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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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.

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
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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 16/4, 15/21, and 16/5.

The draft Decree on “*Management, Provision, and Use of Internet Services and Information on the Network*” was the subject of an allegation letter sent to your Excellency’s Government on 2 August 2012 by 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. We thank your Excellency’s Government for the reply to the abovementioned communication, dated 15 October 2012, and we would like to take this opportunity to address remaining concerns.

In this connection, we would like to draw the attention of your Excellency’s Government information we have received concerning **the new Internet decree that has come into effect which reportedly severely restricts the right to freedom of opinion and expression, and indirectly the rights to freedom of peaceful assembly and of association.**

According to the information received:

On 15 July 2013, the *Decree on the Management, Provision, Use of Internet Services and Information Content Online* (No. 72/2013/ND-CP), known as ‘Decree 72’, was adopted by the Government of Vietnam and came into effect on

2 September 2013. Decree 72 contains a number of provisions that may limit the right to freedom of expression and freedom of information.

The main provisions of concern are:

Article 20. Website classification (4) – This article, *inter alia*, prohibits individuals to provide “general information” on private websites. “General information” is defined in Article 3(19) as information that is collected from multiple sources about politics, economics, culture and society. This would allegedly include all information on news websites, government websites, and other media websites. Article 20(4) could prevent free exchange of information on social networking sites such as Facebook or Twitter.

Article 25. Rights and obligations of organizations and enterprises that establish social networks (5) – This article stipulates that organizations providing social networking sites must “not provide public information that violates Article 5 of this Decree.” Due to the overly broad provisions of Article 5, this can in practice lead to the operators of social networking sites exercising self-censorship and regulating postings that they deem to be “Opposing Socialist Republic of Vietnam; threatening national security, social order and safety; sabotaging national fraternity; propagating wars and terrorism; arousing animosity and among races and religions.” It is further noted that social networking sites are required to eliminate or prevent information that violates Article 5 (Article 25(6)), register and store the personal information of users and only allow users with accurate personal information to use social networking sites (Article 25(9)), and to provide the private information of users to the authorities if the individual is suspected of any terrorism, crime, or violation of Vietnamese law (Article 25(7)), upon the request of the Vietnamese authorities.

Serious concern is expressed that several provisions of the *Decree on the Management, Provision, Use of Internet Services and Information Content Online* would severely restrict the right to freedom of opinion and expression, and by extension the rights to freedom of peaceful assembly and of association, thereby curtailing the legitimate activities of political pressure groups and civil society organisations.

While we do not wish to prejudge the accuracy of these allegations, we wish to refer your Excellency’s Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), that Viet Nam acceded to on 24 September 1982, which provides that “[e]veryone shall have the right to freedom of expression; this right shall include 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.”

In this connection, we wish also to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

In addition, the Human Rights Committee has affirmed in its General Comment on the right to freedom of opinion and expression (CCPR/C/GC/34) 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 [of article 19]. It is also 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”.

We would further like to refer to Human Rights Council resolution 20/8 on the promotion, protection and enjoyment of human rights on the Internet (A/HRC/RES/20/8) adopted on 5 July 2012, which “affirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice.” It further called upon all States to “promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries.”

We would also like to draw the attention of your Excellency’s Government to the principle enunciated in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, which states that everyone has the right to obtain information from public authorities, including information relating to national security, and that in all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration.

We would like to refer to your Excellency's Government to article 21 of the International Covenant on Civil and Political Rights, which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

Similarly, we would also 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”.

In this connection, we would like to 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” (emphasis added).

In addition, 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, in which he noted “the increased use of the Internet, in particular social media, and other information and communication technology, as basic tools which enable individuals to organize peaceful assemblies”, and called upon States to “recognize that the rights to freedom of peaceful assembly and of association can be exercised through new technologies, including through the Internet” (A/HRC/20/27, para. 32 and 84(k) respectively).

Furthermore, we would 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”.

In addition, we would like to bring to the attention of your Excellency’s 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.

We also wish to refer your Excellency's Government to resolution 22/6 adopted by the Human Rights Council on 21 March 2013, and specifically to operative paragraph 10 which "calls upon States to ensure that measures to combat terrorism and preserve national security (a) [a]re in compliance with their obligations under international law, in particular under international human rights law, and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights;" and operative paragraph 11 which "[c]alls upon States to ensure that all legal provisions and their application affecting human rights defenders are clearly defined, determinable and non-retroactive in order to avoid potential abuse to the detriment of fundamental freedoms and human rights, and specifically to ensure that [...] (d) [a]ny provision or decision that may interfere with the enjoyment of human rights respects the fundamental principles enshrined in international law so that they are lawful, proportionate, non-discriminatory and necessary in a democratic society."

Moreover, as 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. To what extent are the facts related to the alleged restrictions imposed by the *Decree on the Management, Provision, Use of Internet Services and Information Content Online* accurate?
2. Please explain how its provisions are in accordance with Viet Nam's obligations under international human rights law and standards, particularly with regard to the right to freedom of opinion and expression.

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 opinion and expression is respected, and that activities of political pressure groups and civil society organisations

are not restricted and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured.

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

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freedom of opinion and expression

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