention Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), making it difficult to monitor, through domestic cooperative UN mechanisms under the Optional Protocol, how Viet Nam treats prisoners in places of detention.<sup>80</sup> Nor is Viet Nam party to the Rome Statute that governs the International Criminal Court that was established to persecute perpetrators of genocide, war crimes, ethnic cleansing and crimes against humanity. The International Criminal court plays a crucial part of a collective responsibility to prevent such mass atrocities. Viet Nam's accedence to the Rome Statute would therefore be a welcome improvement in its commitment to the prevention and punishment of such crimes.<sup>81</sup>

The principle that States have a responsibility to protect all peoples residing in their territory, be they members of majorities or minorities, indigenous peoples, citizens or non-citizens lies at the heart of the commitment to the Responsibility to Protect made by all UN Member States at the 2005 World Summit.<sup>82</sup> According to the UN independent expert on minority issues, minorities have been the principle victims of genocide and ethnic cleansing by fellow citizens or by the state as a result of identity-based tensions. Between 2007 and 2009 over fifty-five per cent of violent conflicts of significant intensity involved violations of minority rights or tensions between communities.<sup>83</sup> While genocide and ethnic cleansing have all too clearly demonstrated the dangers of failing to protect minority groups as seen in Rwanda, Yugoslavia, and Darfur, the promotion and protection of the rights of minorities can undoubtedly contribute to political and social stability, conflict prevention and the prevention of mass atrocities. In his report to the General Assembly, Secretary-General Ban Ki-moon underscored that it is evident that States that handle their internal diversity well, foster respect among disparate groups, and have effective mechanisms for handling domestic disputes and protecting the rights of women, youth and minorities, are unlikely to follow a destructive path of widespread and systemic violence.<sup>84</sup>

Gay McDougall also stated recently at the 65<sup>th</sup> session of the General Assembly in 2010 that attention to minority issues and minority rights violations at an early stage, before they lead to tensions and violence, would make an invaluable contribution to the culture of conflict prevention and the prevention of human rights' abuses within the United Nations.<sup>85</sup> In the context of R2P, the incorporation of minority rights' indicators into early warning systems is essential to enable an early identification of potential commissions of mass atrocities towards or involving minority groups. Applying the R2P doctrine to the violations of minority rights



reinforces the primacy of the State's responsibility to protect and promote the rights of minorities within its borders. As reaffirmed in the 2009 Report of the Secretary-General on implementing the Responsibility to Protect, the emphasis of R2P is on the responsibility to prevent significant abuses so that intervention is not required.<sup>86</sup> The strengthening, implementation and enforcement of human rights, and particularly the rights of ethnic minorities, so as to match international standards would better enhance and help fulfill Viet Nam's responsibility to protect all persons within its borders.

#### *Viet Nam's Policies for Ethnic Minorities and Indigenous Peoples*

The link between minority rights and conflict prevention has been addressed and developed under the auspices of the United Nations and regional organizations in resolutions of the General Assembly, the Commission of Human Rights, its successor the Human Rights Council, reports of the UN Secretary General and outcome documents of international conferences and policy processes. Viet Nam has become a supporter and participant to a range of multilateral treaties and declarations within these international regulatory frameworks that have set standards for minority protection and have improved the country's capacity to fulfill its responsibility to protect all within its borders. For example, the Committee of the Elimination of Racial Discrimination was established in 1966 and provides an early warning mechanism that draws attention to situations which have reached alarming levels of racial discrimination.<sup>87</sup> The Vietnamese government became party to the International Convention on the Elimination of All Forms of Racial Discrimination in 1982 and therefore can benefit from this mechanism.<sup>88</sup> Also, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted by the General Assembly on 18 December 1992 to reaffirm respect for human rights and for fundamental freedom for all, without distinction to race, language or religion.<sup>89</sup> As a UN Member State, Viet Nam adopted this declaration. The Declaration has provided Viet Nam (and all UN Member States) a guide to set essential standards to manage diversity so as to ensure non-discrimination and the achievement of equality and participation for all minorities.<sup>90</sup> Viet Nam also attended the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, also known as the Durban Declaration of 2001. The Durban Declaration acknowledged that poverty, underdevelopment, marginalisation, social exclusion and economic disparities are closely associated with racism, racial discrimination, xenophobia and related intolerance and contribute to continual racial attitudes and practices that generate more poverty and perpetual discrimination. The Vietnamese head of the delegation, H.E. Nguyen Phu Binh, confirmed the country's commitment to the conference's success and its continued conviction against racism, racial discrimination and the inequality of minorities.<sup>91</sup> In 2007, Viet Nam became a signatory of the new UN Universal Declaration on Rights of Indigenous Peoples, which sets out the individual and collective rights of native people to protect their lands and resources, and to maintain their unique cultures and traditions. It also promotes indigenous peoples' full and effective participation in all matters that concern them.<sup>92</sup> Viet Nam undoubtedly continues to acknowledge minority rights and has shown a greater commitment to understanding and implementing minority rights at local, national, regional and international levels.

In line with these commitments at an international level, in recent years, Viet Nam has made several positive advancements with respect to protecting the rights of its minorities and has also made concerted attempts to advance the socio-economic needs of minority groups. The UN Human Rights Council recognizes that Viet Nam's ethnic minorities participate in an increasingly equal manner in the country's socio-political life.<sup>93</sup> Viet Nam's fifty-four ethnic groups, with unique religious, linguistic and cultural characteristics and identities, continue for the most part to live together in peace and share a tradition of patriotism and mutual assistance without ethnic conflict.<sup>94</sup> While Viet Nam acknowledges its minority populations as an important constituent part of its nation, it is also aware of the challenges that it faces to ensure that the rights of minorities are respected, protected and promoted in all areas of life. The country's constitution stipulates that the state applies the policy of equality, solidarity and mutual assistance among the various ethnic communities and forbids all acts of ethnic discrimination and division.<sup>95</sup> The various ethnic communities have the right to use their own language and writing, to preserve their ethnic identity and to nurture their customs, traditions and cultures.<sup>96</sup> The State also implements policies of all-round development aimed at gradually improving and raising the material and spiritual conditions of life of ethnic minorities.<sup>97</sup> The rights belonging to Viet Nam's ethnic minorities can be found in national basic legal documents such as in the Civil Code, the Labour Code, and the Law of Elections of Deputies to the National Assembly, the Law on Protection of Public Health and the Law on Education.<sup>98</sup> Viet Nam has also established the Committee on Ethnic Minority and Mountainous Affairs (CEMMA) to meet its responsibilities on provincial and district levels so as to reduce the economic and social gaps between its minority communities and the majority population, known as the 'Kinh' ethnic group (ethnic Vietnamese).<sup>99</sup>

Over the past thirteen years, Viet Nam has created numerous policies and programs targeted at socio-economic development and poverty reduction for minorities in an effort to implement social justice.<sup>100</sup> The effects of some of these policies on minority groups in Viet Nam are discussed further in the last section of this report. The most radical programme established to target the most vulnerable minority groups is Programme 135. Programme 135 for 'Socio-Economic Development of Communes Facing Extreme Difficulties in Ethnic Minority and Mountainous Areas in Viet Nam' was launched in 1998 and was budgeted until 2010 at a total project investment of US\$1.74 billion.<sup>101</sup> Its objective has been to accelerate production radically and promote market-oriented agricultural development.<sup>102</sup> It has made a major contribution to poverty reduction in the country's ethnic minority and mountainous areas, while addressing their geographical isolation, harsh environmental conditions and reduced economic capacity.<sup>103</sup> The highland communities have benefitted through long-term improvements to infrastructure and income from employment as labourers on public projects.<sup>104</sup>

Representation for ethnic minorities has also improved recently in Viet Nam. The country had its first national ethnic minority congress on 12 May 2010, at which 1,702 delegates from ethnic minority groups throughout the country participated to

review and evaluate ethnic-minority affairs.<sup>105</sup> Vietnamese authorities have also recently extended an invitation to UN independent expert on minority issues, Ms. Gay McDougall, to examine and assess the human rights situation of Viet Nam's numerous minority groups in conformity with her UN mandate that compliments and enhances the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.<sup>106</sup>

The existence of a culture of impunity for violations of human rights by the Vietnamese government has undermined efforts to build and entrench the rule of law in Viet Nam. The link between minority rights and conflict prevention draw attention to the vulnerabilities of minorities in an environment of arbitrary actions by governments and political authorities as demonstrated by the violations of specific rights in respect of discontent minorities in Viet Nam. This next part will examine specific situations of violations of human rights that warrant concern for the well being of Viet Nam's ethnic minorities.

#### *Areas of Grave Concern*

While the Vietnamese government has demonstrated active efforts to address the needs and rights of its minorities, the Summary prepared by the United Nations Office of the High Commissioner for Human Rights for Viet Nam's most recent Universal Period Review in May 2009 reveals many concerns for the well-being of minority groups in Viet Nam. Several international human rights NGOs have also raised similar concerns. Amnesty International (AI), the Unrepresented Nations and Peoples Organization (UNPO), the International Federation of Human Rights (FIDH) and the Viet Nam Committee on Human Rights (VCHR) have noted that the indigenous Christian Montagnard Degar Peoples and the Khmer Kampuchea Krom Peoples in Viet Nam, have suffered decades of persecution in terms of confiscation of their ancestral lands, religious repression, torture, killings, unjust imprisonment, discrimination as well as violations of their civil and political rights.<sup>107</sup> This contributes to further concern for upholding the responsibility to protect in Viet Nam as scholars from comparative genocide studies have determined that long-term violations of human rights based on ethnic minority or religious difference is a significant precondition of genocide and other mass atrocities.<sup>108</sup>

The UN independent expert on minority issues, Ms Gay MacDougall, has raised concerns for the rights of minorities in Viet Nam after her recent visit to Viet Nam from 5-15 July 2010. Ms McDougall visited the provinces of Dier Bien in the Northern Highlands, Tra Vinh in the Mekong Delta region and Gia Lai and Kon Tum provinces in the Central Highlands, which are regions of significant minority populations in Viet Nam.<sup>109</sup> Ms McDougall expressed concern regarding limitations placed on the rights of minorities to the freedom to practice their religions without restrictions, their freedom of association and expression and their right of peaceful assembly. Ms McDougall also raised concerns regarding the equal right of minorities in Viet Nam to own and use land and their right to participate fully and effectively in decision making regarding issues that affect them, including with respect to economic development projects and re-settlement issues.<sup>110</sup>

### *Minorities in Viet Nam: A History of Discrimination, Repression, Religious Persecution, Arbitrary Arrest and Torture*

The systematic demonstration of racial discrimination and repression of indigenous peoples by the VCP involves a complex history of the relationship between minorities and the state which has been influenced by the country's long struggle against foreign domination and for national independence. After winning independence from the French in 1954, the Democratic Republic of (North) Viet Nam became preoccupied with enhancing national integration of its fifty-four officially recognised ethnic groups.<sup>111</sup> Once the North was united with the South in 1976, the VCP concentrated on maintaining unity and mobilising support towards government policies that embodied Marxist-Leninist ideologies. Particular indigenous sects founded in the early 1900s, such as the Hoa Hoa and the Cao Dai, were associated with anti-colonial and later, anti-communist movements in Viet Nam and were seen by the VCP as a potential threat to security and the regime.<sup>112</sup> Of Viet Nam's 88.9 million people<sup>113</sup>, ethnic minorities make up around 14 per cent of the total population, but inhabit approximately three-quarters of the country's territory.<sup>114</sup> Therefore, the maintenance of minority loyalty to the State is seen as critically important to the country's national unity and survival. As stated in the Constitution of 1959, national minorities had a right to maintain their traditions, but only as long as they did not pose a threat to the socialist progress of the country's relations. At present, as stated in Article 38 of the 1992 Constitution, the State forbids any person to use democratic freedoms to the detriment of the interest of the State and of the people.<sup>115</sup> This limitation continues to be applied in relation to the provision for freedom of speech, the press, assembly, association and religion.<sup>116</sup> Today, ethnic minorities in Viet Nam are repressed and persecuted in their struggle for these freedoms. This repression and persecution is aimed primarily at preventing religions and their clergy from becoming forces of dissent against the VCP. The Degar Montagnards from the Central Highlands and the Khmer Kampechea Krom Peoples from the Mekong Delta have experienced decades of repression and persecution from the Communist regime in fear their beliefs could rapidly spread and thus create a major political challenge to the regime.

#### *Case Study: Degar Montagnards*

The contemporary marginalised position of the Degar Montagnards, an indigenous minority group in the Central Highlands, has its roots in the First Indochina War with the French and during the American involvement in tensions between the North and South during the 1960s and 1970s. The Vietnamese revolutionaries and the French colonists each attempted to dominate the highlands and enlisted highlanders on their respective sides with the promise of autonomy. During the Second Indochina War, the Vietcong National Liberation Front (NLF) and the United States and South Vietnamese governments also tried to persuade the highlanders to join their respective sides while using the central mountains and plains as battlegrounds between the opposing forces.<sup>117</sup> Even today, separatist movements or the exhibition of divided loyalties through social unrest by the Montagnards (and other minority groups) have been perceived by the Vietnamese authorities as a serious threat to national unity and contrary to Communist ideals of socialist-polity intent on maintaining a submissive population.<sup>118</sup>

Within the last decade, the Montagnards have publically demonstrated on several occasions by making requests that the Vietnamese government allow them freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and hold demonstrations within the provisions of the law, as provided for in Article 69 of the 1992 Constitution.<sup>119</sup> Their protests are primarily against land confiscation and religious persecution and are an effort to preserve the lives and culture of the indigenous Montagnard peoples and to safeguard their innate and inalienable human rights.<sup>120</sup> Their continual struggle in defending their human rights has prompted the Vietnamese authorities to retaliate with the arbitrary detention, torture, unfair trials and even murder of Montagnards who are party to opposition political parties, independent trade unions, unsanctioned media outlets and religious organisations.<sup>121</sup> Many who have fled to Cambodia have been subject to refolement and persecuted by Vietnamese authorities upon their return which is in violation of the 1951 Refugee Convention.<sup>122</sup> Viet Nam is not party to the Convention Relating to the Status of Refugees, nor the 1967 Protocol which underpin the fundamental principles of non-discrimination, non-penalization and non-refoulement of those fleeing from persecution.<sup>123</sup> This continued persecution of the Montagnards by government forces is in direct violation of Viet Nam's responsibility to protect all its peoples under pillar one obligations.

The Montagnards are comprised of numerous Malayo-Polynesian, Mon-Khmer and Sino-Tibetan ethnic groups who have settled in the mountains of the Central Highlands of Viet Nam. The Central Highlands, called Tay Nguyen, are made up of mountains and wide plateaus bordering the Truong Son range that is rimmed on the west by the frontiers of Laos and Cambodia and on the east by coastal plains.<sup>124</sup> They include the four southern central Vietnamese provinces of Kon Tum, Gia Lai, Dac Lac and Lam Dong, and have a total population of approximately four million people, of whom about one million are Degar Montagnards.<sup>125</sup> Of these, between 229,000 to 400,000 are thought to follow evangelical Protestantism. An additional 150,000 to 200,000 are Roman Catholic.<sup>126</sup>

Living in the mountainous regions of the Central Highlands, the Montagnards are distinctly different from the 'Kinh' or mainstream ethnic Vietnamese who live on the plains and on the deltas.<sup>127</sup> The Montagnards also differ linguistically and culturally from lowlanders, while each tribal group or subgroup has its own customs and system of beliefs, rites and myths. Most mountain villages are dominated by a single ethnic group.<sup>128</sup> Examples of such ethnic groups include the tribes of Bahnar, Jarai, Rhadé, Koho, Sedang, Bru, Pacoh, Katu, Jeh, Cua, Halang, Hre, Rongao, Monom, Roglai, Cru, Mnong, Lat, Sre, Nop, Maa, and Stieng.<sup>129</sup> Generally, all groups live by an agricultural self-subsistence system on small holdings that are in remote districts. Their semi-closed communities function through the integral role of each individual addressing the demands of the group's environment and cosmic forces by means of cooperation and mutual help and support. The village is the most important economic and political unit in their lives as they produce and consume what they



need. Therefore, customs and moral codes are deeply internalised since all inhabitants share common needs, style of life, values and patterns of kinship.<sup>130</sup>

All aspect of life for the hill tribes are influenced by religious beliefs and rituals. The traditional religion for Montagnards was predominantly animism of which spirits and their powers over humans were present and active in the natural world. Sacrificial offerings, religious ceremonies, ancestral worship, taboos and agricultural beliefs and rites are common in relation to events such as illness, marriage, birth, funerals and natural disasters.<sup>131</sup> Christianity was introduced to the Montagnards in Vietnam in the 1850s by French Catholic missionaries. Some Montagnards embraced Catholicism, incorporating aspects of animism into their system of worship. By the 1930s, American Protestant missionaries had become active in the Highlands and mission schools and churches became important social institutions in the Highlands. The church encouraged the Montagnards to seek political autonomy separate from the Vietnamese regime. Historically, therefore, the oppression of the church in the Highlands by the Vietnamese regime is rooted in this dynamic.<sup>132</sup> The VCP has outlawed what it calls “Dega Christianity” as they see the highland minorities as promoting separatism through their demonstrations over grievances regarding poor economic conditions and removal from their ancestral land.<sup>133</sup>

These tensions between the central Vietnamese government and the peoples of the highlands have deep historical roots. The French, who colonised Viet Nam from 1895-1954, politically stimulated ethnic fragmentation and independence movements when they recognized hill tribe rights over the land they occupied.<sup>134</sup> The French called the indigenous hill tribes peoples of the Central Highlands, “Montagnards”, which means “people of the mountains”.<sup>135</sup> French policies generally supported the maintenance of hill tribe culture and the political autonomy of the Montagnards. The French named the Central Highlands the “Pays Montagnards du Sud Indochinois” or the Montagnard country of South Indochina.<sup>136</sup> They also created the Federal Government Commissariat for the Montagnard People of South Indochina in May, 1946 under the authority of Bai Dai, the king of Viet Nam, who created a special statute guaranteeing the Montagnards political independence. To the present time, the Montagnards claim to be the first people to inhabit the Central Highlands of Viet Nam and are therefore the rightful owners of its land.<sup>137</sup> Their claim is based on their ancestors having been in possession of the Central Highlands for more than two thousand years and the French recognition of their rights to this land when formalising borders in 1946. Prior to French colonisation, the highland areas remained virtually independent, as long as group leaders recognised the Vietnamese sovereignty and paid tribute and taxes.<sup>138</sup>

The French also adopted administrative policies that distinguished between the lowland Vietnamese and the highlanders.<sup>139</sup> The customary laws of the various highland peoples were recognised and codified by the French in an effort to protect their cultural uniqueness.<sup>140</sup> Failure to integrate the highland peoples into the lowland-based administrative system or to achieve mutually acceptable relations between the Vietnamese elite and the highlanders inhibited Vietnamese efforts to resist and defeat the French colonisation of Viet Nam.<sup>141</sup> The French exploited the

poor relations by encouraging the highlanders to see France's conquest of Viet Nam as their liberation from Vietnamese domination of their land. Furthermore, the French mobilised the highlanders to help defeat Vietnamese resistance from 1885 until the early 1900s with their extensive knowledge of the highland terrain and their capabilities to adapt to the environment.<sup>142</sup> Many Montagnards were also allied with the United States during the Viet Nam War. American Special Forces penetrated highland villages and armed and trained highlanders for anti-NLF activities in the Central Highlands.<sup>143</sup> Thus the memory of the highlanders' involvement against the Vietnamese authorities over the past century has contributed to distrust by the VCP to present associations with highlanders.<sup>144</sup>

With Viet Nam's independence from France in 1955, Viet Nam established its first Constitution in 1959 which promised minorities that their languages and cultures would be protected and that their peoples would not suffer discrimination in the new state.<sup>145</sup> However, the republic's territory was declared "one and indivisible" and a vague policy of "autonomy" was favoured over the right to highlander self-determination.<sup>146</sup> All land now belonged to the State under Vietnamese Law. This was affirmed in the 1959 Constitution which differed from the 1946 Constitution with regards to property ownership. In the 1946 Constitution, there was a guarantee to individual ownership of property, while in the 1959 Constitution implemented an inflexible hierarchy of property ownership, which restricted private property, and consolidated state ownership and collective ownership of property to enable a central role of the state to lead all economic activities.<sup>147</sup> After 1976 and with the implementation of socialism, large areas of land in the Central Highlands came under control of state farms and state enterprises that were largely staffed by Kinh migrants.<sup>148</sup>

The policy of the central government was to integrate the highland minorities with the mainstream Kinh by moving lowland over-crowded delta farmers to the less populated highlands. First, this resettlement, under the New Economic Zones (NEZ) program, would help the highland minorities develop and 'civilise' them as well as reducing the density of population in the lowland area. Second, it increased food production on unused lands and also reduced land degradation from the swidden farming techniques used by the ethnic minorities on the highland slopes.<sup>149</sup> Between 1976 when the first NEZs were established, and the early 1990s approximately six million people were resettled in Viet Nam. The population of the Central Highlands increased from 420,000 in 1926 to over 2.8 million by 1991, and then to over 4 million in 2002.<sup>150</sup> The Central Highlands were the main areas where the government encouraged migration. However, land disparities between the ethnic minorities and mainstream Kinh in the Central Highlands centred on the hardships minorities faced by uneven land distribution of which indigenous inhabitants were given an average area of 0.25 hectares per household and mainstream Kinh were given an average land area of 1 to 2 hectares per household.<sup>151</sup> To this day, the Montagnards continue to be denied recognition of their traditional minority claims to land rights, are denied education, financial resources, representation and the opportunity to maintain their culture.

Partly as a result of these repressive measures, around 2,000 members of the Christian Montagnard community fled to Cambodia in 2001 and 2004 after Vietnamese security forces crushed protests against land confiscations and religious persecution.<sup>152</sup> The 2004 crackdown resulted in numerous killings of Montagnards in the Central Highlands, which have never been adequately investigated.<sup>153</sup> There are continuing reports of violence, arbitrary arrests and torture experienced by some Christian Montagnards despite the 2002 and 2009 Concluding Observations of the UN Human Rights Council which regarded the Montagnards as facing “serious violations”.<sup>154</sup> Furthermore, in August 2010, the UN Special Procedures mandate holders appealed to the Government of Viet Nam to ensure the rights to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination on Human Rights as well as of the International Covenant on Civil and Political Rights after Vietnamese soldiers, riot police, security forces and local police reportedly surrounded, attacked and threatened Degar Christians in thirty-two villages in Gia Lai Province of the Central Highlands.<sup>155</sup>

To conclude this case study discussion, the Degar Montagnards of the Central Highlands have been subject to a long history of suspicion and repression by the Vietnamese government as a result of their disloyalty to Vietnamese Revolutionaries during the First Indochina War and their association with the American Special forces during the Second Indochina War. The Montagnards’ discontent and disloyalty to Vietnamese forces was and continues to be centred on their desire for autonomy and the right to maintain their ancestral lands, culture and religious practices. This is understood by Vietnamese authorities to be contrary to nationalistic sentiment and socialist values. As a result, the Vietnamese authorities response to the Montagnards’ demonstration of discontent with a heavy hand that suppresses specific human rights, such as freedom of religion, assembly and freedom of expression. The imprisonment, torture and physical abuse of Montagnards as members of a minority groups can be interpreted as a direct link between impunity and collective atrocities. Therefore, this report draws attention to the immediate necessity for the provision of the implementation of measures to eliminate the Montagnards’ vulnerabilities to violations of human rights that could potentially lead to the commission of mass atrocities. As such, the continued persecution of the Montagnards should be monitored as a potential R2P situation. There is also concern for the Khmer Kampuchea Krom Peoples in the Mekong Delta. Their situation is in many ways similar to that of the Montagnards.

#### *Case Study: The Khmer Kampuchea Krom Peoples*

The Khmer Kampuchea Krom Peoples who have lived for centuries in the Mekong Delta and lower Mekong have also faced systemic and severe human rights violations. In the same vein as the Montagnards, violations against the Khmer Krom include the confiscation of their ancestral lands, discrimination, and religious persecution by the Vietnamese authorities.<sup>156</sup>

The Khmer Kampuchea Krom Peoples are indigenous ethnic Khmer minorities in the southern-most part of Viet Nam, just south of the southern Cambodian border. This

area was formerly part of the Khmer Empire from the 9<sup>th</sup> to 13<sup>th</sup> centuries. With the decline of the Khmer Empire, ethnic Kinh, or Viet people, settled into what is now this southern part of Viet Nam. During French colonial rule, the Mekong Delta region was incorporated into the French protectorate of Cochinchina. In 1949, the French divided and transferred this area to colonial Viet Nam. The Khmer Krom population that remain in this region live in the provinces of Soc Trang, Tra Vinh, Kien Giang, An Giang, Bac Lieu, Can Tho, Vinh Long and Ca Mau.<sup>157</sup> They continue to share the same religion (Theravada Buddhism), national language, culture, customs and traditions as the Khmer in Cambodia.<sup>158</sup>

The Khmer Krom Peoples have experienced discrimination by the Vietnamese Communist Party since they took power of the country in 1976 when Vietnamese authorities began targeting Khmer Krom Buddhist temples and persecuting Buddhist monks who peacefully have stood up for their rights. In the decades since, the Khmer Krom in Viet Nam have had their ancestral farmlands confiscated and have been left homeless with no access to the fertile land of the Mekong Delta which provided plentiful food and water. Since 1976, many thousands Khmer Krom have been imprisoned and have faced brutal torture as a result of requesting the return of their ancestral land, recognition of their indigenous status, their inclusion in decision-making processes and their right to religious freedom.<sup>159</sup> In 2007, after decades of discontent among ethnic Khmer Buddhists over government restrictions on religious freedom and inadequate Khmer language education, more than 200 Buddhist monks protested on the streets in Soc Trang provincial town. The government response was harsh in efforts to stifle dissent with the murder of Khmer Krom monk Eang Sok Thoeun and at least twenty monks being defrocked and expelled from their pagodas.<sup>160</sup> Traditionally dismissal from the monkhood is made by the *sangha*, or Buddhist community of monks, and not by the government, therefore making this a serious breach of the Buddhist code and an infringement on the right to practice religion and religious belief.<sup>161</sup> Today, many Khmer Krom Peoples remain in prison or under house arrest, and like the Montagnards, the Khmer Krom Peoples are economically discriminated from the mainstream Kinh of Viet Nam.<sup>162</sup>

#### *Redressing Repression and Economic Disparity for Minorities*

According to the UN Global Millennium Development Goals (MDG) Report in 2008, it is important that Viet Nam continues to achieve the MDGs in all areas of the country so as to include every province, every commune and every ward. The Report expressed concern for the people living in remote and mountainous areas, particularly ethnic minorities, who now make up a growing proportion of the population living in poverty, and where child malnutrition remains widespread and almost one in three children is currently malnourished.<sup>163</sup> These concerns draw attention to particular human rights issues that require the development of appropriate organisations and mechanisms which would contribute to the safeguarding of sustained benefit for all the country's population.<sup>164</sup>

The tension between maintaining indigenous practices and managing cultural diversity within Viet Nam needs to be addressed in a way that protects human rights.

The Montagnard Peoples and the Khmer Krom Peoples would like the Vietnamese authorities to respect their rights as indigenous people as well as to preserve their language, culture, and religion. However, Article 30 in the Viet Nam's 1992 Constitution states that the State assumes the unified administration of cultural development. Reactionary and depraved ideologies and culture are to be banned; superstition is to be driven out.<sup>165</sup> In respect to indigenous ethnic minorities, the Vietnamese Communist Party has emphasized solidarity with the State over solidarity with one's tribe or clansmen in fear that these ties would supersede ties to true socialism.<sup>166</sup> Vietnamese law requires that religious groups register with the government and those that do not join one of the officially authorized religious organisations are considered as acting illegally on the basis of sowing divisions and harming national unity.<sup>167</sup> According to Human Rights Watch as of January 2011, 300 Montagnard Christians as well as Hoa Hao Buddhists and members of the Cao Dai religion are religious prisoners detained in harsh conditions. There is also compelling evidence of torture and ill-treatment of prisoners.<sup>168</sup> Furthermore, there has been little outlet for dissatisfaction for ethnic minorities in Viet Nam while the government prohibits independent or privately-owned domestic media to operate and imposes strict controls over the press, internet and publications that disseminate materials that oppose the government, or promote reactionary ideas.<sup>169</sup> While the Vietnamese authority's default position has been repression in response to ethnic dissent, there is limited space for the ethnic minorities to participate in addressing their concerns or issues.

### **Representation of the People and Civil Society in Viet Nam**

While the Vietnamese Communist Party (VCP) has permitted a growing mid-level private sector and has undertaken fundamental institutional changes to improve its economy, it continues to hold a firm grip on power and has rejected domestic and international requests for political reform and pluralism.<sup>170</sup> Political reform and pluralism are required to address the social and cultural impact of Viet Nam's growing economy and development, such as the increasing polarization between rich and poor and social inequality experienced in the mountainous areas.<sup>171</sup> In response to discontent concerning these issues, the VCP continues to clamp down on oppositional civil society actors in an attempt to retain its monopoly on power. Such action demonstrates that Viet Nam's political and social system has not experienced a similar renovation to its economic liberalization through Doi Moi reforms.<sup>172</sup> As stated by the Security-General in his Report, 'Implementing the Responsibility to Protect', responsible sovereignty is based on the politics of inclusion, not exclusion and therefore entails the building of institutions, capabilities and practices for the constructive management of the tensions so often associated with the uneven growth of rapidly changing circumstances that appear to benefit some groups more than others.<sup>173</sup> While political reforms offer much promise for improved government-civil society relations, in order to fulfill its R2P obligations under pillar one, Viet Nam must improve the implementation of these reforms.

The Vietnamese Communist Party has sought to limit the public sphere in Viet Nam since the early 1950s by imposing a proletarian dictatorship as a goal of socialism.<sup>174</sup>



Today, Viet Nam remains a one-party state that is ruled and controlled by the Vietnamese Communist Party. Although Viet Nam's one-party state has been in a process of transition to a "soft authoritarian" state since the implementation of Doi Moi, the State's policies are established and continue to be enforced by the One-Party State which has extensive control over the executive, legislative and judiciary powers.<sup>175</sup> Changes to government can only come from within the Party and changes to state policies can only be made by the party officials in the Politburo of the Central Committee of the Communist Party of Viet Nam.<sup>176</sup> The country's citizens cannot change their form of government and the behavior of its people is monitored by the Ministry of Public Security. Freedom of speech, press, assembly and association are restricted so as to limit independent political, legal, labour and social organizations as their formation is seen as an infringement upon and contrary to the interests of the state.<sup>177</sup> Article 4 of Viet Nam's Constitution states that the Vietnamese Communist Party, with adherence to Marxism-Leninism, is the force assuming leadership of the State and society.<sup>178</sup> This excludes all forms of pluralism or alternative thought outside the Vietnamese Communist Party and restricts the action of civilians and their rights based on their compliance with the State's interests and policies, "in accordance with the law".<sup>179</sup> Therefore, the population cannot go against the wishes of the State and there are very limited alternative avenues to address their issues. A balanced society-state relationship and representation of the people does not exist to provide accountability and transparency for government or to address the issues expressed by the Vietnamese population.

Civil society in Viet Nam, as a realm separate from the state to serve common interests for the common good, is limited in its capacity to function as autonomous from the state. Under the VCP's authoritarian rule, autonomous organizations are prohibited and there is no legal framework conducive to the emergence of civil society. All associations require approval by the government and are monitored and guided by the State in accordance with Decree 88 of the Civil Code.<sup>180</sup> As an alternative to state independent organisations, the VCP developed a network of organizations in 1950 under Party rule so as to reach every sector and level of society under the umbrella organization of the Vietnamese Fatherland Front (VFF). The Party's intention was to play an interventionist role in all aspects and levels of society in order to promote national solidarity and to persuade support for Party lines and policies.<sup>181</sup> More recently, the Party has tolerated organizations that operate outside the existing legal framework, but these are limited to economic and socio-economic affairs and do not demonstrate political opposition or challenge the socialist ideology or undermine the Party.<sup>182</sup> As a result, civil society continues to be actively suppressed by legal and coercive means and is largely an extension of the state, leaving a lack of a 'real' civil society that can adequately provide an independent, un-biased interpretation of civilian needs and government activities.

With respect to the promotion of R2P, therefore, there is no clear institutional, legal or conceptual space for contestation in state-society relations nor is there a comprehensive facility to call the VCP to account for its actions or inaction on pressing issues such as human rights violations. This leaves little space for a

mechanism outside the government that can facilitate information flow and draw attention to paths of escalating violence and preconditions to mass atrocities.<sup>183</sup> Anyone who opposes the Party is therefore vulnerable to violations of human rights and the commission of mass atrocity crimes, such as ethnic minorities (Montagnards and Khmer Krom) who are continually discriminated against by the Vietnamese government. All civilians are further vulnerable to violence if there were to be a violent reaction by the government to revolutionary activity which questions the political legitimacy of the Vietnamese authorities.

### **Maintaining Political Legitimacy**

In the past, the political legitimacy of the VCP (and the Democratic Republic of Viet Nam) was based on patriotism and nationalism that mobilized the population to resist foreign aggression and intervention.<sup>184</sup> Since the implementation of Doi Moi in 1986, and even more so since the collapse of socialism in the Soviet Union in 1989-91, the political legitimacy of Viet Nam's one-party state has faced continual challenges by some party officials, intellectuals and pro-democracy activists. Leaders of the VCP and State find themselves negotiating between retaining their ideological integrity and addressing changes taking place as a result of economic progress. Dissidents have argued that economic liberalism alongside socialism is incompatible and that it has created a system that tolerates corruption and abuse of power from within the Party which can only be rectified by reforms inclusive of political pluralism.<sup>185</sup> When challenged, the Vietnamese authorities have demonstrated an adaptable position with a response of economic and ministerial reform, but in many situations, repression remains the default position in response to political dissent, demonstrating the Party's strong desire to retain power and repel a transition to democracy. It is simplistic and not the intention of this report to conclude that the process of globalization and economic liberalization will or should automatically lead to political liberalization and democratization in Vietnam. However, the report's purpose has been to draw attention to the reality of government rhetoric towards addressing human rights and the Vietnamese government's impunity to human rights abuses. Furthermore, while the Vietnamese people have been oppressed, their power to hold the VCP accountable has been very limited. The disclosure of patterns of authoritarian political thinking and heavy-handed rule leads to the understanding that the Vietnamese government is overriding the objectives of the country's population.

Concerns have also been raised regarding the authority's capabilities for solving conflict without resorting to authoritarian or even violent means in cases of demonstration, dissatisfaction or dissent. The VCP's centralization of power and devotion to single handed rule while using forms of political and social exclusion that lack of socio-cultural recognition, call into question the principles of equality and justice in their commitment to socialism. They also provide a justificatory logic for mass killing as part of pre-conditions and causes of mass atrocity crimes. The wide range of long-term social, economic and political challenges faced by Viet Nam's ethnic minorities (Montagnards and Khmer Krom) and followers of Theravada Buddhism, as demonstrated earlier in this section, are pre-conditions whereby human rights violations can escalate into more wide-spread and systematic

atrocities. Although incidents of mass atrocities have varied according to culture and location, past episodes of these types of crimes have demonstrated specific patterns leading to the commission of collective violence. Barbara Harff, a leading expert on mass violence, has provided a framework for assessing and comparing the vulnerabilities of countries to genocide and politicide (political mass murders), which she argues can identify countries in which the conditions for future episodes are present: an early warning system to detect humanitarian disasters in the making.<sup>186</sup> She concludes that states ruled by autocratic regimes are more likely to experience mass atrocities. Within this type of government formation, five types of genocidal tendencies have been identified<sup>187</sup>:

1. State repression: mass atrocities are committed to maintain power and usually in the context of relatively weak states.
2. Counter-insurgency: the commission of mass atrocities to defeat an insurgent organization (or group of people) by denying it access to a civilian population to hide amongst.
3. Radical social transformation: the commission of mass atrocities to create a radical social transformation by eliminating a particular ethnic, religious, political or socio-economic group.
4. Rebellion: the commission of mass atrocities as a strategy of rebellion against the state.
5. Major War: the commission of mass atrocities as part of a strategy for winning a major war at the lowest cost.

Most incidents of mass atrocities in the last century were perpetrated as a result of social division, regime and economic weaknesses that are a result of ideological commitments of ruling elites and democratic institutional constraints, characteristics of which are experienced in Viet Nam today.<sup>188</sup> With regard to groups who have experienced persecution in these past cases, mass atrocities have also targeted victims that have been repressed due to their ideological, religious or ethnic associations. The goal of mass violence in such circumstances is often to eliminate or suppress a group because they are seen as hostile to the political ideology and goals of the state or particular elite.<sup>189</sup> Therefore, the ethno-historical trajectory and religious affiliations of the Montagnards and Khmer Krom peoples render them at risk for the commission of genocide, ethnic cleansing and other mass atrocities when social divisions and political tensions become causal agents for the intensification of violence towards these ethnic minority groups.

The on-set of past mass atrocities tend to take place in three stages, the first being pre-conditions, the second, a movement or upheaval and mobilization, and then the third, the elevation to imminent emergency.<sup>190</sup> It is in the interest of the R2P to prevent all of these stages from occurring or escalating. In the case of protection for ethnic minority groups in Viet Nam, it is urgent to advocate preventive measures to address the present pre-conditions such as social division and economic weaknesses alongside the present commissions of human rights abuses towards ethnic minorities.

The Vietnamese Communist Party has also historically shown little tolerance for civil society as an independent mode of social action and interaction. However, in the last decade, a growing and more broad-based Vietnamese democratic movement has risen as a result of networking via the internet. In particular, the emergence of a middle-class youth demographic which is eager to integrate with the capitalist world, enjoy entertainment and recreation and achieve individual professional, financial and family successes challenges the VCP's ideological commitments.<sup>191</sup> A lack of response by the Vietnamese youth to the Party's agenda of building socialism is broadening the gap in the relationship between the state and society.<sup>192</sup> Furthermore, the Internet has provided the opening of political space within the existing system where there is greater potential for overseas Vietnamese to engage trans-nationally in domestic political discourse.<sup>193</sup> The nature of this emerging civil society in Viet Nam has revolved around the promotion of democracy, human rights, labour rights, ethnic minority rights and religious freedom. Among the trans-national political organizations which have been created as a result are the People's democratic Party of Vietnam; the Vietnam Populist Party; the Democratic Party of Vietnam; the Committee for Human Rights in Vietnam; the Free Journalists Association of Vietnam; Bloc 8406; the Vietnam Progression Party; the Vietnam Alliance for Democracy and Human Rights; the Independent Labour Union of Vietnam; the United Workers-Farmers Association and the Lac Hong Group.<sup>194</sup> Although considered illegal and having no standing in the country's one-party political system, these groups have provided financial and political support in a campaign for law, freedom and human rights.<sup>195</sup>

How Viet Nam addresses the challenges posed by this new civil society movement will be determined by its success in creating a law-governed state. The State's responsibility to protect its population from mass atrocities depends on the creation of a law-governed state with guaranteed constitutional provisions that provide human rights to all and particularly, at this stage, the freedoms laid out in Article 69 and Article 70 of its Constitution, "freedom of speech, freedom of the press, the right of assembly, association and demonstration and freedom of belief and religion".<sup>196</sup> In many ways, how the VCP reacts to these movements will also determine its political legitimacy. Recognizing Viet Nam's culture of impunity for human rights violations and the understanding of mass violence as a product of governments that lack the institutional capacity to stop violence against civilians undermines Viet Nam's commitment to and ability to fulfill its responsibility to protect. Under the Responsibility to Protect, this would warrant the potential involvement of regional and international intervention if violence were to escalate. By fulfilling fundamental protection obligations and respecting core human rights, the Vietnamese authorities would avoid unwelcomed intervention from outside their State.

In his report to the General Assembly, Secretary-General Ban Ki-moon emphasized that the responsibility to protect is a moral imperative for UN institutional capacity-building that, in turn, can only strengthen sovereignty. "By [helping] States to meet their core protection responsibilities, the responsibility to protect seeks to strengthen sovereignty, not weaken it."<sup>197</sup> Therefore, understanding mass violence

as a product of individual opportunists and institutional incapacities places the primary responsibility to protect Vietnamese civilians on the Vietnamese government itself, as stipulated in pillar-one of the R2P doctrine. Effective mechanisms for addressing human rights and capacity-building to prevent conflict and escalating violence would prove far more effective to protect the country's civilians and maintain the legitimacy of the government than using ideology as a cover for various forms of abuses to maintain power. As a preventative measure to fulfill the responsibility to protect, addressing the root causes of cultural tensions between the State and ethnic minorities must be a priority as the country's ethnic minorities are the most vulnerable to violations of human rights and the potential to mass atrocities. Living up to the commitment of the Responsibility to Protect will also ensure the maintenance of peace, security and stability. Through a system of law that is responsive to the needs of the country's population that includes justice and the Vietnamese peoples' general welfare, the VCP would deter rebellion that could significantly undermine the government's legitimacy and effectiveness in the eyes of its people and the international community.





## Conclusion and Recommendations

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### Conclusion

This report has argued that Viet Nam has a long history of colonial and post-colonial violence, civil war and social upheaval, thus making the prevention of future mass atrocities crucial. Viet Nam has stated its commitment to upholding its responsibility to protect its population from future mass atrocities and has also agreed to engage with the international community for assistance and to provide assistance in building protection capacities to exercise the R2P doctrine. This report has assessed the challenges Viet Nam faces in fulfilling these obligations. It has outlined that there exists a real opportunity to prevent mass atrocity crimes if Viet Nam were to strengthen its commitments to the R2P and if the government were to implement a coordinated and comprehensive strategy to address ongoing human rights violations in accordance with Standards outlined by the UN OHCHR. This entails the need for the Vietnamese government to apply a more comprehensive focus on legitimate equity and social justice concerns as well as strengthening the rule of law and socio-economic development to provide stability and the maintenance of human rights for all its population.

To conclude, the research conducted as part of this project has produced the following overall and specific recommendations for the future protection of Viet Nam's population from the commission of genocide, war crimes, ethnic cleansing and other mass atrocities.

### Recommendations

*Strengthen commitment to preventing mass atrocities.* Viet Nam's role in the prevention of mass atrocities involves supporting the UN measures outlined in the R2P mandate provided in the UN Secretary General's Report, 'Implementing the Responsibility to Protect'. Viet Nam should further engage in the three-pillar strategy by seeking regional and international assistance to gain comprehensive consensus and effective mechanisms that can be implemented in the country's domestic law and institutions. Such mechanisms would support the prevention of pre-conditions to mounting violence and the commission of mass atrocities.

*Strengthen internal capacity and expand networks regarding upholding human rights.* Respect for human rights is an essential element of mass atrocity prevention. Human rights are anchored in well-established international laws that lay down obligations of Governments to promote and protect human rights and fundamental freedoms of individuals and groups. Viet Nam should support the UN's human rights mechanisms that guarantee human rights by law through treaties, declarations,

commissions and protocols. It is therefore recommended that the Vietnamese government accede to and consider ratifying:

- the Rome Statute of the International Criminal Court and implement it in national law
- the Agreement on the Privileges and Immunities of the International Criminal Court and implement it in national law
- the International Convention for the Protection of All Persons from Enforced Disappearance
- the Convention relating to the Status of Refugees and the Status of Stateless Peoples
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The United Nations Convention on Transnational Organized Crime and its Protocols to prevent, suppress and punish trafficking in persons, especially women and children
- The Convention on the Rights of Persons with Disabilities
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

*Guarantee the maintenance of human rights.* It is essential to the maintenance of human rights that the Vietnamese government allows groups to carry out human rights monitoring activities in Viet Nam, independently and without hindrance or threats. Therefore the Vietnamese Government is encouraged to permit and cooperate with international and domestic non-governmental organisations whose functions are to monitor and provide assistance for the maintenance of human rights to standards stipulated by the UNHCHR. In particular, the Vietnamese authorities are urged to re-engage with the Special Rapporteur on freedom of religion.

*Cooperate with the ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN community extensions offices for community level human rights education and capacity-building.* The Vietnamese authorities are advised to invite resource speakers from the members of the Southeast Asia National Human Rights Institutions forum (SEANF) and engage in their networking activities with other relevant institutions to engage in human rights education. Appropriate education and training of human rights promotion and maintenance should be provided for the benefit of all relevant Government authorities so the capacity of officials can ensure the effective implementation of human rights-related law.

*Implement a national human rights institution (NHRI).* Viet Nam is also highly encouraged to implement a national human rights institution to advance the vital mandate of the United Nations High Commissioner for Human Rights (UNHCHR) in compliance with the *Paris Principles*.<sup>198</sup> Therefore, the core international standards can be faithfully embodied in Viet Nam's national legislation and the specified crimes and violations and their incitement can be criminalised under domestic law and practice.

*Allow independent civil society stakeholders.* At present, Viet Nam does not have a legal framework conducive to the emergence of an active and independent civil society. The government of Viet Nam is encouraged to allow a domestic civil society not bound by restrictions. Authorities should allow the population to engage the state, each other, the market and provide an independent political space to address issues of concern to the population through dialogue, advocacy and contention. Therefore, this must include ensuring the population the freedom of the press and internet and freedom of assembly.

*Engage in dialogue with international experts on legal developments.* The Vietnamese authorities are urged to review the country's 1999 Penal Code and the 2003 Criminal Procedure code to allow less scope for open interpretation and to provide consistent adherence to international norms outlined in the international human rights treaty commitments. Authorities are encouraged to take action to strengthen the legal basis for the accountability of all state authorities and the improvement of judicial scrutiny over their activities. This will aid in the establishment of an effective, open and transparent legal system based on the rule of law.

*Strengthen the focus on minority rights.* The attention to minority issues and minority rights violations at an early stage is known to be an invaluable contribution to the prevention of mass atrocities. The Vietnamese authorities are therefore encouraged to take a more proactive approach to minority rights by putting protections in place long before tensions erupt. A proactive approach should involve expanding avenues to raise minority issues, such as:

- Allowing minorities to participate in decision-making and allow representation of minorities at all levels of civic service
- Continually reassessing the success of efforts to accommodate diversity and implementation of principles of non-discrimination
- Providing the protection and preservation of culturally distinctive identities, including language and religious identities
- Allowing minority groups to participate equally in and benefit from the economic life of the State
- Acknowledging the indigenous status of the Christian Montagnards and the Khmer Kampuchea Krom Peoples.
- Promoting solidarity between Kinh and minorities

*Address the systemic violations of human rights of particular minorities.* It is essential for the prevention of mass atrocities to continually uphold human rights. Therefore, it is highly recommended that the Vietnamese government stop the repression of ethnic minority Christian Montagnards in the northern and central Highlands and to stop the repression of ethnic Khmer Krom Kampuchea Peoples and Khmer Buddhists in the Mekong Delta. Urgent steps must be taken to ensure that citizens can fully enjoy the rights to freedom of expression and freedom of religion. This should include an amendment to the provisions in the Ordinance on religion and other domestic laws that criminalize certain religious activities on the basis of threats to national security. This should also permit independent religious organizations to

conduct peaceful religious activities in accordance with international legal standards and allow religious groups and organizations to obtain legal status and operate independently from other religious organizations if they desire independence. The torture and ill-treatment of political and religious prisoners should be condemned and the perpetrators of these crimes brought to trial.



## Author Notes and References

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<sup>3</sup> Ho Chi Minh, 'To the People's Committees in the whole country and at all levels', in *Selected Writings* (Hanoi: The Gioin Publishers, 1994 [1945]), pp. 59-61; and 1992 Constitution of the Socialist Republic of Vietnam (As Amended 25 December 2001), Chapter I, Article 2, <http://www.vietnamlaws.com>.

<sup>4</sup> Carlyle A. Thayer, 'Political Legitimacy in Vietnam: Challenge and Response', *Politics and Policy*, 38/3: 423-444 (2010), p. 425; Damien Kingsbury, *South-East Asia: A Political Profile* (Oxford and New York: Oxford University Press, 2005), pp. 235-40; and Justin Cornfield, *The History of Vietnam* (Westport, Connecticut; London: Greenwood Press, 2008), p. 105.

<sup>5</sup> Gareth Porter, 'The U.S. and Vietnam: Between War and Friendship', *Southeast Asian Affairs*, 4: 325-338 (1977), p.332; and Nayan Chanda, *Brother Enemy: The War After the War* (New York: Macmillan Publishing Company, 1986), p. 142.

<sup>6</sup> Carlyle A. Thayer, 'Political Legitimacy in Vietnam: Challenge and Response', *Politics and Policy*, 38/3: 423-444 (2010), p. 425; and Justin Cornfield, *The History of Vietnam* (Westport, Connecticut; London: Greenwood Press, 2008), pp. 105-6.

<sup>7</sup> Damien Kingsbury, *South-East Asia: A Political Profile* (Oxford; New York: Oxford University Press, 2005), p. 242; and Justin Cornfield, *The History of Vietnam* (Westport, Connecticut; London: Greenwood Press, 2008), p. 106.

<sup>8</sup> Justin Cornfield, *The History of Vietnam* (Westport, Connecticut; London: Greenwood Press, 2008), pp. 107-8. Friction between the two countries mounted as clashes between the Vietnamese and Cambodian Communists over the control of islands in the Gulf of Thailand heightened after the fall of Saigon and Phnom Penh in 1975. Khmer Rouge leader Pol Pot reacted with direct attacks on Vietnamese villages in fear of being swallowed by Cambodia's historic enemy. China denounced Viet Nam's returned ambition to dominate Indochina as a result of Viet Nam's expulsion of Chinese residents and Viet Nam's growing alliance with the Soviet Union on China's doorstep. Viet Nam's behaviour was understood by the Chinese government as an inexcusable lack of filial piety to the emperor, especially since China had provided Viet



Nam twenty billion dollars of aid during the recent war. China's short invasion to punish Viet Nam ended due to China's desire to step up closer relation with the United States, non-Communist Asia and the West. At that time, Viet Nam was also eager to establish ties with the United States so as to gain American assistance in reconstruction efforts and also to have American support in their claims to the islands in the Gulf of Thailand with which Viet Nam would provide access to US companies to begin oil exploration in the area. See Gareth Porter, 'The U.S. and Vietnam: Between War and Friendship', *Southeast Asian Affairs*, 4: 325-338 (1977), p. 329-330; and Nayan Chanda, *Brother Enemy: The War After the War* (New York: Macmillan Publishing Company, 1986), pp. 5-7 and 135).

<sup>9</sup> Damien Kingsbury, *South-East Asia: A Political Profile* (Oxford; New York: Oxford University Press, 2005), p. 244; and Justin Cornfield, *The History of Vietnam* (Westport, Connecticut; London: Greenwood Press, 2008), pp. 106-8.

<sup>10</sup> Lawrence E. Grinter, 'Vietnam's Thrust into Globalization: Doi Moi's Long Road', *Asian Affairs, an American Review*, 33/3: 151-165 (2006), p. 154; and Justin Cornfield, *The History of Vietnam* (Westport, Connecticut; London: Greenwood Press, 2008), p. 112.

<sup>11</sup> Justin Cornfield, *The History of Vietnam* (Westport, Connecticut; London: Greenwood Press, 2008), p. 112; Rhoads Murphy, *East Asia: A New History* (New York; London: Longman, 2001), p. 437.

<sup>12</sup> Gerd Mutz, Rainer Klump and Nicola Benda, 'Introduction: Modernization and Social Transformation in Vietnam. Social Capital Formation and Institution Building' in Gerd Mutz and Rainer Klump (eds.), *Modernization and Social Transformation in Vietnam* (Hamburg: Institut für Asienkunde, 2005), p. 17; Justin Cornfield, *The History of Vietnam* (Westport, Connecticut; London: Greenwood Press, 2008), pp. 111-13; and Phan Xuan Nam, Be Viet Dang and Geoffrey B. Hainsworth, 'Introduction' in Peter Boothroyd and Phan Xuan Nam (eds.), *Socioeconomic Renovation in Viet Nam: The Origin, Evolution, and Impact of Doi Moi* (Ottawa: The International Development Research Centre, 2000), p. 3.

<sup>13</sup> Peter Boothroyd and Phan Xuan Nam, 'Preface', in Peter Boothroyd and Phan Xuan Nam (eds.), *Socioeconomic Renovation in Viet Nam: The Origin, Evolution, and Impact of Doi Moi* (Ottawa: The International Development Research Centre, 2000), p. ix.

<sup>14</sup> Peter Boothroyd and Phan Xuan Nam, 'Preface', in Peter Boothroyd and Phan Xuan Nam (eds.), *Socioeconomic Renovation in Viet Nam: The Origin, Evolution, and Impact of Doi Moi* (Ottawa: The International Development Research Centre, 2000), p. ix.; and Joern Dosch, 'Vietnam in 2008: Foreign Policy Successes but Daunting Domestic Problems', *Southeast Asian Affairs*, 2009: 373-388 (2009), p. 384. Undoubtedly Vietnam has further extended its diplomatic relations since the publication of the above references with the country's recent involvements within ASEAN and the Asia-Pacific region and as a result of its participation as a non-permanent member in the UN Security Council (2008-2009).

<sup>15</sup> Stephen R. Tyler, 'Foreword', in Peter Boothroyd and Phan Xuan Nam (eds.), *Socioeconomic Renovation in Viet Nam: The Origin, Evolution, and Impact of Doi Moi* (Ottawa: The International Development Research Centre, 2000), p. vii.

<sup>16</sup> UN, MDG Monitor, 'Viet Nam', [http://www.mdgmonitor.org/country\\_progress.cfm?c=VNM&cd=704](http://www.mdgmonitor.org/country_progress.cfm?c=VNM&cd=704).

<sup>17</sup> According to the MDG Monitor, Viet Nam is on track to achieve universal primary education, to reduce child mortality, to improve maternal health, to ensure environmental sustainability and to promote gender equality. It is possible for Viet Nam to combat HIV/Aids, malaria and other diseases if some changes are made. In respect to the eighth goal, there is insufficient information to assess the country's efforts 'to develop a global partnership for development' (UN, MDG Monitor, 'Viet Nam', [http://www.mdgmonitor.org/country\\_progress.cfm?c=VNM&cd=704](http://www.mdgmonitor.org/country_progress.cfm?c=VNM&cd=704)).

<sup>18</sup> Joern Dosch, 'Vietnam in 2008: Foreign Policy Successes but Daunting Domestic Problems', *Southeast Asian Affairs*, 2009: 373-388 (2009), p. 373.

<sup>19</sup> Gerd Mutz, Rainer Klump and Nicola Benda, 'Introduction: Modernization and Social Transformation in Vietnam. Social Capital Formation and Institution Building', in Gerd Mutz and Rainer Klump (eds.), *Modernization and Social Transformation in Vietnam* (Hamburg: Institut für Asienkunde, 2005), p. 29. Concerns have been highlighted in many non-governmental reports, UN independent expert reports, and in the Summary of Viet Nam's latest Universal Periodic Review of 2009. This will be discussed extensively later in Section One and Section Two of this report.

<sup>20</sup> '2005 World Summit Outcome', UNGA/RES/60/1, 16 September 2005.

<sup>21</sup> See Ban Ki-moon, 'Implementing the Responsibility to Protect', A/63/677, 12 January 2009; and UN Charter, Art. VI, VII, VIII, 26 June 1945.

<sup>22</sup> Ban Ki-moon, 'Implementing the Responsibility to Protect', A/63/677, 12 January 2009, p. 10.

<sup>23</sup> Although Viet Nam had indicated that it would not support the Responsibility to Protect prior to the 2005 World Summit, it has since overcome particular reservations regarding commitment to the traditional understanding of the principle of sovereignty and non-interference and has since shown its support to the R2P. See The Asia-Pacific Centre for the Responsibility to Protect, 'The Responsibility to Protect in Southeast Asia', 30 January 2009, p. 57; Global centre for the Responsibility to Protect, 'Implementing the Responsibility to Protect: The 2009 General Assembly Debate: An Assessment', August 2009, p. 10; and The International Coalition for the Responsibility to Protect, 'July 2009 UN General Assembly Debate on the Responsibility to Protect: What did Member States from the Asia-Pacific Region Say?', 30 October 2009.

- <sup>24</sup> Permanent Mission of the Socialist Republic of Viet Nam, Statement by H.E. Ambassador Bui The Giang, Deputy Permanent Representative of Viet Nam, at the Plenary Meeting on the Responsibility to Protect, 24 July 2009.
- <sup>25</sup> Socialist Republic of Viet Nam Mission to the United Nations, Statement by H.E. Mr. Nguyen Minh Triet, President of the Socialist Republic of Viet Nam at the General Debate of the 64<sup>th</sup> General Assembly of the United Nations, 25 September 2009; Global Centre for the Responsibility to Protect, *Implementing the Responsibility to Protect, The 2009 General Assembly Debate: An Assessment*, August 2009, p. 6; and Ban Ki-moon, 'Implementing the Responsibility to Protect', Report of the UN Secretary-General, A/63/677, 12 January 2009, p. 10.
- <sup>26</sup> '2005 World Summit Outcome', UNGA/RES/ 60/1, 16 September 2005; Ban Ki-moon, "Implementing the Responsibility to Protect", Report of the UN General-Secretary, A/63/677, 12 January 2009, p. 10; and Thealm Ekiyor and Mary Ellen O'Connell, 'The Responsibility to Protect (R2P): A Way Forward – Or Rather Part of the Problem?', *Foreign Voices*, February (2008), p. 8.
- <sup>27</sup> Global Centre for the Responsibility to Protect, *Implementing the Responsibility to Protect, The 2009 General Assembly Debate: An Assessment*, August 2009, pp. 2 and 5; and SG/SM/11701, 15 July 2008.
- <sup>28</sup> Global Centre for the Responsibility to Protect, *Implementing the Responsibility to Protect, The 2009 General Assembly Debate: An Assessment*, August 2009, p. 2; and SG/SM/11701, 15 July 2008.
- <sup>29</sup> The 1992 Constitution of the Socialist Republic of Vietnam (As Amended 25 December 2001), Article 5, [http://www.vietnamlaws.com/freelaws/Constitution92\(aa01\).pdf](http://www.vietnamlaws.com/freelaws/Constitution92(aa01).pdf); and A/HRC/12/11, 5 October 2009, p.4.
- <sup>30</sup> A/HRC/12/11, 5 October 2009, p. 4.
- <sup>31</sup> The Vietnam Committee on Human Rights and FIDH, 'Human Rights Mechanisms and the Asia-Pacific: the Case of Vietnam, Submission to the Human Rights sub-Committee of the Australian Parliament, July 2009, [http://www.aph.gov.au/house/committee/jfadt/asia\\_pacific\\_hr/subs/Sub%2032.pdf](http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%2032.pdf).
- <sup>32</sup> H.R 1969, 'The Vietnam Human Rights Act 2009', 2 April 2009, <http://www.vietnamhumanrights.net/english/documents/HR%201969%20IH.pdf>.
- <sup>33</sup> H.R 1969, 'The Vietnam Human Rights Act 2009', 2 April 2009, <http://www.vietnamhumanrights.net/english/documents/HR%201969%20IH.pdf>.
- <sup>34</sup> The Vietnam Committee on Human Rights and FIDH, 'Human Rights Mechanisms and the Asia-Pacific: the Case of Vietnam, Submission to the Human Rights sub-Committee of the Australian Parliament, July 2009, [http://www.aph.gov.au/house/committee/jfadt/asia\\_pacific\\_hr/subs/Sub%2032.pdf](http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%2032.pdf).
- <sup>35</sup> Permanent Mission of the socialist Republic of Viet Nam, Statement by H.E. Ambassador Bui The Giang, Deputy Permanent Representative of Viet Nam, at the Plenary Meeting on the Responsibility to Protect, 24 July 2009.
- <sup>36</sup> Ban Ki-moon, "Implementing the Responsibility to Protect", Report of the UN General-Secretary, A/63/677, 12 January 2009, p. 15.
- <sup>37</sup> Permanent Mission of the Socialist Republic of Viet Nam to the United Nations, Statement by Statement by Ambassador Le Luong Minh, Permanent Representative of Viet Nam to the UN at the Security Council Briefing on Somalia, <http://www.vietnam-un.org/en/vnun.php?id=160&cid=1>.
- <sup>38</sup> Permanent Mission of the Socialist Republic of Viet Nam to the United Nations, Statement by Statement by Ambassador Le Luong Minh, Permanent Representative of Viet Nam to the UN at the Security Council Briefing on Somalia, <http://www.vietnam-un.org/en/vnun.php?id=160&cid=1>.
- <sup>39</sup> The Djibouti Agreement facilitated rounds of talks between the Transitional Federal Government of Somalia (TFG) and the Alliance for Re-liberation of Somalia (ARS), which provided an avenue for the implementation of Somalia's national reconciliation process. The TFG and ARS committed to the cessation of hostilities, unhindered humanitarian access and the establishment of a Joint Security Committee to monitor the implementation of the security arrangements contained in the agreement (UNDP, 'Somalia', [http://www.un.org/wcm/content/site/undpa/main/activities\\_by\\_region/africa/somalia](http://www.un.org/wcm/content/site/undpa/main/activities_by_region/africa/somalia)).
- <sup>40</sup> Permanent Mission of the Socialist Republic of Viet Nam to the United Nations, Statement by Statement by Ambassador Le Luong Minh, Permanent Representative of Viet Nam to the UN at the Security Council Briefing on Somalia, <http://www.vietnam-un.org/en/vnun.php?id=160&cid=1>.
- <sup>41</sup> Permanent Mission of the Socialist Republic of Viet Nam to the United Nations, Statement by H.E. Ambassador Bui The Giang, at the Security Council Debate on UNMIK, <http://www.vietnam-un.org/en/vnun.php?id=166&cid=1>. Security Council Resolution 1701 concerned the escalating hostilities in Lebanon and Israel since Hezbollah's attack on Israel on 12 July 2006 (S/RES/1701 (2006), 11 August 2006). Security Council resolution 1850 again stressed a solution to the situation in the Middle East, including the Palestinian question (S/RES/1850 (2008), 16 December 2008) and Resolution 1860 the continuing violence due to hostilities in the Gaza Strip between Israel and Palestine (S/RES/1860 (2009), 8 January 2009).
- <sup>42</sup> Permanent Mission of the Socialist Republic of Viet Nam to the United Nations, Statement by Statement by Ambassador Le Luong Minh, Permanent Representative of Viet Nam to the UN at the Security Council Open Debate on "The Situation in the Middle East, Including the Palestinian Question", 14 October 2009, <http://www.vietnam-un.org/en/vnun.php?id=164&cid=1>.

- <sup>43</sup> Permanent Mission of the Socialist Republic of Viet Nam to the United Nations, Statement by Ambassador Le Luong Minh, Permanent Representative of Viet Nam at the Debate of the Security Council on “Report of the AU Panel on Darfur”, 21 December 2009, <http://www.vietnam-un.org/en/vnun.php?id=174&cid=1>
- <sup>44</sup> A/59/PV.89, 8 April 2005; S/RES/1540 (2004), 28 April 2004.
- <sup>45</sup> Permanent Mission of the socialist Republic of Viet Nam, Statement by H.E. Ambassador Bui The Giang, Deputy Permanent Representative of Viet Nam, at the Plenary Meeting on the Responsibility to Protect, 24 July 2009.
- <sup>46</sup> Permanent Mission of the Socialist Republic of Viet Nam, Statement by H.E. Mr. Nguyen Ming Triet President of the Socialist Republic of Viet Nam at the General Debate of the 65<sup>th</sup> Session of the United Nations General Assembly, 24 September 2010.
- <sup>47</sup> Permanent Mission of the Socialist Republic of Viet Nam to the United Nations, Statement by Statement by Ambassador Le Luong Minh, Permanent Representative of Viet Nam to the UN on Behalf of the Association of Southeast Asian Nations at the Debate of the Security Council on “Cooperation between the United Nations and Regional and Subregional Organizations in Maintaining International Peace and Security”, 13 January 2010, <http://www.vietnam-un.org/en/vnun.php?id=175&cid=1>.
- <sup>48</sup> SG/SM/13212, 28 October 2010.
- <sup>49</sup> A/59/PV.89, 8 April 2005.
- <sup>50</sup> A/63/334, 26 August 2008; and UN Programme of Action Implementation Support System (POA-ISS), Viet Nam Country Report: On Implementing the Action Program on Preventing, Combating and Eradicating the Illicit Trade in Small Arms and Light weapons (SALW), <http://www.un-casa.org/CASACountryProfile/PoANationalReports/2006@211@Viet%20Nam.pdf>.
- <sup>51</sup> Ban Ki-moon, ‘Implementing the Responsibility to Protect’, A/63/677, 12 January 2009, p. 25.
- <sup>52</sup> UN Programme of Action Implementation Support System (POA-ISS), Viet Nam Country Report: On Implementing the Action Program on Preventing, Combating and Eradicating the Illicit Trade in Small Arms and Light weapons (SALW), <http://www.un-casa.org/CASACountryProfile/PoANationalReports/2006@211@Viet%20Nam.pdf>.
- <sup>53</sup> Ban Ki-moon, ‘The Responsibility to Protect’, A/63/677, 12 January 2009.
- <sup>54</sup> On the topic of Viet Nam’s “humanitarian” intervention into Cambodia in 1978-79, see Douglas Eisner, ‘Humanitarian Intervention in the Post-Cold War Era’, *Boston University International Law Journal* 11 (1993): 195-226; and G. Klintworth, *Vietnam’s Intervention in Cambodia in International Law* (Canberra: AGPS Press, 1989).
- <sup>55</sup> International Coalition for the Responsibility to Protect, ‘July 2009 UN General Assembly Debate on the Responsibility to Protect: What did Member States from the Asia-Pacific region say?’; and Permanent Mission of the socialist Republic of Viet Nam, Statement by H.E. Ambassador Bui The Giang, Deputy Permanent Representative of Viet Nam, at the Plenary Meeting on the Responsibility to Protect, 24 July 2009.
- <sup>56</sup> A/RES/60/1, 16 September 2005.
- <sup>57</sup> Permanent Mission of the socialist Republic of Viet Nam, Statement by H.E. Ambassador Bui The Giang, Deputy Permanent Representative of Viet Nam, at the Plenary Meeting on the Responsibility to Protect, 24 July 2009.
- <sup>58</sup> International Coalition for the Responsibility to Protect, ‘July 2009 UN General Assembly Debate on the Responsibility to Protect: What did Member States from the Asia-Pacific region say?’; Permanent Mission of the socialist Republic of Viet Nam, Statement by H.E. Ambassador Bui The Giang, Deputy Permanent Representative of Viet Nam, at the Plenary Meeting on the Responsibility to Protect, 24 July 2009.
- <sup>59</sup> Ban Ki-moon, ‘Implementing the Responsibility to Protect’, A/63/677, 12 January 2009, p. 8.
- <sup>60</sup> Ban Ki-moon, ‘Implementing the Responsibility to Protect’, A/63/677, 12 January 2009, p. 8.
- <sup>61</sup> Ban Ki-moon, ‘Implementing the Responsibility to Protect’, A/63/677, 12 January 2009, pp. 10-14.
- <sup>62</sup> H.R 1969, ‘The Vietnam Human Rights Act 2009’, 2 April 2009, <http://www.vietnamhumanrights.net/english/documents/HR%201969%20IH.pdf>, p. 4.
- <sup>63</sup> H.R 1969, ‘The Vietnam Human Rights Act 2009’, 2 April 2009, <http://www.vietnamhumanrights.net/english/documents/HR%201969%20IH.pdf>, p. 10.
- <sup>64</sup> Joern Dosch, ‘Vietnam in 2008: Foreign policy Successes but Daunting Domestic Problems’, *Southeast Asian Affairs*, 2009: 373-388 (2009), p. 377.
- <sup>65</sup> A/HRC/WG.6/5/VNM/2, 16 March 2009; H.R 1969, ‘The Vietnam Human Rights Act 2009’, 2 April 2009, <http://www.vietnamhumanrights.net/english/documents/HR%201969%20IH.pdf>; and Joern Dosch, ‘Vietnam in 2008: Foreign policy Successes but Daunting Domestic Problems’, *Southeast Asian Affairs*, 2009: 373-388 (2009), p. 375.
- <sup>66</sup> Barbara Harff, ‘No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955’, *The American Political Science Review*, 97/1 (2003), p. 59; and Kenneth J. Campbell, *Genocide and the Global Village* (New York: Palgrave, 2001), p. 34. The definition of genocide is drawn from Article II of the United Nations Genocide Convention (GA/RES/260/III, 9 December 1948).
- <sup>67</sup> David Chandler, ‘R2P or Not R2P?: More State-building, Less Responsibility’, *Global Responsibility to Protect*, 2 (2010), p. 166.
- <sup>68</sup> Ban Ki-moon, ‘Implementing the Responsibility to Protect’, A/63/677, 12 January 2009.

- <sup>69</sup> R. J. Rummel, *Death by Government* (New Brunswick and London: Transaction Publishers, 1994).
- <sup>70</sup> Penal Code of Viet Nam, No.15/1999/QH10.
- <sup>71</sup> Article 69 stipulates that citizens are entitled to freedom of speech and freedom of the press; they have the right to receive information and the right of assembly, association and demonstration in accordance with the law. The first two statements in Article 70 stipulate that citizens have the right to freedom of belief and religion, and may practice or not practice any religion. All religions are equal before the law (Socialist Republic of Viet Nam, 1992 Constitution, 25 December 2001).
- <sup>72</sup> Duy Hoang and Angelina Huynh, 'Rule by Law: How Communist Vietnam Suppresses Political Opposition' *Viet Tan*, 18 November 2010, <http://www.viettan.org/spip.php?article10565>. International Federation of Human Rights and Viet Nam Committee on Human Rights (VCHR and FIDH), 'Human Rights Mechanisms and the Asia-Pacific: the Case of Vietnam', [http://www.aph.gov.au/house/committee/jfadt/asia\\_pacific\\_hr/subs/Sub%2032.pdf](http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%2032.pdf).
- <sup>73</sup> Socialist Republic of Viet Nam, 1992 Constitution, Article 70, 15 April 1992, [http://www.vietnamlaws.com/freelaws/Constitution92\(aa01\).pdf](http://www.vietnamlaws.com/freelaws/Constitution92(aa01).pdf).
- <sup>74</sup> Kenneth Christie and Denny Roy, *The Politics of Human Rights in East Asia* (London; Sterling, Virginia: Pluto Press, 2001), p. 109.
- <sup>75</sup> A/HRC/WG.6/5/VNM/2, 16 March 2009, p. 3.
- <sup>76</sup> A/HRC/12/11\*, 5 October 2009, p. 3-4.
- <sup>77</sup> E/CN.4/1999/58/Add.2, 29 December 1998.
- <sup>78</sup> OHCHR, 'Country Visits by Special Procedures', <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm#vietnam>.
- <sup>79</sup> There are numerous violations listed on Human Right Watch's and Amnesty International's websites. Furthermore, such Country Visits by Special Procedures', <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm#vietnam>.
- <sup>79</sup> There are numerous non-governmental organisation have voiced their findings in the Summary prepared by the Office of the High Commissioner for Human Rights in response to Viet Nam's most recent submission to the Universal Periodical Review (A/HRC/WG.6/5/VNM/3, 23 February 2009).
- <sup>80</sup> A/RES/39/4, 10 December 1984.
- <sup>81</sup> A/CONF.183/9, 17 July 1998, p. 2.
- <sup>82</sup> '2005 World summit Outcome', A/RES/60/1, 16 September 2005.
- <sup>83</sup> 'Statement by Gay McDougall, Independent Expert on minority Issues at the 65<sup>th</sup> session of the General Assembly', 20 October 2010, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10472&LangID=E>.
- <sup>84</sup> Ban Ki-moon, 'Implementing the Responsibility to Protect', A/63/677, 12 January 2009, p. 11.
- <sup>85</sup> 'Statement by Gay McDougall, Independent Expert on minority Issues at the 65<sup>th</sup> session of the General Assembly', 20 October 2010, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10472&LangID=E>.
- <sup>86</sup> Ban Ki-moon, 'Implementing the Responsibility to Protect', Report of the Secretary-General, A/63/677, 12 January 2009.
- <sup>87</sup> Early warning mechanisms draw attention to the lack of an adequate legislative basis for defining and prohibiting all forms of racial discrimination such as inadequate implementation of enforcement mechanisms; the presence of a pattern of escalating racial hatred and violence or appeals to racial intolerance by persons, groups or organizations; and significant flows of refugees or displaced persons resulting from a pattern of racial discrimination or encroachment on the lands of minority communities (A/48/18, Annex III, 31 January 1992).
- <sup>88</sup> UN Treaty Collection, International Convention on the Elimination of All Forms of Racial Discrimination, status as at 19 January 2011, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-2&chapter=4&lang=en).
- <sup>89</sup> A/RES/47/135, 18 December 1992.
- <sup>90</sup> UNGA/Res/47/135, 18 December 1992; OHCHR, 'Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities', [http://www2.ohchr.org/english/issues/minorities/docs/Booklet\\_Minorities\\_English.pdf](http://www2.ohchr.org/english/issues/minorities/docs/Booklet_Minorities_English.pdf), p.3.
- <sup>91</sup> H.E Ngyen Phu Binh, Statement made by Assistant Minister for Foreign Affairs, Head of the Vietnamese Delegation to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 3 September 2001, <http://www.un.org/WCAR/statements/vietE.htm>; Committee on the Elimination of CERD/C/61/Misc.30/Rev.3 Racial Discrimination, 23 August 2002, [http://www.johannesburgsummit.org/html/documents/summit\\_docs/background\\_papers/background7cerd.pdf](http://www.johannesburgsummit.org/html/documents/summit_docs/background_papers/background7cerd.pdf)
- <sup>92</sup> GA/10612, 13 September 2007.
- <sup>93</sup> A/HRC/12/11\*, 5 October 2009, p. 5.
- <sup>94</sup> A/HRC/12/11\*, 5 October 2009, p. 3-4; Khong Dien, *Population and Ethno-Demography in Vietnam* (Chiang Mai: Silkworm Books, 2002), p. 1; and J. Michaud, 'Handling Mountain Minorities in China, Vietnam and Laos: From History to Current Concerns', *Asian Ethnicity*, 10/1 (2009), p. 32.



- <sup>95</sup> The 1992 Constitution of the Socialist Republic of Vietnam (As Amended 25 December 2001), Article 5, [http://www.vietnamlaws.com/freelaws/Constitution92\(aa01\).pdf](http://www.vietnamlaws.com/freelaws/Constitution92(aa01).pdf).
- <sup>96</sup> The 1992 Constitution of the Socialist Republic of Vietnam (As Amended 25 December 2001), Article 5, [http://www.vietnamlaws.com/freelaws/Constitution92\(aa01\).pdf](http://www.vietnamlaws.com/freelaws/Constitution92(aa01).pdf).
- <sup>97</sup> The 1992 Constitution of the Socialist Republic of Vietnam (As Amended 25 December 2001), Article 5, [http://www.vietnamlaws.com/freelaws/Constitution92\(aa01\).pdf](http://www.vietnamlaws.com/freelaws/Constitution92(aa01).pdf).
- <sup>98</sup> Khong Dien, *Population and Ethno-Demography in Vietnam* (Chiang Mai: Silkworm Books, 2002), p. 15.
- <sup>99</sup> Khong Dien, *Population and Ethno-Demography in Vietnam* (Chiang Mai: Silkworm Books, 2002), p. 15; and H.E Ngyen Phu Binh, Statement made by Assistant Minister for Foreign Affairs, Head of the Vietnamese Delegation to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 3 September 2001, <http://www.un.org/WCAR/statements/vietE.htm>.
- <sup>100</sup> Such programs include the National Targeted Programme for Poverty Reduction, the National Targeted Programme for Rural Water Supply and Sanitation, the National Targeted Programme for Vocational Training, the National Targeted Programme for Energy Conservation and Efficiency, the National Targeted Programme for Employment, the National Targeted Programme for Climate change, The National Targeted Programme for Prevention and Control of Social Evils and the Socio-Economic Development Programme for the Most Vulnerable Communes in Ethnic Minority and Mountainous Areas (Ha Viet Quan [Deputy Director of the P.135 Coordination Office for the Committee for Ethnic Minority Affairs of Vietnam], 'Programme 135: Sharing Lessons on Poverty Reduction and Development Schemes for Ethnic Minorities in Vietnam', <http://www.un.org/esa/socdev/egms/docs/2009/Ghana/Quan.pdf>).
- <sup>101</sup> Government of Vietnam, Committee for Ethnic Affairs, Case Study, 'Programme 135 For Socio-Economic Development of Communes Facing extreme Difficulties in Ethnic Minority and Mountainous Areas in Vietnam', [http://www.undprcc.lk/ext/mdgi\\_regional\\_workshop\\_2007/pdf/Vietnam2.pdf](http://www.undprcc.lk/ext/mdgi_regional_workshop_2007/pdf/Vietnam2.pdf).
- <sup>102</sup> Ha Viet Quan (Deputy Director of the P.135 Coordination Office for the Committee for Ethnic Minority Affairs of Vietnam), 'Programme 135: Sharing Lessons on Poverty Reduction and Development Schemes for Ethnic Minorities in Vietnam', <http://www.un.org/esa/socdev/egms/docs/2009/Ghana/Quan.pdf>.
- <sup>103</sup> Government of Vietnam, Committee for Ethnic Affairs, Case Study, 'Programme 135 For Socio-Economic Development of Communes Facing extreme Difficulties in Ethnic Minority and Mountainous Areas in Vietnam', [http://www.undprcc.lk/ext/mdgi\\_regional\\_workshop\\_2007/pdf/Vietnam2.pdf](http://www.undprcc.lk/ext/mdgi_regional_workshop_2007/pdf/Vietnam2.pdf).
- <sup>104</sup> Terry Rambo, 'Vietnam', in Colin Mackerras (ed.), *Ethnicity in Asia* (London and New York: Routledge, 2003), p. 124.
- <sup>105</sup> 'First National Ethnic Minority Congress Opens', *Vietnam News*, 12 May 2010, <http://myvietnamnews.com/2010/05/13/first-national-ethnic-minority-congress-opens/>.
- <sup>106</sup> OHCHR, 'Statement by the United Nations Independent Expert on minority issue, Ms. Gay McDougall, on conclusion of her official visit to Viet Nam, 5 -15 July 2010', 21 July 2010, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10223&LangID=E>.
- <sup>107</sup> A/HRC/WG.6/5/VNM/3, (A/HRC/10/7/Add/2), 23 February 2009, p. 9; Amnesty International (AI), 'Viet Nam: Time to Live up to Commitment', 1 July 2008, <http://www.amnesty.org.au/news/comments/14689/>; AI, 'Increasing Discrimination in Viet Nam', 10 October 2008, <http://www.amnesty.org.au/news/comments/18127/International>; Federation of Human Rights (FIDH), 'Vietnam Twelve Human Rights Defenders Have the Floor', *The Observatory for the Protection of Human Rights Defenders*, 470/2 (April 2007), pp. 7-8; Unrepresented Nations and Peoples Organization (UNPO), 'Degar-Motagnards; Jailed For Practicing "independent Christianity"', 17 November 2010 <http://www.unpo.org/article/11945>; UNPO, 'Degar-Motagnards: Lethal Torture of Christians Continues', 15 November 2010, <http://www.unpo.org/article/11932>; and UNPO, 'Degar-Motagnards: Military crackdown on religious Dissidents', 2 November 2010 <http://www.unpo.org/article/11876>.
- <sup>108</sup> Barbara Harff, 'No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955', *The American Political Science Review*, 97/1 (2003), p. 63.
- <sup>109</sup> OHCHR, 'Statement by the United Nations Independent Expert on minority issue, Ms. Gay McDougall, on conclusion of her official visit to Viet Nam, 5 -15 July 2010', 21 July 2010, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10223&LangID=E>.
- <sup>110</sup> OHCHR, 'Statement by the United Nations Independent Expert on minority issue, Ms. Gay McDougall, on conclusion of her official visit to Viet Nam, 5 -15 July 2010', 21 July 2010, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10223&LangID=E>.
- <sup>111</sup> Terry Rambo, 'Vietnam', in Colin Mackerras (ed.), *Ethnicity in Asia* (London; New York: Routledge Curzon, 2003), pp. 108-13.
- <sup>112</sup> Stephen Denney, 'Religion and Dissent in Vietnam', *Journal of Interdisciplinary Studies*, 18/1/2: 136-152 (2006), pp. 136-38.
- <sup>113</sup> Population Reference Bureau, '2010 World Population Data Sheet', p. 8, [http://www.prb.org/pdf10/10wpds\\_eng.pdf](http://www.prb.org/pdf10/10wpds_eng.pdf).
- <sup>114</sup> Terry Rambo, 'Vietnam', in Colin Mackerras (ed.), *Ethnicity in Asia* (London; New York: Routledge Curzon, 2003), p. 127.
- <sup>115</sup> Mark Sidel, *The Constitution of Vietnam: A Contextual Analysis* (Oxford; Portland. Oregon: Hart Publishing, 2009), p. 51.



- <sup>116</sup> Mark Sidel, *The Constitution of Viet Nam: A Contextual Analysis* (Oxford; Portland, Oregon: Hart Publishing, 2009), p. 51.
- <sup>117</sup> Mark McLeod, 'Indigenous Peoples and the Vietnamese Revolution, 1930-1975', *Journal of World History*, 10/2 (1999), p. 354.
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- <sup>119</sup> Article 69 states, 'citizens are entitled to freedom of Speech and freedom of the press; they have the right to receive information and the right of assembly, association and demonstration in accordance with the law.' 1992 Constitution of the Socialist Republic of Vietnam (As Amended 25 December 2001).
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<sup>144</sup> It is also worth noting that historically, the Vietnamese considered the highlands to be a dangerous place due to the greater incidents of malaria that occurred in the mountains where the fast-flowing waters or "poisonous waters" (*nuoc doc*) of the highlands provided a more suitable breeding ground for the anopheles mosquito than the waters of the lowlands. Therefore, the Red River Delta and mountains of the high plains of central and southern central Viet Nam were considered uninhabitable and left to "the mountain peoples". A cultural superiority existed when the Vietnamese took over the land of the Central Highlands after the French were defeated and left Viet Nam in 1955 and the Vietnamese resorted to calling the hill tribes peoples, "moi" which means "savage". This was a derogatory term implying primitiveness and backwardness.

<sup>145</sup> Mark McLeod, 'Indigenous Peoples and the Vietnamese Revolution, 1930-1975', *Journal of World History*, 10/2 (1999), p. 361.

<sup>146</sup> Mark McLeod, 'Indigenous Peoples and the Vietnamese Revolution, 1930-1975', *Journal of World History*, 10/2 (1999), p. 364; and Mark Sidel, *The Constitution of Vietnam: A Contextual Analysis* (Oxford; Portland, Oregon: Hart Publishing, 2009).

<sup>147</sup> Terry Rambo, 'Vietnam', in Colin Mackarras (ed.), *Ethnicity in Asia* (London; New York: Routledge, 2003), p. 125; and Mark Sidel, *The Constitution of Viet Nam: A Contextual Analysis* (Oxford; Portland, Oregon: Hart Publishing, 2009), p. 48.

<sup>148</sup> Terry Rambo, 'Vietnam', in Colin Mackarras (ed.), *Ethnicity in Asia* (London; New York: Routledge, 2003), p. 125.

<sup>149</sup> Pamela McElwee, 'Becoming Socialist or Becoming Kinh?', in Christopher R. Duncan (ed.), *Civilizing the Margins: Southeast Asian Government Policies for the Development of Minorities* (Ithaca; London: Cornell University Press, 2004), pp. 198-200. The highlanders commonly practiced shifting cultivation and slash and burn farming techniques which authorities found unfavourable. This was due to the mobility of farmers through rotating field and the destruction of forests and land degradation caused by the slash and burn technique. However, environmental studies have predominantly concluded that rotational shifting agriculture is not responsible for forest destruction and water pollution. See Tim Forsyth and Andrew Walker, *Forest Guardians, Forest Destroyers: The Politics of Environmental Knowledge in Northern Thailand* [Chiang Mai: Silkworm Books, 2008], p. 226.

<sup>150</sup> Pamela McElwee, 'Becoming Socialist or Becoming Kinh?', in Christopher R. Duncan (ed.), *Civilizing the Margins: Southeast Asian Government Policies for the Development of Minorities* (Ithaca; London: Cornell University Press, 2004), p. 200.

<sup>151</sup> Pamela McElwee, 'Becoming Socialist or Becoming Kinh?', in Christopher R. Duncan (ed.), *Civilizing the Margins: Southeast Asian Government Policies for the Development of Minorities* (Ithaca; London: Cornell University Press, 2004), p. 201.

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