

Mandates 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

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Excellency,

We have the honour to address you in our capacity 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 resolutions 25/2 and 25/18.

First of all, we would like to refer to and welcome your Excellency's Government's commitment, expressed during the second cycle of the Universal Periodic Review in 2015, in which it accepted recommendations to remove a number of restrictions on the right to freedom of expression. In particular, the government accepted to fully implement its obligations under the ICCPR to respect and ensure the right to freedom of expression (121.36); to re-examine recent legislation that limits dissemination of certain information via the internet, including through social media (121.142); and to take measures to ensure that all legislation, especially on press and media, including digital media, is fully aligned with its international human rights obligations (121.144) (A/HRC/15/5).

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Decree No.377 of 24 November 2015 on the Press Activities of Foreign Media Agencies, Diplomatic Missions, and International Organizations in Lao PDR, which entered into force on 15 January 2016.**

According to the official translation made available by the Ministry of Foreign Affairs, the decree aims to regulate and monitor press activities of foreign media, diplomatic missions and international organizations "in order to facilitate that their activities to be carried out in an effective manner and in consistence with laws and regulations of the Lao PDR, thus contributing to the socio-economic development and further promoting cooperation with foreign countries" (article 1). We welcome the expressed intention to promote international cooperation on

media in compliance with the relevant international treaties and agreements to which the Lao PDR is a party. However, we are nonetheless concerned that the decree contains a number of provisions which appear to unduly limit the right to freedom of expression in the Lao PDR.

In spirit of co-operation and dialogue, and in line with the mandates entrusted to us by the Human Rights Council, we wish to submit the following comments on some of the provisions of the new decree and respectfully to share these concerns with your Excellency's Government.

The decree includes several provisions which include requirements for approval prior to publication work and requirements for the registering and prior approval for activities of foreign media personnel, international organizations and diplomatic missions, as well as the approval of the appointment of staff of foreign media agency by the Ministry of Foreign Affairs and the government.

Prior censorship

Articles 14 and 18 of the decree provide that foreign media agencies, foreign journalists, diplomatic missions and international organizations must submit their work to the Ministry of Foreign Affairs for consideration and approval prior to publication. Articles 17 and 18 require submitting media content to the Ministry of Foreign Affairs for review, and article 18 includes an obligation to submitting requests for publication within certain time frames.

Requirement on registration and prior approval

Article 6 obliges foreign media personnel accompanying a diplomatic delegation to engage in reporting in Lao PDR, to inform the Ministry of Foreign Affairs three working days in advance of their names, equipment and programme of activities. Article 7 requires obtaining a permit fifteen days in advance for foreign media personnel who work for a non-resident foreign media agency. The application for permit must include CV, application letter and list of previous articles and publications about the Lao PDR.

Moreover, the head of the office of a foreign media agency and the staff must be approved by the Ministry of foreign Affairs of Lao PDR (article 11(1)).

Obligations to abide by the traditions, and culture of the Lao PDR

Articles 14 and 19 require that the press activities of foreign media agencies, diplomatic missions and international organizations in Lao PDR to abide by the traditions and culture, in addition to the laws and regulations of the Lao PDR.

We express serious concern is that the decree would unduly restrict the legitimate exercise of the right to freedom of expression and access to information in Lao PDR, in contradiction with article 19 of the International Covenant on Civil and Political Rights (ICCPR), which Lao PDR ratified 25 September 2009.

We are particularly concerned at the provisions of Articles 6, 7, 14, 17 and 18, which impose prior approval by the Government of publications and reporting work of foreign media agencies, foreign journalists, diplomatic missions and international organizations, set a system of prior censorship, allowing the authorities to have broad discretion to control information and communication. Further concern relate to Article 11 for granting competencies to the Ministry of Foreign Affairs to approve the appointment of the head of the office of a foreign media agency as well as other staff of these agencies, which would impose undue control of the authorities over the independence of international media. We also express concern at the provisions of Articles 14 and 19 requiring foreign media, diplomatic missions and international organizations to abide by the traditions and culture of Lao PDR, the definition and interpretation of which lacks sufficient clarity and precision to avoid undue interference and overly broad discretion from the authorities to restrict the exercise of the right to freedom of expression.

In light of the abovementioned concerns, we would like to recall article 19 of the ICCPR that explicitly safeguards the right to freedom of expression, which includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. The right to freedom of expression cannot be restricted unless the high threshold of article 19(3) of the ICCPR is met. That is, be provided by law, serve a legitimate government interest, and meet the strict tests of necessity and proportionality. In particular, the Human Rights Committee has indicated that general systems of registration or licencing of journalists is incompatible with article 19(3) of the ICCPR and has highlighted that “free, uncensored, unhindered [...] media [are] essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights”(General Comment 34, CCPR/C/GC/34).

The targeting of foreign media, diplomatic missions and international organizations would be incompatible with article 19 of the ICCPR, which explicitly states that the right to freedom of expression applies to “everyone”. By restricting the ability of foreign actors to function and to serve the public in Lao PDR with information, the decree could undermine their right to freedom of expression and people’s access to information in the country.

In relation to the vague formulation of provisions of the Decree, we would like to stress that, as stated by the Human Rights Committee, a norm “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly”. A law must provide “sufficient guidance to those charged with their execution to enable

them to ascertain what sorts of expression are properly restricted and what sorts are not” (CCPR/C/GC/34).

We would like to reiterate that the right to freedom of opinion and expression, as well as to access information, including through the media and the Internet, is of central importance in the effective functioning of a democracy.

At it is our responsibility under the mandates of the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide information on measures taken, or to be taken, to ensure the compliance of the decree with the Lao PDR’s obligations under international human rights law, particularly with regard to the right to freedom of expression.
2. Please explain how the new decree will contribute to the accepted recommendations by Lao PDR during the second cycle of the UPR.
3. Please explain the purpose behind differential treatment between foreign and international actors and domestic ones, and explain how this is compatible with international human rights norms and standards.
4. Please provide detailed information on the implementation of the Decree since its enactment, providing desegregated data and information on the reports and publications subject to the prior authorization of the government or on the cases reviewed by the authorities relative to the appointment of foreign media agency staff.
5. Please provide information regarding the guidance given to law enforcement officials for the execution of the decree, specifically, indicating what kind of consideration is involved in granting or denying publication. Please indicate how this guidance refers to international human rights norms, such as article 19 of the ICCPR.

We would appreciate receiving a response within 60 days.

Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge all relevant authorities in the Lao PDR to take all necessary measures to ensure the full compliance of domestic legislation with international human rights norms and standards, in particular revising or revoking the legislative provisions, regulations, administrative and other measures that impose undue limitations to the legitimate exercise of the right to freedom of expression. We would like to take this opportunity to express my interest and availability to discuss the decree in

more detail with your Excellency's Government at your convenience and provide further assessment towards its revision.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders