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HUMAN RIGHTS COUNCIL

Mandates of 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 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 15/21 and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **draft Guidelines for the implementation of the Prime Minister's Decree on International Non-Governmental Organizations which, if adopted without further changes, will seriously compromise the enjoyment of the right to freedom of association in the Lao People's Democratic Republic.**

According to the information received:

A first draft of Guidelines for the implementation of the Prime Minister's Decree on International Non-Governmental Organizations has recently been prepared. While welcoming information that international non-governmental organizations have been consulted in the drafting process, several serious concerns have been brought to our attention, as follows.

It is reported that the authorities' prior authorization will be required for any international non-governmental organizations willing to register, and to operate in the Lao People's Democratic Republic. It is alleged that the Guidelines do not set any minimum timeframes for authorities' approval or the grounds upon which an approval may be denied. It is reported that in the absence of such human rights safeguards, applications may be arbitrarily rejected.

It is also brought to our attention that, when delivered, the authorization allowing an association to operate ("Operation Permit") will be valid for one year only; thus unduly limiting the ability for these associations to pursue their activities

without any discontinuity and without state's interference. Concerns have also been reported that international non-governmental organizations are defined as "an international or foreign nonprofit organization having a legal status, which desires to provide development assistance and humanitarian aides without any pursuit of profit". This definition might prevent organizations focusing on other issues, such as human rights, equality between women and men, marginalized groups empowerment, amongst others from operating in the Lao People's Democratic Republic.

Similarly, it is reported that in order to be able to implement a project, international non-governmental organizations will have to seek and obtain the approval from the authorities through the submission of a project proposal and a draft Memorandum of Understanding. Such a procedure may interfere with the independence of international non-governmental organizations, which is a key component of freedom of association.

According to the draft Guidelines, the organization's budget shall be made "of 70 percent for project activities and 30 percent for administration." These Guidelines also stipulate that "the objective and activities of the project [of an international non-governmental organization] should also be in line with the National Socio-economic Development Plan". While the participation of the State in development policies is paramount, it is reported that such a provision will seriously compromise the ability for organizations to choose their thematic areas and to operate freely and independently from state's oversight.

In addition "any project with a budget that is less than 30,000 USD should not be implemented directly by the International Non-Governmental Organizations, but should be given to local authorities to implement it instead." It is reported that such restrictions do not meet the cumulative conditions of international law, according to which any restriction must "be motivated by a limited interest, have a legal basis and be "necessary in a democratic society".

It is also reported that the requirements for international non-governmental organizations who wish to open an office are particularly strict and will be very difficult to meet. A "minimum of five-year experience of successful development assistance in Lao PDR with a value assistance of no less than five hundred thousand US dollars annually, as stated in Article 9 of the Prime Minister's Decree, No. 013/PM, dated 08/01/2010" is reportedly required to open a Country Representative Office. Moreover, an international non-governmental organization "wishing to open its Regional Office in Lao PDR shall meet the requirement of having greater development programme in Lao PDR than in other countries in the region as contained in Article 10 of the Prime Minister's Decree, No. 013/PM, dated 08/01/2010". These two provisions will reportedly make it very difficult for organizations to open an office, be it a Country Office or a Regional Office, thus limiting their ability to operate.

The authorities will be reportedly entitled to approve the appointment of several categories of staff, including the Country representative or the project director, of Country or Regional Offices of an international non-governmental organization.

Furthermore, it is alleged that after the completion of a project or the closing of an Office, “the equipments and vehicles must be re-exported, or otherwise handed over to the Government”. It is alleged that the draft legislation does not specify the rationale of this provision and may impede organizations to develop activities without state’s interference.

Very serious concerns are raised in relation to several provisions of the draft Guidelines that are in violation of international human rights norms and standards related to freedom of association. Further serious concerns are expressed that the aforementioned violations will unduly impede the ability for international non-governmental organizations to effectively and independently contribute to development and advancing human rights in the Lao People's Democratic Republic.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to article 22 of the International Covenant on Civil and Political Rights, which provides that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

We would like to further refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 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.”

Similarly, we would like to refer to Human Rights Council resolution 22/16, and in particular operative paragraph 13 that '*reaffirms* the right of everyone, individually and in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms'.

We would also like to refer your Excellency's 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 Excellency’s Government the following provisions of the Declaration, and in particular to article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

Finally, we would like to mention the first thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association to the Human Rights Council (A/HRC/20/27), in which he stated that:

- “[States should] ensure that the rights to freedom of peaceful assembly and of association are enjoyed by everyone and any registered or unregistered entities” (para. 84(b));
- “A regime of notification to establish an association should be in force. Associations should be established after a process that is simple, easily accessible, non-discriminatory, and non-onerous or free of charge” (para. 95);
- “Any associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment” (para. 96); and
- “Associations should be free to determine their statutes, structure and activities and to make decisions without State interference” (para. 97).

In his second thematic report to the Human Rights Council (A/HRC/23/39), the Special Rapporteur further called upon States to inter alia:

- “Ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities” (para. 82(b)); and
- “Recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association and of other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights” (para. 82(c)).

Moreover, since 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, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide full details on the aforementioned draft legislation and explain how its provisions are in accordance with Laos' obligations under international human rights norms and standards related to the right to freedom of association.

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

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the right to freedom of association is respected.

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

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

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders