

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.

Téléfax: (41-22) 917 9006
Télégrammes: UNATIONS, GENEVE
Téléx: 41 29 62
Téléphone: (41-22) 917 9359
Internet www.ohchr.org
E-mail: urgent-action@ohchr.org

Address:
Palais des Nations
CH-1211 GENEVE 10

REFERENCE: AL G/SO 214 (67-17) G/SO 214 (107-9)
VNM 3/2012

2 August 2012

Dear Mr. Vu Anh Quang,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 16/4 and 16/5.

In this connection, we would like to bring to the attention of your Government information we have received **concerning the draft decree on “management, provision and use of internet services and information on the network”**, replacing Decree N° 97/2008/NP-CP of 28 August 2008.

According to the information received, the draft decree contains, amongst others, the following provisions:

Article 5 prohibits the use of the Internet to “oppose the State of the Socialist Republic of Viet Nam; undermine the national security and social order and safety; sabotage national unity; disseminate [information on] wars of aggression; cause feuds and conflicts among nations, ethnic peoples and regions” (para.1(a)) and “sabotage national fine custom and tradition” (para.1(b)).

Article 10 prohibits “Internet agents”, “public Internet access points”, and venues which provide free Internet access services from allowing users to engage in the types of expression prohibited under article 5.

Article 23 requires “Vietnamese entities” to be responsible for ensuring that “information self-provided, stored, transmitted by them on the network, including the information under direct links” does not to violate article 5 (para. 1). This article also requires owners of internal websites and blogs to be responsible for ensuring that “information provided, stored on the entity’s website, including

public information posted by other persons or information under direct links”, does not to violate article 5 (para.2).

Article 24 requires foreign entities providing cross-border public information to users in Vietnam “not to provide public information” violating article 5, and to coordinate with Vietnamese administrative bodies to remove such information (para. 2(d)). This provision also requires foreign entities with a large number of Vietnamese users to provide a written commitment to filter information violating article 5 (para. 3(b)).

Article 25 requires entities using and providing Internet services to filter information violating article 5.

Article 29 requires social network users to be responsible for ensuring that “information self-posted, transmitted by him/her on the social network, including information under direct link provided by himself/herself” (para. 2), as well as “information posted, stored on his/her blog established on social network, including public information posted by others or information under direct links” (para. 3), do not violate article 5.

Article 28 requires entities establishing general websites and social networks to “immediately remove” information violating article 5.

In addition, according to information received, the draft decree would require Internet users to use their real name when posting information.

Concern is expressed that the decree, if adopted, would exacerbate an already disturbing situation of freedom of expression in Viet Nam. We would also like to raise the following concerns vis-à-vis the obligations of your Government under article 19 of the International Covenant on Civil and Political Rights (ICCPR), which Viet Nam acceded to on 24 September 1982.

Firstly, any restriction imposed on the enjoyment of the right to freedom of opinion and expression must meet the following three criteria: (1) it must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency); (2) it must pursue one of the purposes set out in article 19, paragraph 3, of the ICCPR , namely: (i) to protect the rights or reputations of others; (ii) to protect national security or public order, or public health or morals (principle of legitimacy); and (3) it must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality). In addition, any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences in a manner that is neither arbitrary nor discriminatory. There should also be adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application (See A/HRC/17/27, para. 69).

We are concerned that the draft decree, in particular article 5, contains vague and ambiguous language. Moreover, many of the restrictions are broader than the permissible grounds for restricting the right to freedom of expression, including terms such as “opposing the State of Socialist Republic of Viet Nam”, “sabotaging national unity”, “causing feuds and conflicts among nations, ethnic peoples and regions” and “sabotaging national fine custom and tradition”. Such broad and ambiguous terms can be misused to censor and suppress legitimate expression which may be critical of the Government. Furthermore, the vagueness of the types of prohibited expression can generate a climate of self-censorship.

Secondly, in relation to the responsibility of Internet service providers and other intermediaries (articles 10, 23, 24, 25, 28 and 29), we would like to emphasize that censorship measures should never be delegated to private entities, and that intermediaries should not be held liable for refusing to take action that infringes individuals’ human rights. Any requests submitted to intermediaries to prevent access to certain content, or to disclose private information for strictly limited purposes such as administration of criminal justice, should be done through an order issued by a court or a competent body which is independent of any political, commercial or other unwarranted influences. (See A/HRC/17/27, para. 75).

Moreover, it is unclear which “Vietnamese administrative bodies” referred to in article 24 would be responsible for removing the types of prohibited information under the decree. We would like to underline that any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences in a manner that is neither arbitrary nor discriminatory. We would therefore be grateful for further details from your Government regarding the independence and impartiality of such bodies.

In relation to the requirement that Internet service providers should filter information which violates article 5, we would like to emphasize that blocking and filtering measures are often unnecessary and disproportionate means to achieve the purported aim, as they are often not sufficiently targeted and render a wide range of content inaccessible beyond that which has been deemed illegal (see A/HRC/17/27, para. 31.)

We are further concerned that the requirement of Internet users to use their real name when posting information will prevent journalists, human rights defenders bloggers and others from using the protection of pseudonyms when reporting on-line. In this regard, we would like to stress the importance of individuals to express themselves anonymously online, and call upon all States to refrain from adopting real-name registration systems (see A/HRC/17/27, para.84).

In addition, we would like to refer your Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has

the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; and

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in this letter accurate?
2. Please provide information on how the draft decree, in particular regarding the points raised above, is in line with your obligations under international human rights law, in particular with article 19 of the ICCPR.
3. Please indicate what measures have been taken to ensure that independent journalists, civil society and activists, as well as bloggers can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

We would appreciate a response within sixty days. Your Government’s response will be made available in a report to the Human Rights Council for its consideration.

Please accept, Mr. Vu Anh Quang, the assurances of our highest consideration.

Frank La Rue
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders