

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders

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(Please use this reference in your reply)

17 June 2026

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 53/12 and 61/22.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a series of amendments to the legal framework regulating the legal profession included in Decree No. 109/2026/NĐ-CP. Several provisions of these amendments may not be in line with international human rights standards related to independence of lawyers, the autonomy of professional associations, and the right to effective legal assistance, by allowing broad administrative sanctions, including temporary deprivation of practicing certificates, for vaguely defined professional conduct. They may also infringe upon the right to a fair trial.

We refer to your Excellency's Government's international human rights obligations, specifically those related to the independence of the judiciary and the right to a fair trial, protected in both the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR), to which Vietnam acceded on 24 September 1982.

In this communication, we do not intend to offer an exhaustive analysis of the amendment. Instead, we focus on those provisions that, as they stand, may infringe on the role of lawyers, including human rights lawyers, and as such are not compatible with international human rights law and applicable standards. We also take note that these amendments occur in a context in which the Treaty Bodies¹ and Special Procedures mandate holders² have already raised their concerns about reports of harassment, intimidation and prosecution against human rights defenders and lawyers in Viet Nam.

At the outset, we would like to recall that article 14 of the ICCPR states that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Human Rights Committee has highlighted the important role of lawyers as a guarantee of fair trial in setting out that "(...) The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way. While article 14 explicitly addresses the guarantee of legal assistance in criminal proceedings in paragraph 3 (d), States are encouraged to provide free legal aid in other cases, for

¹ Human Rights Committee, Concluding observations on the fourth periodic report of Viet Nam, CCPR/C/VNM/CO/4, 12 August 2025, para. 38

² See, e.g., Special Procedures communications AL VNM 1/2023, 31 March 2023; AL VNM 4/2018, 4 April 2018; UA VNM 3/2015, 6 January 2016, UA VNM 2/2015, 25 November 2015.

individuals”.³

The provisions and amendments analyzed below touch upon these standards.

While States may legitimately regulate the legal profession and establish professional and ethical standards for lawyers, such regulation must remain fully consistent with international human rights law and standards concerning the independence of lawyers, legality, proportionality, and protection against improper interference in the exercise of professional functions.

Decree 109/2026/NĐ-CP concerning administrative sanctions in the legal profession

On 1 April 2026, the Government of Viet Nam issued Decree No. 109/2026/NĐ-CP, regulating administrative sanctions in the fields of judicial support, judicial administration, marriage and family, civil judgment enforcement, and recovery and bankruptcy of enterprises and cooperatives. The Decree is scheduled to enter into force on 18 May 2026 and replaces Decree No. 82/2020/NĐ-CP.

The Decree applies, among other areas, to lawyers, legal consultancies, notarial practices, judicial expertise, asset auctions, commercial arbitration and commercial mediation. It also applies to Vietnamese and foreign individuals and organizations committing administrative violations in the regulated fields. It provides for monetary fines, deprivation of the right to use lawyers’ practicing certificates or foreign lawyers’ licences to practice in Viet Nam, suspension of law-practicing organizations, confiscation of material evidence or means of administrative violations, and remedial measures.

Relevant provisions

a. Entry, licensing and registration requirements

Article 7 regulates documentation related to entry into, and continued standing within, the legal profession. It applies to files and applications concerning registration as a trainee lawyer, admission to a Bar Association, issuance or re-issuance of lawyers’ practicing certificates, certificates of registration to practice law, foreign lawyers’ licenses to practice in Viet Nam, and the registration of law-practicing organizations, branches, foreign law firms and foreign legal practices.

Article 7(1) provides for fines of VND 3,000,000 to VND 7,000,000 for erasing, altering or falsifying documents issued by competent agencies, organizations or persons in such files or applications. Article 7(2) provides for fines of VND 7,000,000 to VND 10,000,000 for making untruthful declarations or concealing information in such files or applications. Article 7(3) provides for confiscation of material evidence consisting of erased, altered or falsified documents, while article 7(4) provides remedial measures including review of documents issued as a result of the violation, compulsory submission of altered or falsified originals, and compulsory return of unlawful gains.

³ CCPR/C/GC/32, paragraph 10.

b. Regulation of legal practice and professional conduct

Article 8 governs administrative violations in the practice of law.

Several provisions concern professional obligations, such as mandatory training, notification of practice registration, informing clients of professional rights and obligations, practicing in the correct form, and complying with registration requirements. Article 8(1) provides for fines of VND 1,000,000 to VND 3,000,000 for failure to complete mandatory training or notify the Bar Association of practice registration changes. Article 8(2) provides for fines of VND 3,000,000 to VND 7,000,000 for failure to inform clients fully of professional rights and obligations or failure to register or notify changes. Article 8(3) provides for fines of VND 7,000,000 to VND 10,000,000 for several practice-status violations. Article 8(4) provides for fines of VND 10,000,000 to VND 15,000,000 for falsifying or altering practicing documents and related notices, and article 8(5) provides for fines of VND 15,000,000 to VND 20,000,000 for foreign lawyers operating outside the permitted scope of practice or for misuse of practicing certificates or licenses.

Other paragraphs regulate lawyers' speech, conduct in proceedings, advice to clients, and interaction with procedural bodies and State agencies:

- Article 8(6) provides for a fine of VND 15,000,000 to VND 30,000,000 for “insulting the honour, dignity or reputation of persons authorized to conduct proceedings.”
- Article 8(7)(c) provides for a fine of VND 20,000,000 to VND 30,000,000 for “personally carrying out, or assisting a client to carry out, unlawful acts aimed at delaying, prolonging, creating difficulties for, or obstructing the activities of procedural bodies and other State agencies.”
- Article 8(7)(e) provides for the same fine of VND 20,000,000 to VND 30,000,000 for “behaving, speaking or acting in a manner that affects the image or reputation of the legal profession or causes damage to the lawful rights and interests of agencies, organizations or individuals, where the conduct does not reach the threshold for criminal liability.”

Article 8(8) provides for fines of VND 30,000,000 to VND 40,000,000 for a series of acts, including:

- Article 8(8)(b): inciting a client to give false testimony, or inciting a client to make unlawful complaints or denunciations;
- Article 8(8)(đ): participating in enticing, inciting, bribing or coercing others to gather in large numbers to disturb public order or to commit unlawful acts, where the conduct does not reach the threshold for criminal liability.

For certain violations, article 8 provides for additional sanctions. Under article 8(9)(a), violations of article 8(3)(a), (b), (c), (d), (đ) and (g), and article 8(5)(a)

may result in deprivation of the right to use a lawyer's practicing certificate or a foreign lawyer's license to practice law in Viet Nam for one to three months. Under article 8(9)(b), violations of article 8(5)(b), article 8(6), article 8(7)(c), (d) and (e), and article 8(8) may result in deprivation of the right to use a lawyer's practicing certificate or license to practice law in Viet Nam for six to nine months. Article 8(9)(c) and (d) further provide for confiscation of specified material evidence or means of administrative violations.

Decree 109 also gives sanctioning powers to local and police authorities. Article 84 provides that chairpersons of commune-level People's Committees may issue warnings, impose fines up to VND 25,000,000 in the field of judicial support, temporarily suspend activities or deprive persons of the right to use licenses or practicing certificates, confiscate material evidence and means of administrative violations, and apply remedial measures. Article 89 provides that heads of commune-level police may impose fines up to VND 25,000,000 in the field of judicial support, and may temporarily deprive persons of licenses or practicing certificates or suspend activities.

c. Regulation of law-practicing organizations

Article 9 regulates law-practicing organizations and provides fines ranging from VND 7,000,000 to VND 50,000,000. Relevant violations include operating outside the registered field or location of practice, allowing non-lawyers to practice under the organization's name, failing to appoint lawyers to participate in proceedings as assigned by the Bar Association, providing legal services without a written contract, representing clients with opposing interests in the same case or matter, or operating without registration. Article 9(7) provides for suspension of operation for three to six months for specified violations, including allowing non-lawyers to practice under the organization's name, operating outside the registered scope or location, providing services without a written contract, or representing clients with opposing interests.

d. Oversight of socio-professional organizations of lawyers

Article 10 regulates socio-professional organizations of lawyers and provides for fines ranging from VND 1,000,000 to VND 10,000,000. These are provided for, amongst other violations, failure to report to competent authorities on congress plans or results, organization and activities, and professional training; failure to assign law-practicing organizations to accept trainee lawyers; failure to assign lawyers to participate in proceedings at the request of procedural bodies; irregular registration of trainees or Bar Association membership; and failure to request revocation of lawyers' practicing certificates where required.

e. Sanctioning powers of State authorities

Chapter VIII regulates sanctioning powers. Article 84 empowers chairpersons of People's Committees to issue warnings, impose fines, temporarily suspend activities, deprive persons of the right to use licenses or practicing certificates, confiscate material evidence and apply remedial measures. At the commune level, fines may reach VND 25,000,000 in the field of judicial support; at provincial level, fines may reach VND 50,000,000.

Article 89 grants similar powers to police authorities. Heads of commune-level police may impose fines of up to VND 25,000,000 in the field of judicial support, while provincial police directors and specified central-level police officials may impose fines of up to VND 50,000,000. Article 90(6) gives police competence over several lawyer-related violations, including article 8(6), article 8(7)(c), (d) and (e), and article 8(8)(a), (b), (d) and (đ).

International standards

International standards recognize that States may regulate the legal profession and establish disciplinary or administrative sanctions for professional misconduct. Such regulations may serve legitimate aims, including protecting clients, ensuring compliance with professional ethics rules and safeguarding the proper administration of justice. However, any regulatory framework governing lawyers must be compatible with the independence of the legal profession, the right to effective legal assistance, and the fair trial guarantees protected under article 14 of the International Covenant on Civil and Political Rights, to which Viet Nam is a State Party.

Article 14 of the Covenant guarantees equality before courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Human Rights Committee has emphasized that this guarantee is a key element of human rights protection and an essential means of upholding the rule of law.⁴ In criminal proceedings, article 14(3)(b) and (d) further protects the right of accused persons to have adequate time and facilities to prepare their defence, to communicate with counsel of their own choosing, and to defend themselves through legal assistance of their own choosing. These guarantees require not only the formal availability of lawyers, but also conditions in which lawyers, including human rights lawyers, can advise and represent clients effectively, independently, and without improper interference. Additionally, Article 9(3)(c) of 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 Declaration on Human Rights Defenders, establishes the right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms. In this regard, provisions in Decree No. 109/2026/NĐ-CP, taken as a whole, may expose lawyers to undue pressure. In particular, the combination of broadly framed administrative violations, substantial financial and professional sanctions, and enforcement powers vested in executive authorities may create risks of intimidation, arbitrary enforcement and improper interference with lawyers' professional activities. These concerns are particularly acute where lawyers represent clients in cases involving public authorities, land disputes, human rights defenders, journalists, whistleblowers, or other politically sensitive matters.

Several provisions, mostly contained in Article 8, Chapter II, such as conduct affecting the “image” or “reputation” of the legal profession, “obstructing” State authorities, or conduct linked to “public order” also appear formulated in broad and subjective terms that may not satisfy the principle of legality under international human

⁴ Human Rights Committee, General Comment No. 32, article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, para. 2.

rights law, which requires restrictions affecting protected rights to be sufficiently precise, foreseeable, and non-arbitrary. These may create risks of arbitrary or selective enforcement and may disproportionately affect lawyers defending human rights or representing human rights defenders.

a. Intimidation, improper interference and restrictions on lawyers' expression

Several provisions of the Decree use broad and imprecise terminology, including references to “insulting” persons authorized to conduct proceedings, conduct that “delays, prolongs, creates difficulties for, or obstructs” procedural bodies or State agencies, “behavior, statements or actions” affecting the image or reputation of the legal profession, and incitement of “unlawful complaints or denunciations.”

If interpreted broadly, such terms may allow ordinary acts of legal representation to be recharacterized as administrative misconduct. Lawyers frequently challenge the conduct of authorities. They may advise clients on procedural rights, challenge evidence or procedural violations, seek disclosure, and submit complaints concerning official conduct. These activities may be essential to the effective protection of clients' rights. While professional ethics and courtroom decorum may legitimately be regulated, restrictions imposed on lawyers, particularly human rights lawyers, should not penalize legal argumentation, criticism of procedural irregularities, robust defence advocacy, or representation undertaken in the interests of clients.

The cumulative effect of these provisions may create a chilling effect on lawyers' ability to act freely, independently and diligently on behalf of their clients, including in proceedings or matters involving criticism of public officials or State agencies, and where the defence of human rights are concerned.

We recall that the Basic Principles on the Role of Lawyers (“Basic Principles”) require governments to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and without suffering or being threatened with administrative, economic or other sanctions for actions taken in accordance with recognized professional duties, standards and ethics.⁵ The Basic Principles further provide that lawyers shall enjoy civil and penal immunity for statements made in good faith in written or oral pleadings or in professional appearances before a court, tribunal or other legal or administrative authority.⁶

b. Lawyer-client confidentiality and the principle of non-identification with clients

As it stands, the Decree may affect the integrity of the lawyer-client relationship, including lawyer-client confidentiality and the principle that lawyers should not be identified with their clients or their clients' causes as a consequence of discharging their professional functions. In particular, sanctions linked to advising clients to submit complaints or denunciations, or to matters involving public gatherings, may risk

⁵ Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990, principle 16.

⁶ *Ibid.*, principles 13–15.

treating lawyers as responsible for the claims, views, legal strategies or alleged conduct of their clients.

Provisions authorizing confiscation of material evidence or means of administrative violations may, if applied to lawyers' files, communications, documents or defense materials, affect legal professional privilege and the confidentiality of lawyer-client communications. Additionally, this has the potential to elevate existing risks posed to clients, such as human rights defenders, particularly in cases challenging the State. Any measure affecting such materials must be strictly circumscribed by law, necessary and proportionate, and accompanied by safeguards sufficient to prevent interference with defence rights and professional secrecy.

We recall that the Basic Principles require governments to recognize and respect the confidentiality of all communications and consultations between lawyers and their clients within their professional relationship.⁷ These guarantees are essential to the relationship of trust required for effective legal assistance and for the proper preparation of a defense.

c. Erosion of professional independence and autonomy

The Decree appears to expand the authority of executive and police bodies to impose sanctions directly affecting lawyers' ability to practice, including temporary deprivation of the right to use practicing certificates or licenses. Where such powers are exercised by local executive or police authorities, including in matters in which those authorities may be challenged by lawyers, there is a risk of conflict of interest and of perceived or actual retaliatory enforcement. These concerns are particularly significant where lawyers represent clients in disputes involving local authorities, law enforcement bodies, politically sensitive matters or allegations of official misconduct, and where the defence of human rights are concerned.

The Basic Principles require that charges or complaints made against lawyers in their professional capacity be processed expeditiously and fairly under appropriate procedures, with the right to a fair hearing and assistance by a lawyer of the defendant's choice.⁸ They further provide that disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, an independent statutory authority, or a court, and shall be subject to independent judicial review.⁹ The Decree does not appear to clearly specify the procedural safeguards applicable to sanctions affecting lawyers' practicing rights, including evidentiary standards, access to appeal, procedural transparency, and safeguards against arbitrary or retaliatory enforcement.

Principle 19 also provides that no court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for a client unless the lawyer has been disqualified in accordance with national law and practice and in conformity with the Basic Principles.

⁷ Ibid., principle 22.

⁸ Ibid., principle 27.

⁹ Ibid., principle 28.

Against this background, as it is drafted, the Decree may permit administrative authorities to impose measures with effects akin to professional discipline, including suspension from practice, outside a framework that ensures sufficient independence, impartiality and review. Temporary deprivation of a practicing certificate, even for a fixed period, may interrupt ongoing representation, deprive clients of counsel of their choice, and deter lawyers from taking sensitive or complex cases. In such circumstances, measures formally characterized as administrative sanctions may nevertheless operate in practice as mechanisms of professional discipline exercised under executive authority.

We also recall that professional standards for lawyers should be developed and applied in a manner consistent with the autonomy of the legal profession. The Basic Principles provide that codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and recognized international standards and norms.¹⁰ Disciplinary proceedings must also be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession.¹¹

d. Oversight of professional associations of lawyers

The Decree as drafted may affect the institutional autonomy of lawyers' professional associations. The provisions concerning socio-professional organizations of lawyers appear to subject matters such as congresses, organizational reporting, professional training, apprenticeship, Bar Association membership, assignment of lawyers to proceedings, and requests for revocation of practicing certificates to potential administrative sanction.

While States may establish general legal requirements applicable to professional associations, such oversight should not undermine the ability of bar associations and lawyers' organizations to regulate the profession, protect professional integrity and safeguard lawyers from improper interference. The Basic Principles recognize that lawyers are entitled to form and join self-governing professional associations to represent their interests, promote continuing education and training, and protect their professional integrity. The executive body of such associations shall be elected by its members and shall exercise its functions without external interference.¹²

Accordingly, the use of administrative sanctions in relation to core governance, training, membership and disciplinary functions of lawyers' professional associations may raise concerns if it results in undue influence or control over bodies that should operate with a sufficient degree of independence.

e. Entry into and continued access to the legal profession

With respect to the provisions concerning admission, licensing and registration, we note that rules addressing falsification or alteration of documents, false declarations or concealment of information may pursue the legitimate aim of preserving the integrity of the legal profession. However, because such provisions concern entry into, and

¹⁰ Ibid., principle 26.

¹¹ Ibid., principle 29.

¹² Ibid., principle 24.

continued access to, legal practice, their application should be based on clear, objective and non-discriminatory criteria. Such criteria should also be sufficiently precise and foreseeable to prevent arbitrary or selective application.

The Basic Principles require that Governments, professional associations and educational institutions ensure that there is no discrimination against a person with respect to entry into, or continued practice within, the legal profession on prohibited grounds.¹³ They also require Governments to ensure that all persons within their territory and subject to their jurisdiction have effective and equal access to lawyers.¹⁴ In this respect, admission and licensing rules should not be applied selectively to prevent lawyers from entering, remaining in or exercising the profession because of the clients they represent, the cases they accept, or their lawful professional activities.

In closing, we urge your Excellency's Government to consider bringing these provisions into line with international standards. We stand ready to engage in dialogue with your Excellency's Government on this very important matter and to provide any technical advice it may require in ensuring the proposal is fully compliant with international human rights obligations.

In a spirit of cooperation and dialogue, and in line with the mandate entrusted to me by the Human Rights Council, we respectfully invite clarification on the measures taken to ensure that the newly adopted Decree complies with international standards, including:

1. Please explain how Decree 109/2026/NĐ-CP is compatible with article 14 of the International Covenant on Civil and Political Rights, with the Basic Principles on the Role of Lawyers and with the UN Declaration on Human Rights Defenders.
2. Please provide information on the measures taken to ensure that the provisions of the Decree concerning lawyers' professional conduct are sufficiently clear, precise and foreseeable, and that they cannot be applied to legitimate acts of legal representation.
3. Please indicate what safeguards exist to ensure that lawyers are able to perform their professional functions without intimidation, hindrance, harassment, improper interference, or threats of administrative, economic or other sanctions for actions taken in accordance with recognized professional duties, standards and ethics despite the abovementioned regulations expanding sanctions against the profession, and the use of use broad and imprecise terminology in the decree.
4. Please explain how the Decree ensures that any administrative or disciplinary proceedings affecting lawyers' practicing rights are conducted by an independent and impartial body, in accordance with due process guarantees, and are subject to effective independent judicial review.

¹³ Ibid., principle 10.

¹⁴ Ibid., principle 2.

5. Please clarify the scope of the sanctioning powers conferred on executive and police authorities under the Decree, and the measures in place to prevent conflicts of interest, arbitrary enforcement, or retaliatory use of such powers in cases involving proceedings against public authorities.
6. Please provide information on the measures taken to protect lawyer-client confidentiality and the principle that lawyers shall not be identified with their clients or their clients' causes in the implementation of the Decree.
7. Please explain how the temporary deprivation of lawyers' practicing certificates for up to nine months is necessary and proportionate, particularly where the alleged violation arises from legal representation undertaken in politically sensitive matters, proceedings involving public authorities, public-interest litigation, or allegations of official misconduct.
8. Please provide information on any measures adopted or envisaged to prevent the Decree from being used to intimidate, retaliate against, or otherwise interfere with lawyers representing clients, including in politically sensitive cases, land disputes, whistleblower cases, the representation of human rights defenders, public-interest litigation, or cases involving allegations of misconduct by police or local authorities.

This communication, as a comment on pending or 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 also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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