UNITED NATIONS
HUMAN RIGHTS
SPECIAL PROCEDURES
SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

United Nations Special Rapporteur on the right to development, Mr Surya Deva

Official country visit to Viet Nam

6 to 15 November 2023

PRELIMINARY OBSERVATIONS AND RECOMMENDATIONS

Hanoi, 15 November 2023

Preliminary observations and recommendations of the United Nations Special Rapporteur on the right to development, Mr Surya Deva, at the end of his visit to Viet Nam

Hanoi ***(15 November 2023)*** *– At the end of his visit to Viet Nam, Mr Surya Deva delivered the following statement:*

I am grateful to the Government of Viet Nam for inviting me to conduct an official visit as the Special Rapporteur on the right to development, and for their full support and cooperation before and during the visit. This invitation shows the Government's openness and desire to show leadership in promoting all human rights and implementing the Sustainable Development Goals (SDGs).

During my official visit from 6 to 15 November 2023, I visited Hanoi, Ho Chi Minh City and the provinces of Ha Tinh and Ben Tre. I had the pleasure to meet with representatives of the central and provincial Governments, United Nations agencies, development partners, non-governmental organisations (NGOs), businesses and universities.

Context and objectives of the visit

Article 1 of the Declaration on the Right to Development, adopted by the United Nations General Assembly on 4 December 1986, defines the right to development as an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

As I highlighted in my vision report to the UN Human Rights Council (A/HRC/54/27), there are three elements and four facets of the right to development. The three elements are the ability of human beings to participate in, contribute to and enjoy the right to development. The four facets are economic, social, cultural and political development. One can also derive four overarching principles of the right to development from the relevant normative instruments: (a) self-determination, (b) intersectionality, (c) intergenerational equity, and (d) fair distribution.

Viet Nam is a member of the UN Human Rights Council (2023-25) and recently participated in the second Voluntary National Review on the Implementation of the SDGs (VNR). It has ratified seven of nine core human rights treaties and nine of ten fundamental ILO conventions. In 2024, Viet Nam will be undergoing through the 4th Cycle of the Universal Period Review. Like other States, Viet Nam's journey of implementing the SDGs has been affected by the COVID pandemic, climate change and conflicts. Moreover, this will be the first official country visit of any special procedures to Viet Nam after November 2017.

Against this backdrop, the key objectives of my visit were to gain a first-hand understanding of the realisation of the right to development in Viet Nam, and to identify ongoing challenges with a view to formulating practical recommendations to the Government, businesses and other stakeholders who are working towards implementing the SDGs and promoting the realisation of the right to development in the country.

I was especially interested in learning more about how the Government at all four levels ensure active, free and meaningful participation of people in development policies and programs; what

policies and measures are in place to address intersectional inequalities and discriminations; and how the Government has been approaching economic development amidst the triple planetary crisis.

Progress in implementing the SDGs

Viet Nam has made considerable advances in the implementation of the 2030 Agenda for Sustainable Development in several areas such as poverty reduction, access to clean water and sanitation, and developing resilient infrastructure and fostering innovation. I especially appreciated the multi-dimensional poverty reduction approach adopted by the Government. Moreover, in 2017, the Prime Minister issued Decision 622/QD-TTg, which provides a National Action Plan and Roadmap for the implementation of the SDGs by 2030. The two National Target Programs on New Rural Development and Sustainable Poverty Reduction have delivered positive results.

In its 2023 VNR, Viet Nam recognised the need to accelerate action on implementing several of the SDGs: addressing malnutrition among ethnic minority children (SDG 2); improving health and well-being, the expansion of essential healthcare services for all people, especially for vulnerable populations such as the older people and ethnic minorities (SDG 3); improving equitable access to quality education, especially for vulnerable groups (SDG 4); combating harmful social norms on gender (SDG 5); increasing renewable energy and boosting energy efficiency (SDG 7); make extra efforts in addressing environmental issues in both urban and rural areas (SDG 11); promoting sustainable consumption and production (SDG 12); mobilizing resources for disaster risk management and climate change mitigation and adaptation (SDG 13); preserving life below water (SDG 14); and protecting biodiversity and improving ecosystem services (SDG 15).

It appears to me that insufficient, inaccurate or inconsistent data to measure the progress toward the implementation of SDG targets is a gap that the Government should address. Moreover, the importance of disaggregated data collection is critical from the perspective of the right to development. Disaggregated data is needed to identify development priorities at all levels and for all segments of the society. Disaggregated data is also crucial to enable an assessment of how policies and programmes are affecting individuals and groups that have faced (or continue to face) discrimination. The process of data collection should actively involve the community about whom the information is being gathered and the respondents should be able to self-select how they identify in terms of ethnicity, sexual orientation, gender identity and disability status. Viet Nam's General Statistics Office should therefore work closely with NGOs and UN agencies to develop a robust methodology and apply it to collect reliable disaggregated data.

I specifically refer to the progress and challenges in the implementation of SDG 5, SDG 10 and SDG 13 in the sections below.

Gender dimensions

In implementing my mandate, I pay special attention to the gender dimensions of the right to development, considering the developmental challenges that girls and women face in most societies due to multiple intersectional discriminations.

Gender equality is enshrined in article 26 of the Constitution of Viet Nam and in the 2006 Law of Gender Equality. Article 26.2 explicitly requires the State, society, and family to create

conditions for the comprehensive development of women. On a positive note, I would like to note that draft laws are assessed for gender equality and gender-responsive approaches are integrated in developing standards or new technologies.

Viet Nam is also striving to achieve progress in ensuring the equal participation of women in decision-making bodies at different levels of the Government and public administration. The 2018 Resolution 26-NQ/TW of the Communist Party of Vietnam sets targets for women's representation by 2030 for Party Committees at all levels (25%), and for National Assembly and People's Councils at all levels (35%). The country's Gender Equality Strategy 2021-2030 sets targets that by 2025, 60% of state agencies and local governments must have women in key leader positions, rising to 75% by 2030. In 2022, 30.26% of the seats in the National Assembly are being held by women and three of the eighteen ministers in the Central Government are women. At the same time, women with disabilities and from ethnic minorities continue to be under-represented at all levels of the Government.

Women's representation at the management level of businesses also remains low: in 2022, women represented only 16.8% of those employed in senior and middle management. Women in Viet Nam also face a lower retirement age in comparison to men, though the Government is taking steps to bridge gradually this discriminatory gap. Moreover, in 2021, 57% of women were in vulnerable employment in comparison to 46.9% of men. The percentage of women in the informal economy is relatively high, thus affecting the protection of their labour rights, including social security. Women also continue to bear a disproportionate burden of unpaid work and caring responsibilities in Viet Nam, though the Women's Union noted that the situation is slowly changing in cities. The Government should take proactive measures to address the double burden faced by women and try to promote the inclusion of all women engaged in the informal economy in the pension and social benefits schemes. I also recommend that the Government at all levels should take more measures to offer vocational training and credit facilities to women from ethnic minorities.

The 2019 Labour Law of Viet Nam prohibits and penalises sexual harassment in the workplace. However, I noticed that policies and procedures to address sexual harassment at work appear to be few and the awareness of such policies and procedures even lower. I urge the Government to ensure that policies to address sexual harassment at work are put in place at all four levels of the Government as well as in state-owned enterprises. Moreover, businesses should be required to adopt sexual harassment policies and establish a gender-responsive complaint mechanism to deal with complaints. The Government should also ratify the ILO Convention No. 190 on Violence and Harassment.

Domestic violence results in physical and mental damage for the victims and significantly hampers their participation not only in economic, but also in social, political and cultural development. Women again experience domestic violence disproportionately. In 2022, Viet Nam enacted the Law on Domestic Violence Prevention and Control. This is a welcome step in that this Law adopts a human rights-based approach to domestic violence. However, the levels of awareness on issues related to gender-based violence appear to be low and because of significant social stigma, cases are not reported. The Government at all levels should raise awareness to change patriarchal values (e.g., the country's sex ratio at birth was 112 boys per 100 girls in 2021), aid domestic violence victims and establish more protective shelters for the victims of domestic violence.

Vulnerable or marginalised groups

When adopting the SDGs in 2015, States unanimously committed to leave no one behind: they also agreed to ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard (Goal 10.3). These commitments imply that governments have a duty to formulate national development policies and measures that would not only eliminate discrimination but also remedy the disadvantage faced by certain marginalised or vulnerable groups such as ethnic minorities, persons with disabilities and migrant workers.

In Viet Nam, over 14 million people belong to one of the recognised 53 ethnic minorities, living in 52 provinces and cities. Despite progress reported towards the objective of leaving no one behind, the available data regarding progress under SDG 10 shows that there is a higher proportion of people living in poverty among ethnic minorities. Multi-dimensional poverty rates in the Northern Mountains and Central Highlands regions, where most ethnic minorities live, is more than double the national average. Access to reproductive health for women in remote areas and among ethnic minorities is more limited than for Kinh women and women in more developed regions. I also received information that thousands of members of ethnic minorities do not have their household registration certificates and identity cards and consequently are excluded from receiving access to many public benefits and services. The Government should take effective measures to address these inequalities and exclusions of ethnic minorities from development and human rights programmes.

The leading institution responsible for ethnic minorities, the Committee for Ethnic Minority Affairs (CEMA), has an advisory role on ethnic affairs, legislative issues, supervising the implementation of ethnic policies and socio-economic development programs and plans for ethnic minority areas. In 2014, the CEMA created the Statistical Indicator System on Ethnic Work with 119 statistical indicators in different fields, which facilitate leadership and state management agencies in evaluation, forecasting, policymaking and the development of socio-economic plans for minorities. I learned that the Government has taken measures to provide for ethnic doctors and teachers as well as for vocational training and loans.

Article 5.2 of Viet Nam's Constitution provides that "[a]ll the ethnicities are equal, unified and respect and assist one another for mutual development; all acts of national discrimination and division are strictly forbidden". However, Viet Nam has not yet enacted a specific law on anti-discrimination incorporating the definition of racial discrimination. While 89 of 500 deputies of the National Assembly of Viet Nam are ethnic minorities, their representation at the commune people's committees as well as in government employment is relatively low.

To ensure that development programmes and projects truly addresses the local developmental priorities, especially in communes with high percentages of ethnic minorities population, it is crucial to adopt a bottom-up participatory approach to all planning, development, implementation and monitoring processes. To ensure that the perspective of women from ethnic minorities is taken into consideration, authorities should plan and budget for their participation in all stages of planning, implementation and monitoring of development programmes and projects.

I am aware that the Government of Viet Nam does not accept the concept of indigenous peoples, though it had supported the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This results in ethnic monitories unable to avail important rights to self-

determination and free, prior and informed consent (FPIC). As self-identification is a fundamental principle of UNDRIP, I recommend that the Government considers allowing individuals alone or in association with others to choose their identity, including the right to identify as indigenous peoples. The Government should also consider ratifying the ILO Convention No. 169 on Indigenous and Tribal Peoples.

Persons with disabilities are another group in a situation of vulnerability. According to data received, about 7.7% of the population of Viet Nam suffer from different disabilities, a significant portion of which are related to the use of Agent Orange by the United States military between 1961 and 1971. Based on what I observed during the visit, persons with disabilities face numerous challenges in accessing public infrastructure and facilities. For example, roads and most public buildings are not accessible for wheelchairs; road crossings are not provided with traffic lights adapted for visually impaired person or persons in wheelchairs; and adequate information about disasters or hazards is not available for persons with visual or hearing impairments. The levels of disability benefits are also insufficient to cover basic needs. Moreover, persons with disabilities are under-represented in legislative bodies at different levels and they face discrimination in education, employment and online services.

The Government should review the relevant regulations and policies on accessibility to all government facilities providing public services such as health care, education and administrative services, as well as review the accessibility of public transports that person with disabilities could use to participate in economic, political, social and cultural life. I also urge the responsible authorities to ensure the recruitment of a sufficient number of teachers, particularly in remote and rural areas, so that children with different disabilities can receive education. The Government at all levels should also have continuous dialogues with NGOs and unions of persons with different types of disabilities to better understand their specific needs and include them in the preparation of development programmes and policies.

Migration is an important pathway to realising the right to development. However, migrant workers are also quite vulnerable to exploitation. I received information that migrant workers from Viet Nam face risks of forced labour, human trafficking, debt bondage, deception by recruitment agencies and exploitation in destination countries. A "whole of Government approach" should be adopted to protect the rights of migrant workers and legal assistance should be provided to them in collaboration with the relevant agencies of destination countries.

Environmental pollution and climate change

Viet Nam is highly vulnerable to climate change impacts such as sea level rise, biodiversity loss and marine plastic pollution. Climate change and environmental pollution pose the greatest risk to the poor, ethnic minorities and other people in remote, mountainous and low-lying areas, persons with disabilities, children and women. Communities living in the Mekong Delta have been facing soil degradation from over-farming, unpredictable monsoon floods, droughts, increasing infiltrations of saline water in the rice fields and salt deposits in the nearby grounds. I saw first-hand the coastal erosion in Bao Thuan Commune of the Ben Tre Province caused by the sea level rise.

Viet Nam submitted its Intended Nationally Determined Contribution (INDC) in 2015, signed and approved the Paris Agreement, and developed a National Plan for the implementation of the Paris Agreement in 2016. The 2020 Law on Environmental Protection has a chapter on responding to climate change that stipulates the responsibility to reduce greenhouse gas

emission and adapt to climate change to implement Viet Nam's INDC. At COP26, Viet Nam committed to achieve net zero emissions by 2050 and has pledged to reduce methane emissions by 30% from 2020 levels by 2030. The National Steering Committee for Implementing Viet Nam's Commitments at COP26 was established on 21 December 2021, headed by the Prime Minister. Several important documents have been issued, including: Decree on reducing greenhouse gas emissions and protecting the ozone layer; National Climate Change Strategy to 2050; Action Program on Green Energy Transition and Reduction of Carbon and Methane Emissions of the Transportation Sector; National Action Plan on Green Growth for the period 2021-2030; and Methane Emission Reduction Action Plan to 2030. The Government is also encouraging renewable energy production, as I saw at the Cam Hoa Solar Power Plant in the Ha Tinh Province, and restoring the forest cover by adopting a protection model of conservation (e.g., the Can Gio Biosphere Reserve that I visited).

Despite these positive developments, several challenges such as limited funding, policy incoherence, slow approval processes and non-availability of suitable technology remain. It also seems that although an environmental (or social) impact assessment is required under law before approving new development projects, the process is often like a "tick box" compliance, because a holistic, meaningful, participatory and transparent impact assessment is often missing in practice. Moreover, it is a matter of great concern that arrests and conviction of several environmental human rights defenders on charges such as tax evasion is having a chilling effect on independent NGOs' willingness to contributing to the Just Energy Transition Partnership (JETP). The Government should also offer incentives to both companies and individuals to produce and/or use renewable energy.

Land acquisition

Development projects often require the acquisition of land. While land acquisition may bring economic development or other public benefits, I have been made aware that in some cases individuals and communities that have lived off the land for generations may have been displaced without adequate compensation and/or resettlement. I also received information that land is often sold to companies for price far exceeding the amount of awarded compensation to individuals. I am looking forward to receiving more information regarding the compensation rates, the resettlement plans if any and programmes to assist affected individuals and communities to find new sources of livelihood. The cultural rights of the relevant communities should be taken into consideration in planning and implementing development programmes. Due consideration should also be given to ethnic minorities' right to FPIC.

I was informed that the existing Land Law of 2013 is currently being reviewed. I urge the Government to take this revision opportunity to address concerns of land users, including of ethnic minorities. Moreover, the revision process should involve active, free and meaningful participation of all affected stakeholders and independent experts.

Participation

Active, free and meaningful participation of people in decision-making processes is a key element of the right to development. Ensuring participation involves more than merely consulting individuals and communities. Rather, it implies placing rightsholders at the centre of decision-making affecting their own economic, social, cultural and political development.

During the visit, I learned from various Government officials the importance that they attach to ensuring an inclusive participation of all people, including marginalised or vulnerable groups, in adopting or revising laws, developing policies and approving projects. Viet Nam already has a legal framework enabling participation of people. For example, the 2022 Law on Implementation of Grassroots Democracy outlines the rights of people to be informed of government activities that affect them, contribute to the formulation of policies and projects and participate in local development activities. The Viet Nam Fatherland Front and the Women's Unions as well as the Youth Union facilitate participation of people.

At the same time, I received information that people – especially from marginalised or vulnerable groups – and NGOs are often not able to participate in decision-making processes in an active, free and meaningful manner. While international NGOs face cumbersome regulatory processes, unreasonable restrictions on the freedom of speech and expression (both offline and online), shrinking civic space and the selective use of laws to target human rights defenders are have a chilling effect on diverse participation opportunities. While consultations are generally conducted by various Government authorities, these are often superficial and do not recognise the agency of people.

After various meetings with diverse stakeholders, it became clear to me that even within the existing political system of Viet Nam, there is a significant scope for the Government authorities at all four levels to listen to and accommodate diverse views of people and NGOs. I will strongly encourage the Government of Viet Nam to create an environment conducive for people's active, free and meaningful participation in all decisions affecting them, including those related to the right to development and the SDGs. Doing so will assist in building an inclusive and equitable society. The Government should also consider releasing all environmental human rights defenders as a goodwill gesture and to show leadership in promoting human rights as we celebrate the 75th Anniversary of the Universal Declaration of Human Rights.

Role of business

As articulated in my 2023 report to the UN General Assembly (A/78/160), businesses have a key role in realising the right to development and implementing the SDGs. During the visit, I had an opportunity to meet representatives of several companies from diverse sectors: Beinco (coconut products), Cam Hoa Solar Farm of Hoang Son Group (renewable energy), Formosa Ha Tinh Steel Corporation (steel manufacturing), VinES (battery packs for electronic cars) and VNG Corporation (online games, social networking and digital payment).

After seeing their business operations and exchanging information during dialogues, I was pleased to note that these companies are integrating latest technologies and innovations in their operations, promoting welfare of their employees, supporting transition towards renewable energy or support community projects. At the same time, the representative of the companies that I met were not aware of international responsible business conduct standards. Nor these companies have policies and processes, for example, to deal with sexual harassment in the workplace. I also received information about business-related concerns in Viet Nam about human trafficking, exploitation of migrant workers, discrimination on the grounds of gender and sexual orientation, occupational health and safety, freedom of association, collective bargaining and environmental pollution.

Therefore, all companies operating in Viet Nam should do more to act in line with the UN Guiding Principles on Business and Human Rights. They should develop processes to engage meaningfully all relevant stakeholders, speak up to preserve civic space, adopt a human rights policy, build internal capacity to conduct human rights due diligence, establish mechanisms to address grievances of affected rightsholders and contribute to realising the SDGs. Formosa should also provide adequate remediation, including compensation, to the thousands of individuals affected by its 2016 toxic discharge.

During the visit, I also met the officials of the Viet Nam Chamber of Commerce and Industry (VCCI) and learned about its efforts to promote green supply chains, decarbonisation, circular economy, gender equality, women entrepreneurship and corporate contribution towards the SDGs. The VCCI – in collaboration with the Ministry of Labour, Invalids and Social Affairs, the Ministry of Natural Resources and Environment, the Ministry of Industry and Trade, the Vietnam General Confederation of Labour and the State Securities Committee of Vietnam – also launched a Corporate Sustainability Index in 2016. The VCCI should take more proactive measures to build capacity of its members (especially small and medium size enterprises) to embrace responsible business conduct as part of their DNA.

The role of the Government is also vital to ensure that companies respect all human rights (including the right to development), operate within planetary boundaries and contribute to achieving the SDGs. Under Circular 96 of 2021, public listed companies are required to report on environmental, social and government (ESG) issues in their annual report. Moreover, by adopting a National Action Plan to Promote Responsible Business Practices (2023-2027), the Government has taken an important step in promoting responsible business conduct. However, it should take more sustained measures such as raise awareness, revise relevant laws and policies, offer incentives and disincentives to companies, encourage employment of persons with disability, and engage NGOs as well as universities to foster dialogues. The Government should also develop strategies to promote responsible business practices in informal economy.

Trade and investment agreements

Appropriately designed trade and investment agreements can support inclusive and sustainable development. Viet Nam is embracing a holistic vision of trade. It is a party to three "new generation" free trade agreements (FTAs), which include provisions about labour rights and/or sustainability: the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Vietnam-EU Trade Agreement and the Vietnam-UK Trade Agreement. These FTAs have triggered some reforms to protect labour rights and the environment. In this context, the Government should ratify the ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise.

During the visit, I learned that the Ministry of Industry and Trade is currently developing the FTA Index with indicators to evaluate the results of FTA implementation by different provinces and cities. In order to be promote inclusive and sustainable development, such an Index should measure not merely the volume of trade but also the impact of trade on people and the planet. The Government should also conduct research on how FTAs are affecting (both positively and negatively) marginalised or vulnerable groups such as children, ethnic minorities, rural population, migrant workers and persons with disability. Moreover, the Government should integrate sustainable development and responsible business conduct provisions in its bilateral investment treaties.

Approval of development financing projects

Viet Nam has an ambitious vision for sustainable development and numerous needs in implementing all the SDGs. Development requires funding. Throughout my visit, representatives of the Government, the UN agencies and international development partners expressed their frustration with the slow pace of approval of development projects. I heard examples of delays of several years both for internationally funded projects and for projects submitted for approval by provincial authorities. These delays mean that the much-needed funding does not reach the people in need in different provinces or is even lost in some cases. I urge the Government to work with all relevant stakeholders on finding solutions to simplify the approval procedures, without sacrificing the requirements for environmental or social impact assessments and consultations.

Concluding remarks

Let me conclude by thanking the Government of Viet Nam for facilitating a smooth and productive country visit with high level of engagement by various authorities. Today I have shared some preliminary observations to support Viet Nam's journey towards achieving the goal of inclusive and sustainable development. I will prepare a full report of the visit with concrete and actionable recommendations for presentation at the 57th session of the UN Human Rights Council in September 2024. I look forward to having a constructive engagement with the Government and all other stakeholders in the coming months and beyond.