Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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(Please use this reference in your reply)

10 December 2021

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 promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 41/12 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a number of **amended Decrees and a Decision from the Prime Minister, which entered into force in 2020 and raise serious concerns regarding the rights to freedom of peaceful assembly and of association, as well as to freedom of opinion and expression.** According to the information at our disposal, **Decree 80/2020/ND-CP,** dated 8 July 2020 and replacing Decree 93/2009/ND-CP dated 22 October 2009, and **Decree 56/2020/ND-CP**, dated 25 May 2020, regulate the activities and funding of national and international NGOs, establishing further unreasonably burdensome requirements for their reporting, registration of funding and projects, meetings and other public activities, especially for issues related to human rights. Additionally, the Prime Minister's **Decision 06/2020/QD-Ttg,** dated 21 February 2020 and replacing Decision 76/2010/QD-TTg dated 30 November 2010, regulates the organization of international conferences and seminars, and stipulates that in order to organize such in-person or virtual events when they relate to national sovereignty, security, human rights, ethnicity and religions, a number of relevant government agencies must be consulted and ultimately the organizers of the event must apply for and receive approval from the Prime Minister 30 days prior to the event.

Background on National Regulatory Framework

The Vietnamese Constitution (2013) is the main national framework regulating civil society activities and operations. Despite ensuring the respect and protection of fundamental freedoms and rights, it also provides for the restriction of such rights by the Government on grounds of "national defence, national security, social order and security, social morality and community well-being" (Article 14), and this throughout all national legislation. The scope of interpretation of such exceptions provides for neither conceptual nor legal limits in the national Criminal Code (2015) that entered into force on 1 January 2018, or in the Criminal Procedure Code that entered into force on 26 November 2003. The Government has issued a number of decrees placing further restrictions on the activities and operations of civil society organizations and actors in Viet Nam. This restrictive legislative framework may have resulted in a chilling effect on the exercise of the fundamental freedoms of opinion and expression, as well as of those of peaceful assembly and of association, among civil society actors that are being labelled as threats to national security under such provisions.

Firstly, Decree 72/2013-ND-CP on Management, Provision, and Use of Internet Services and Information Content Online became effective on 1 September 2013. Under said Decree, the use of the Internet can be subject to various restrictions depending on the purpose or effect of its use. The Decree further prohibits the use of Internet services and online information to oppose the Socialist Republic of Vietnam; threaten the national security, social order, and safety; sabotage the "national fraternity"; arouse animosity among races and religions; or contradict national traditions, among other acts (Article 5).

Decree 15/2020/ND-CP replaced the former decree on penalties in the technology and telecom sectors - Decree No. 174/2013/ND-CP - and took effect on 15 April 2020. This Decree sets out and increases various penalties for administrative violations in the fields of telecommunications, information technology, and electronic transactions, *inter alia*. One of the most notable additions provided for in this Decree is the introduction of specific administrative penalties for users who post or share "fake news" on social networks, which are imposed in addition to other eventual civil or criminal liabilities related to distortion, slander, defamation, *inter alia*. Article 101 of the Decree specifically sets out penalties for violations of regulations on the use of social networks, which include administrative fines between 10-20 million VND for social network users who commit any such violations. The Decree further provides for higher administrative fines of 20-30 million VND for the disclosure of information classified as state or personal secrets, but which are not serious enough to face criminal punishment. Additionally, violators are required by the Decree to remove the fake news or violating content that was posted or shared. Decree 15 also imposes several penalties on social network providers who fail to prevent fake news from being posted on their social networks or who intentionally provide, store, or transmit violating content that isn't in the country's interest (Article 100 (3)). These social network providers are also required to remove the fake news or otherwise violating content can be subject to the suspension of their social network license and/or the revocation of their social network's domain name.

In Decree 93/2009/ND-CP, the Government promulgated the regulation on the management and use of foreign non-governmental aid, which took effect on 1 January 2010. This decree establishes that foreign non-governmental aid other than emergency relief can only be received by Viet Nam-based institutions, which are lawfully established and operating in domains eligible for aid (Article 1), after receiving approval from the competent governmental agency (Article 17 (1)), or, in certain cases, from the Prime Minister (Article 17 (2)).

In 2020, two decrees were amended, namely Decrees 80/2020/ND-CP and 56/2020/ND-CP, on managing Official Development Assistance ("ODA") and non-ODA funding. These amended decrees, seem to have effectively rendered more complex all procedures to receive foreign funding, for INGOs and national organizations alike.

Decree No. 80/2020/ND-CP dated 8 July 2020 relates to the management and use of non-refundable aid not belonging to ODA provided by foreign agencies, organizations and individuals for Viet Nam. The Decree classifies the majority of such funding as State budget revenue (Article 3 (8)). It further provides for a 20-day time limit for the mandatory grant aid evaluation after receiving a complete and valid dossier (Article 10 (6)). At least five ministries, along with specific provincial local governments, are involved in the mandatory appraisal process of a project, from the

assessment and approval of a work plan, to the narrative and financial reports (Articles 28 to 33). The Decree tasks the Ministry of Public Security with guiding national agencies and organisations in receiving and using aid amounts in accordance with the law on protection of national security and maintenance of social order and safety, as well as with contributing to appraisals (Article 31). This Decree took effect on 17 September 2020.

Secondly, the Government promulgated Decree No. 56/2020/ND-CP on 25 May 2020, concerning the management and use of ODA and concessional loans of foreign donors. More specifically, the Decree states that ODA and concessional loans may only be used for development investment but not regular spending, such as taxes, fees and charges, loan interests, and supplies, *inter alia* (Article 6 (2)). Additionally, the Decree sets the timeframe for the appraisal of a report on proposing the investment policy or the pre-feasibility study report of a program or project, to a maximum of 60 days for national targeted programs, and 45 days for a public investment program (Article 15 (6)).

Finally, the Prime Minister promulgated Decision No. 06/2020/QD-TTg on 21 February 2020 that took effect on 15 April 2020, which amended the previous Decision No. 76/2010/QD-TTg on the organisation and management of international conferences and seminars in Viet Nam. The Decision concerns both conferences and seminars organized by national agencies or organisation and attended or sponsored by foreign parties, as well as those organised by foreign organizations (Article 1). Furthermore, it requires that the hosting organization or agency of an international conference or seminar held directly in the territory of Viet Nam or online with at least one side taking place in the territory (Article 2), must apply for permission within at least 30 days before the event, and 40 days for events falling under the jurisdiction of the Prime Minister (Article 4 (1) a.). The latter include, *inter alia*, international conferences and seminar with contents related to national sovereignty, security, national defence, ethnic groups, religion, human rights or classified as state secrets, as well as those attended by heads or ministerial officials or the equivalent or higher of other countries or international organizations (Article 3 (1)). In contrast with the previous Decision No. 76/2010/QD-TTg, the amended Decision does not provide for a timeframe for the Prime Minister to reply to the application for an event. The amended Decision also sets out administrative sanctions on conferences and seminars which do not follow the established protocol.

As such, the national legislative framework may have resulted in undue restrictions on civil society actors in the exercise of their rights and limits the actions of civil society organizations, particularly with regards to their access to legal foreign funding.

Overview of Applicable International and Human Rights Law Standards

The rights to freedom of expression and opinion, as well as of peaceful assembly and of association are guaranteed by Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights ("ICCPR"), which was ratified by Viet Nam on 24 September 1982. These fundamental rights must be guaranteed and enjoyed by individuals in any democratic and peaceful society. Civil society is defined as embodying "forms" (diverse associational relationships), embracing "norms" (values that shape a "good society", such as freedom, democracy, tolerance, and cooperation), and engaging in "spaces" (the public sphere where discussions and

disputes can freely take place with a view to achieving consensus on what is good for society) (A/HRC/35/28, para. 10 (2017)).

The rights to freedom of peaceful assembly and of association are further enshrined 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.[1] The Declaration provides that everyone has the right, individually or in community with others, to assemble peacefully, to form governmental or non-governmental organizations (Article 5). It also states that everyone has the right to engage in peaceful activities to counter violations of human rights and fundamental freedoms (Article 12).

In its 2019 Concluding Observations on Viet Nam, the Human Rights Committee reiterated its concern about undue restrictions on the establishment, management and operation of public associations. The Committee was particularly concerned by a number of restrictive regulations on foreign funding, which can be used to tighten control over associations and limit their ability to receive such funds. It urged the Government to respect individuals' right to form or join an association of their choice, including in the field of human rights.[2] The Committee further reiterated its concerns regarding the excessive restrictions imposed on the freedom of peaceful assembly and public meetings, including on human rights issues, as well as on the disproportionate use of force and arbitrary arrests by law enforcement officials against peaceful demonstrations, including those related to labour rights.[3]

Restrictions of civil society actors' activities in the national regulatory framework

Limitation to press freedom and access to information

We are concerned that Article 5 of Decree 72, through its list of prohibited acts, imposes undue restrictions on the type of information that civil society actors can share and access online. The vagueness of the terms used in the article, such as "false information" or "information for opposing the Socialist Republic of Viet Nam", encompasses a wide range of information that State officials have an interest in concealing, regardless of any public interests in sharing such information. Such limitations contravene the free flow of ideas, a fundamental principle under international human rights law, as guaranteed by Articles 18 and 19 of the ICCPR.

With regard to the use of the term "false information", we also wish to express serious concern. In her report to the Human Rights Council on the subject of disinformation, the Special Rapporteur on the promotion and protection of freedom of opinion and expression whilst recognising the difficulty in finding appropriate responses to disinformation, due to the fact that the concept is undefined and therefore open to abuse, expressed concern with regard to State responses to the issue, which have often been problematic, heavy handed and had a detrimental impact on human rights (para.3).[4] The Special Rapporteur also emphasised in the report that the right to freedom of expression applies to all kinds of information and ideas, including those that may shock, offend or disturb, and irrespective of the truth or falsehood of the

[1] A/RES/53/144 (1999).
[2] CCPR/CO/75/VNM, para. 20
[3] CCPR/C/VNM/CO/3, para 47
[4] A/HRC/47/25

content, and that under international human rights law, individuals have the right to express ill-founded opinions or statements (para. 38).[5] Responses by States to the spread of disinformation and misinformation must be grounded in international human rights law, including the principles of lawfulness, legitimacy, necessity and proportionality (para. 30).[6] Concern is expressed by the Special Rapporteur in response to the flurry of laws in recent years prohibiting "false news" of various forms on the internet, and that many of these laws, including Decree 72, fail to meet the three-pronged test of legality, necessity and legitimate aims set out in article 19(3) of the ICCPR. Such laws often do not define with sufficient precision what constitutes false information or what harm they seek to prevent, nor do they require the establishment of a concrete and strong nexus between the act committed and the harm caused (paras. 53-54).[7] The vague and overly broad nature of such laws allows Governments to use them arbitrarily against journalists, political opponents, human rights defenders and civil society actors.

We would like to raise further concern that Decree 15 is likely to prevent the sharing information that may go against official Government positions or policies. Article 101 of said Decree provides for new and increased penalties against individuals, including civil society actors, who disseminate content such as diverging political views, or reactional ideologies on social media platforms. As such, these provisions could seriously infringe on the freedoms of expression and opinion online, in addition to violating international human rights norms.

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 article 19 (3) of the ICCPR. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. 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.[8]

We would also like to express our concerns regarding Articles 6 (2) and 11 (2) of the Law on Access to Information that seem to gravely limit the exercise of the freedom to access information. These articles make inaccessible the information which "if published, can cause harm to State interests" or which is "against the Social Republic of Viet Nam". Such vague formulations provide a wide scope of action for authorities to limit the freedom to seek, receive and impart information, which is in serious violation of the right to hold opinions without interference, as enshrined in Article 19 of the ICCPR.

We would like to further emphasise that Article 19 para. 3 of the ICCPR lays down specific conditions which must be fulfilled for the restriction of such rights, and which must further conform to the strict tests of necessity and proportionality.[9]

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[5] *Ibidem*, See also: Human Rights Committee, general comment No. 34 (2011), paras. 47 and 49; and European Court of Human Rights, Salov v. Ukraine, application No. 65518/01, judgment, 6 September 2005, para. 113: "Article 10 of the [European] Convention [on Human Rights, on freedom of expression] does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful."

[6] A/HRC/47/25

[7] *Ibidem*.

[8] CCPR/C/GC/34, para. 43.

CCPR/C/GC/34 para. 22.

Provisions relating or similar to national security are not compatible with Article 19 para. 3 when they are used to prosecute journalists, researchers, environmental activists, or human rights defenders, *inter alia*, for having disseminated or accessed information of legitimate public interest.[10] In this sense, the protection of the interests of the State is not considered a permissible restriction on the rights to freedom of expression and of opinion, as well as of association. In addition to a lack of a legitimate objective, the Decree is also unclear as to how the "harm to State interests" is to be measured and applied in practice. Such provisions violate the principle of legality as established in Article 15(1) of the ICCPR. The ambiguity of the such dispositions renders it difficult for an individual to foresee which information in particular is prohibited.

We would like to emphasize that, according to international law, any restriction on fundamental rights must be formulated with sufficient precision, be accessible to the population and be subject to a restricted system of exceptions. In a report, the Human Rights Council highlighted that the law should be unambiguous, and "sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and also foresee the likely consequences of any such breach" (para. 30).[11] Broadly worded restrictions are not only incompatible with the requirement of legality, but also risk making the scope of the restrictions wider than those required to achieve the legal objective.[12] The practical implementation of these provisions seems to have consequently resulted in increased prosecutions against those who are exercising their legitimate right to the freedom of expression and of association.

Restrictions of Civil Society Organizations' Activities

We would like to express further concern that the recently amended Decrees 80/2020/ND-CP and 56/2020/ND-CP, and Decision No. 06/2020/QD-TTg, have imposed additional burdensome requirements for the creation and operation of human rights organizations, in violation of Articles 21 and 22 of the ICCPR and Article 8 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). The Human Rights Council recalled the essential role of civil society at the local, national, regional, and international levels - underlining that civil society facilitates the achievement of the fundamental purposes and principles of the United Nations.[13] The Council further reaffirmed that States should create and maintain a safe and enabling environment, in which civil society organizations can operate freely, without hindrance or threats.[14] In this sense, the amended Decrees on associations refers to a system of classification, that effectively renders some sectors more difficult to operate in. In general, with regards to meetings and conferences, as per Decision No. 76/2010/QD-TTg (now Decision 06/2020/QD-TTg), special approval is required for meetings involving foreign participants or foreign funding. More precisely, the recent Decision No. 06/2020/QD-TTg – on the organisation and management of international conferences and seminars in Viet Nam – provided for additional conditions provisions and precautions, which make it more burdensome to set up international conferences or seminars (Articles 6, 7 and 8). The processes for the assessment, authorization, along with the liability regime have translated into a more cumbersome procedure in general. The Prime Minister is given sole authority on

[10] CCPR/C/GC/34 para. 30.
[11] A/HRC/31/66.
[12] OL DNK 3/2021.
[13] A/HRC/RES/27/31, para. 12 and 13 (2014).
[14] A/HRC/RES/24/5, para. 7 (2013).

approving such conferences, while competent bodies are obliged to report on their organization and management, with the risk of cancellation of any conference that is contrary to the Decision's prerequisites.

Regarding the creation of organizations and associations, Decree 88 stipulates that the competent authority – namely the Prime Minister – is responsible for the overseeing of the establishment of civil society organisations. Decree 45 further affirms that the organization must have operational purposes that are not contrary to the law. Moreover, the Criminal Code provides for criminal liability for anyone "who establishes or joins an organization that acts against the people's government" (Article 109), with sentences that include the death penalty. Furthermore, Decree 33 is in violation of international human rights law, as well as the international standard laid out by the Human Rights Council, by hindering the establishment of civil society organizations.[15] The Council has stated that civil society must operate within the framework of legislation that is consistent with the UN Charter and the international human rights law, in a "safe and enabling environment in which civil society can operate free from hindrance and insecurity".[16]

In this connection, we reiterate our grave concerns regarding the restrictions imposed on the freedoms of peaceful assembly and of association in Viet Nam, that had been denounced by the Human Rights Committee in its 2019 Concluding Observations on Viet Nam.[17] These undue restrictions by the Government on civil society in the exercise of their fundamental freedoms seem to be in violation of the principles and standards of international human rights law.

Legal Restrictions on Foreign Funding

Finally, we would like to express our serious concerns regarding the legal restrictions on the access to foreign funding. In a report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association called upon States "[t]o 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."[18] He also called upon States to "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"[19], and to " recognize that regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding."[20]

Therefore, Article 2 of Decree 93, which prohibits foreign non-governmental aid (FNA) that affects "political security, social order and safety or infringing upon interests of the State" is a particular cause for concern. The absence of a clear definition constitutes a source of concern, due to the its imprecise nature that leaves it open to a wide range of interpretations. Thus, this Article impedes on the ability of

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15 HRC/RES/27/31 (2014).
16 A/HRC/20/27 and A/HRC/38/34.
17 CCPR/C/VNM/CO/3, para. 47 (2019).
18 A/HRC/23/39, para. 82 (b).
19 A/HRC/23/39, para. 82 (c).
A/HRC/23/39, para. 82 (d).

associations to pursue their statutory activities and violates Article 22 of the ICCPR, under which Viet Nam has the obligation to protect all activities of an organization, including fundraising activities which are recognised as part of the right to freedom of association.[21]

Likewise, we are strongly concerned about the legal justifications put forward by the Government in Article 5 of Decree 80 to restrict access to foreign aid. Most of them do not comply with Article 22 para. 2 of the ICCPR, which stipulates that any limitation must pursue a legitimate interest and be necessary for a democratic society. Thus, the protection against terrorism and prevention of money laundering that are invoked by authorities as grounds to limit access to funding would not constitute a legitimate aim for restricting the freedom of association.[22] There is also a need for States to comply with international human rights law while countering terrorism. In this connection, we wish to also remind your Excellency's Government that restrictive measures must be the least intrusive means to achieve the desired objective and be limited to the associations falling within the identified aspects characterizing terrorism only.[23] They cannot be misused to hinder the work and endanger the safety of civil society organizations.[24]

We are also concerned about the process of project approval of Official Development Assistance (ODA). Although Decree 56 introduces significant changes, the project approval process lacks a shared understanding of effective practices that allow for ODA benefits such as tax exemptions. Therefore, even those international development agencies that have been operating in Viet Nam for many years and have implemented a large portfolio of activities, still may continue to face challenges in obtaining project approval and value-added tax refunds. We would thence like to recall that, as affirmed by the Human Rights Council,[25] States should create and maintain a safe and enabling environment in which civil society organizations can operate free from hindrance and insecurity, as an essential component for the promotion of human rights, democracy, and the rule of law.

While we do not wish to prejudge the accuracy of the information made available to us, we express our grave concern that the three amended decrees could have already seriously restricted the space for civil society to exercise their fundamental freedoms. As such, the decrees would appear to constitute a breach of Viet Nam's obligations under international human rights law, as described above.

As it is our responsibility under the mandate 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 an additional information and/or comment(s) you may have on the above-mentioned concerns.

2. Considering your Excellency's Government's obligations under articles 2, 19, 20, 21, 22 of the ICCPR and articles 11, 12, 14, 19 and 20 of the UDHR, and in view of the aforementioned inconsistencies of the amended decrees with such obligations, please provide information on

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[21] A/HRC/23/39, para. 8 (2013).
[22] A/61/267, para. 20 (2006).
[23] A/HRC/RES/23/39, para. 23 (2013).
[24] A/HRC/RES/27/31 (2014).
[25] A/HRC/RES/24/5 (2013).

the steps it may take to remediate such inconsistencies to bring the decrees in line with international human rights standards.

3. Please provide further information on the steps your Excellency's Government may take to remediate the aforementioned incompatibility of the definitions of national defence and security in the amendments with international human rights standards, so they respect the principle of legal certainty established under the ICCPR.

4. Please provide further information on the positive measures and oversight provided by your Excellency's Government to enable the free enjoyment of uncensored media to end restrictions on online sources of information and use of the Internet, and to provide a safe space and enabling environment for civil society actors and organizations that express themselves online.

5. Please provide information on the steps your Excellency's Government may take to bring the amended Decrees and Decisions in line with your obligation to ensure that all persons are guaranteed their internationally recognized human rights, such as the freedoms of opinion and expression, as well as of peaceful assembly and of association.

This communication, as a comment on recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website after 48 hours. They will be also subsequently made available in the usual report to be presented to the Human Rights Council.

While awaiting for a reply, we encourage your Excellency's Government to ensure that the legislation on civil society's work is in accordance with its obligations under international law regarding the rights to freedom of expression and opinion, as well as of peaceful assembly and of association under Articles 19, 21 and 22 ICCPR. To achieve this, the legislation should be reviewed, and all broad provisions should be precise, in order to ensure this legislation does not undermine the protection of human rights and democracy in Viet Nam.

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

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