

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Decree No. 327 on Internet-Based Information Control/Management**, which appears to unduly restrict the right to freedom of opinion and expression in the Lao People's Democratic Republic.

According to the information received:

On 16 September 2014, the Government of the Lao People's Democratic Republic approved Decree No. 327 on Internet-Based Information Control/Management. The decree entered into force on 1 October 2014.

The purpose of the decree is to develop principles and procedures for the management of information through the Internet, so as to ensure – inter alia – the protection of national stability and security, social order and the general public (article 1). According to article 2, the reason behind the adoption of specific procedures to control the flow of information through the Internet is to prevent and prohibit the circulation of information that may threaten national security and the society as a whole.

This Decree contains a number of provisions that appear to unduly restrict the right to freedom of expression and opinion. This right is enshrined in a wide range of human rights instruments, including article 19 of the Universal Declaration of

Human Rights and article 19 of the International Covenant on Civil and Political Rights, which your Excellency's Government ratified on 25 September 2009.

Article 19, paragraph 2, of the International Covenant on Civil and Political Rights requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart "information and ideas of all kinds".

In its General Comment No. 34 (2011), the Human Rights Committee stated that paragraph 2 protects all forms of expression and the means of their dissemination, including "electronic and internet-based modes of expression". The Human Rights Committee also made it clear that the scope of paragraph 2 embraces "even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20".

Article 19, paragraph 3, of the Covenant expressly states that the exercise of the right to freedom of expression carries with it special duties and responsibilities. For this reason, two limitative areas of restrictions on the right are permitted, which may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (*ordre public*) or of public health or morals. In General Comment No. 34 (2011), the Human Rights Committee has stressed that restrictions on the exercise of freedom of expression "may not put in jeopardy the right itself", and that, as a result, "the relation between right and restriction and between norm and exception must not be reversed".

In order to be consistent with the provisions of paragraph 3, restrictions to the right to freedom of expression must meet the following conditions: (a) they must be 'provided by law'; (b) they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and (c) they must conform to the strict tests of necessity and proportionality.

In General Comment No. 34 (2011), the Human Rights Committee also made it clear that any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, "are only permissible to the extent that they are compatible with paragraph 3". Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not, therefore, compatible with paragraph 3.

In this context, we would also like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of

peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In light of the aforementioned international law and standards, a number of restrictions set out in article 9 of Decree No. 327 fail to meet the conditions laid down in article 19, paragraph 3, of the Covenant. These include:

- Paragraph 1, in the part that prohibits “the dissemination of false or misleading information against the Lao People’s Revolutionary Party or the Government”;
- Paragraph 3, which prohibits the promotion of “untrue information” with the aim of undermine social unity and the solidarity among ethnic/minority groups and nations;
- Paragraph 4, whereas it prohibits the circulation of “retouched/adjusted photos or other photos that Lao PDR do not allow or are against national traditions”;
- Paragraph 5, which prohibits the disclosure of national secrets, military secrets or “other secrets” as indicated in Lao PDR’s legislation and regulation.

These provisions make use of terms that are extremely vague with regard to their interpretation and/or concrete application. Without clarifying the meaning of terms such as “false”, “misleading” or “untrue” information, these provisions do not fulfil the strict requirements of article 19, paragraph 3, of the Covenant.

With particular regard to restrictions to freedom of expression based on the need to protect national security, the Human Rights Committee has affirmed that “extreme care” must be taken by States parties to ensure that treason laws and similar provisions relating to national security, whether described as sedition laws or otherwise, are “crafted and applied in a manner that conforms to the strict requirements of paragraph 3”. It is not compatible with paragraph 3, for instance, to invoke such laws to “prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information”.

Furthermore, we wish to recall that in order to comply with the requirements of article 19, paragraph 3, of the Covenant, such restrictions must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. Furthermore, they may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. On the contrary, they 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.

We are seriously concerned that such vaguely defined provisions may be used to muzzle any dissenting voice and to silence any form of criticism or negative opinion on the policies and practices of the ruling party or the Government. The Human Rights Committee stressed that all public institutions and all public figures, including those exercising the highest political authority such as heads of State and Government, “are

legitimately subject to criticism and political opposition”. Consequently, it would be inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the Government.

Other provisions of Decree No. 327 impose restrictions that clearly contradict the purpose and scope of article 19, paragraph 2, of the Covenant. These include:

- Article 7, which requires Internet users to indicate their names, surnames and current addresses when creating their profiles on social media; and
- Article 15 on the responsibilities of Internet users, which prohibits not only the dissemination of information listed in article 9, but also commenting in support of restricted content.

Apart from holding individuals accountable for the information or comment that they post or disseminate online, the Decree also provides that web administrators and Internet service providers (ISPs) can also be held responsible for failing to ensure that online spaces are not used for circulating information and ideas prohibited in article 9. Article 14, for example, holds Internet service providers accountable for facilitating the circulation of information or ideas “against the Party and Government’s guidelines”, as well as information that may “affect national security or defense”. In addition, both provisions contain an identical – and vaguely worded – paragraph that holds web administrators and ISPs responsible for “any other behaviour in breach of national legislation or regulation” (article 14, paragraph 3 and article 16, paragraph 3).

Finally, we are seriously concerned that article 25 lists a number of sanctions to punish those who contravene with the provisions of Decree No. 327, from warnings for minor cases to “re-education”, disciplinary measures, fines, compensation for civil damage and criminal prosecution for more serious violations, but fails to determine the behaviour to which the sanction corresponds. Consequently, very stiff penalties may be imposed by national authorities to prevent and punish criticism against the ruling party or the Government.

In this regard, we wish to stress that criminal legislation must define the punishable conduct and the penalty with sufficient definiteness to allow citizens to foresee when a specific action would be punishable, and to conduct themselves accordingly. This principle is an application of the general principle of legal certainty in matters of criminal law, and may be regarded as a general principle of law pursuant to article 38, paragraph 1, of the Statute of the International Court of Justice.

In conclusion, we believe that several provisions of Decree No. 327 are not consistent with the obligations your Excellency’s Government has undertaken with regard to the effective realisation of the right to freedom of opinion and expression. We therefore urge your Excellency’s Government to repeal this Decree or to review it in order to ensure its consistency with existing human rights norms and standards. We would appreciate a response on the possible measures taken in this direction at your earliest convenience.

We are considering to publicly express our concerns highlighted in this communication. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue in question.

In line with the mandates entrusted to us by the Human Rights Council, we stand ready to provide our assistance to the Government of the Lao People's Democratic Republic, with a view to ensuring that any legislation on Internet use builds upon, and does not undermine, the fundamental guarantees enshrined in the international human rights treaties to which the State is party.

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

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

Maina Kiai  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst  
Special Rapporteur on the situation of human rights defenders