

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, pursuant to Human Rights Council resolutions 43/16, 43/4, 41/12, and 42/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a recent cyber-attack against the civil society organisation, The Vietnamese Overseas Initiative for Conscience Empowerment (VOICE), reportedly carried out by a government-backed hacking group named Ocean Lotus. Information received indicates that the attack could be in reprisal for VOICE's active cooperation and engagement with UN human rights mechanisms.

VOICE is a non-governmental human rights and civil society organisation that advocates for the protection of human rights and the promotion of fundamental freedoms, directly engages with civil society projects in Vietnam and works on third-country resettlement for Vietnamese refugees and asylum seekers. VOICE has a long history of cooperation with the United Nations Office of the High Commissioner for Human Rights, and has engaged with UN Human Rights Mechanisms, including the Special Procedures for many years.

Two human rights defenders and members of VOICE were subject of a previous communication sent to your Excellency's government by special procedures mandate holders on 22 January 2020 (VNM 5/2019). We thank you for your response to these allegations.

According to the information received:

On 29 April 2020, an email containing spyware was sent to VOICE's as an email attachment. If downloaded, the spyware would have opened a decoy document and downloaded a toolkit, which would have enabled the attackers to gain full access of VOICE's device system, including all its data and communication of the users.

On 18 April 2020, eleven days prior to the above-mentioned cyber-attack, VOICE received a Google alert informing them that several of the organisation's Google accounts had been compromised and alleged government-backed hackers had stolen the passwords of these accounts.

VOICE have archived these emails as evidence of the attack.

Although the hackers did not appear to steal any data or corrupt any of VOICE's files during this attack, it was a direct breach of the organisation's privacy. It is feared that VOICE's whole system had been undermined and sensitive information could have been compromised. As a consequence of this cyber-attack, VOICE introduced increased layers of protection and deleted and changed the principal account of the organisation to protect itself against future attacks.

Several organisations and cybersecurity experts identified the alleged perpetrator of this cyber-attack as Ocean Lotus (also known as APT32). Ocean Lotus is a notoriously sophisticated hacking group that has carried out a longstanding and sophisticated hacking campaign for many years. A large number of cyber-attacks targeting Vietnamese human rights organisations, human rights defenders and individuals working in the human rights and civil society field in the country have been attributed to them. Ocean Lotus has reportedly used the particular spyware that was sent to VOICE to carry out cyber-attacks against activists and human rights organisations in Vietnam in the past.

Furthermore, we are highly concerned about credible information that suggests that Ocean Lotus operates on behalf of, or has a link with the Vietnamese government.

There is credible evidence that VOICE may have been targeted with this cyber-attack due to enhanced cooperation with the UN, especially its human rights mechanisms and bodies. In 2019-2020, VOICE worked closely with the UN, including plans to conduct a training on human rights documentation and reporting to UN human rights mechanisms. VOICE engaged actively and visibly with the Office of the High Commissioner for Human Rights submitting information and reports to the Treaty Bodies, Special Procedures, and the Universal Periodic Review.

Without prejudging the accuracy of these allegations, we express serious concern about the targeting of VOICE as it appears to have been in response to the legitimate human rights work that they carry out as a civil society organisation. This concern is heightened by the fact that this is not the first time that VOICE has been targeted by the authorities. It has been reported that VOICE employees have been victims of harassment, due to their human rights work, and many of them have been issued travel bans, and had their passports confiscated by the Vietnamese authorities. We draw your attention to the above-mentioned communication sent by special procedures (VNM 5/2019) regarding allegations of harassment and targeting of VOICE members. Furthermore, VOICE was reportedly subjected to a smear campaign carried out by state-owned media company, in which they were accused of being a terrorist group.

We are deeply concerned by fact that this cyber-attack appears to have been in reprisal for VOICE's active cooperation and engagement with UN human rights mechanisms. We note that Viet Nam has appeared several times in annual reports of the Secretary-General on cooperation with the UN, its representatives and mechanisms in the field of human rights. We are seriously concerned by reports of

continued acts of surveillance, intimidation and retribution against those who engage or try to engage with the UN, especially over the past few years. Such acts have taken the form of surveillance, travel bans, passport confiscation, arrests and detention, and criminal charges against human rights defenders and relatives, as well as lawyers and journalists. This contributes to an environment of fear leading to self-censorship and potentially inhibiting others from cooperating or sharing information with the UN.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information of the actions taken by the Vietnamese authorities, to investigate the cyber-attack against VOICE, and of the efforts being made to bring the perpetrators to justice.
3. Please provide the factual and legal basis for the travel bans and confiscation of passports of the employees of VOICE.
4. Please provide any information you have gathered regarding the alleged attacks carried out by the hacking group Ocean Lotus (APT32) in Vietnam. Please also provide any information regarding the alleged government connection to this group.
5. Please provide information as to concrete steps that have been taken or may be in the process of being taken to prevent further cyber-attacks against civil society and human rights organisations. If no such steps have been taken, please indicate a manner in which we may be able to engage with your Excellency's Government to develop and implement of such concrete steps.
6. Please indicate what steps have been taken and measures put in place by your Excellency's government to ensure that non-governmental organisations, civil society organisations and all human rights defenders can carry out their peaceful work free from fear of threat, violence, harassment or retaliation of any sort. If no specific measures in this regard have been put in place, please indicate a means by which we may engage with your Excellency's government on the development of such measures.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

In light of the allegations of reprisals for cooperation with the United Nations on human rights, we reserve the right to share this communication – and any response received from Your Excellency's Government - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official designated by the Secretary General to lead the efforts within the United Nations system to address this issue.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Jelena Aparac
Chair-Rapporteur of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Vietnam on 24 September 1982.

We would like to draw your attention to the following articles of the ICCPR; article 17 which provides that everyone has the right to privacy and the protection of the law against interference and attacks on one's privacy, and article 19.1 and 19.2 which provide for the universal right to freedom of opinion and expression, including the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any form of media of one's choice. In this context, we further refer to the Human Rights Council resolution 12/16, which called on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. This right applies online as well as offline (Human Rights Council resolution 20/8). Under international law, to cite article 2.3 of the ICCPR, the State is obliged to act appropriately to prevent, investigate and hold accountable those who arbitrarily intrude or interfere with another's privacy. We notably recall that the former Special Rapporteur on freedom of opinion and expression called on States to "impose an immediate moratorium on the export, sale, transfer, use or servicing of privately developed surveillance tools until a human rights-compliant safeguards regime is in place", in his report on surveillance and human rights (A/HRC/41/35).

We make further reference to General Assembly resolution 75/176 on 'The Rights to Privacy in the Digital Age' of December 2020, which "emphasizes that "unlawful or arbitrary surveillance and/or interception of communications, as well as the unlawful or arbitrary collection of personal data, hacking ...as highly intrusive acts, violate the right to privacy, can interfere with the right to freedom of expression and to hold opinions without interference, the right to freedom of peaceful assembly and association and the right to freedom of religion or belief and may contradict the tenets of a democratic society, including when undertaken extraterritorially or on a mass scale," The same resolution further notes that "States should refrain from employing unlawful or arbitrary surveillance techniques, which may include forms of hacking."

We further make reference to the 2018 Report of the High Commissioner on "the right to privacy in the digital age." In that report, it is noted that "Where Governments consider targeted hacking measures, they should take an extremely cautious approach, resorting to such measures only in exceptional circumstances for the investigation or prevention of the most serious crimes or threats and with the involvement of the judiciary (see CCPR/C/ITA/CO/6, para. 37)....Hacking operations should be narrowly designed, limiting access to information to specific targets and types of information. States should refrain from compelling private entities to assist in hacking operations, thereby impacting the security of their own products and services." (A/HRC/39/20, para 38)

We also refer to article 21 and 22 of the ICCPR, which enshrine the right to freedom of peaceful assembly and of association with others. Article 21 states that no person should be restricted in their right to assemble and be associated with a peaceful

and legitimate assembly of their choice. Article 22.1 provides that everyone has the right to join associations for the protection of their interests.

Furthermore, we bring to your attention 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

We would like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21, and 42/28 reaffirming the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. In these resolutions, the Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations. The Council also urges States to ensure accountability for reprisals by providing access to remedies for victims, and preventing any recurrence. It calls on States to combat impunity by conducting prompt, impartial and independent investigations, pursuing accountability, and publicly condemning all such acts.

Finally, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5 (b) and (c), which provides for the right of all persons to form, join and participate in non-governmental organizations, associations and groups; and to communicate with non-governmental or intergovernmental organizations;
- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.