

# **UN Recommendations on the draft Decree on the sanctions of administrative violations in the organization of international conferences and workshops in Viet Nam, the operation of foreign non-governmental organizations in Viet Nam, and the consular certification, consular legalization activities**



*(14<sup>th</sup> September 2017)*

The purpose of the draft Decree is not entirely clear. The intention appears to be to complete the regulatory framework for the organization of international conferences and workshops and for the registration and management of activities of foreign Non-Governmental Organizations, by establishing various sanctions for violations of these administrative rules.

As such, the draft Decree will directly affect the enjoyment of the rights of peaceful assembly and freedom of association protected under Articles 21 and 22 respectively of the International Covenant on Civil and Political Rights (ICCPR) and the right to participate in cultural life protected under Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Viet Nam, which is a party to both Covenants since 1982, has the obligation to respect, protect and fulfil the enjoyment of these fundamental rights on its territory, without discrimination of any kind, including on the basis of national origin. In this regard, the United Nations would like to make the following observations on the draft Decree:

- The establishment and management of NGOs falls under the right of freedom of association, which includes the right to operate in an independent manner and administer one's own affairs. In accordance with Article 21, ICCPR, the Government of Viet Nam has the obligation to establish and maintain an enabling environment for NGOs to operate freely, free from undue interference.<sup>1</sup>
- The organisation of, and participation in, public gatherings such as conferences, seminars, symposiums, discussions or workshops falls under the right of peaceful assembly. Under Article 22, ICCPR, the Government of Viet Nam must protect the right to gather for a common purpose or to pursue common goals, including those with a social, cultural, religious, charitable or professional nature, in both private or public settings.
- The organization of such conferences and workshops is also protected under Article 15, ICESCR, the right to participate in cultural life. "Culture is a broad, inclusive concept encompassing all manifestations of human existence".<sup>2</sup> The Government of Viet Nam has the obligation to guarantee the right of everyone to respect the freedom indispensable to scientific research and creative activity.<sup>3</sup> It should also recognize the benefits of international contacts and cooperation in the scientific and cultural field.<sup>4</sup> The full realization of this right requires that the Government of Viet Nam to adopt steps necessary for the conservation, development and dissemination of science and culture.<sup>5</sup> Therefore, the Government of Viet

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<sup>1</sup> See Special Rapporteur on the rights to freedom of peaceful assembly and of association report, A/HRC/20/27, in particular par. 63-66, and Resolution of the Human Rights Council 24/5.

<sup>2</sup> CESCR, General Comment no. 21, par. 11.

<sup>3</sup> Article 15 (3) of ICESCR.

<sup>4</sup> Article 15 (4) of ICESCR.

<sup>5</sup> CESCR, General Comment no. 21, par. 47

Nam, has the positive obligation to encourage “scientists, artists and others to take part in international and cultural research activities, such as symposiums, conferences, seminars and workshops” and without hindrance.<sup>6</sup>

- The establishment of numerous administrative sanctions under the draft Decree that are to be applied for any delay, default, neglect or failure to comply with the registration and operational procedures for foreign NGOs, or to obtain authorisations for and report on the organisation of international conferences, including for unseen changes of dates, venue or participants, imposes a disproportionate (and impractical) burden on organisers of international conferences and civil society more generally. This appears to be in direct contradiction with Viet Nam’s obligations to create the conditions for the enjoyment of the rights of peaceful assembly, association and participation in cultural life.<sup>7</sup> According to international standards, as per the recommendations of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the exercise of the right to freedom of peaceful assembly and association should not be subject to prior authorization by the authorities and, at the most, a prior notification procedure, which should not be burdensome.<sup>8</sup>
- Any association should be able to function freely without State interference and be able to access both domestic and foreign funding resources without prior authorization.<sup>9</sup> Establishing sanctions for foreign NGOs which “organize, conduct fundraising activities in Viet Nam to call for contributions from Vietnamese individuals and organisations” is incompatible with the right to freedom of association guaranteed by Article 22, ICCPR.
- The regulation of such activities under the draft Decree restricts the exercise of the rights of peaceful assembly, association and participation in cultural life in a manner inconsistent with the provisions of the ICCPR and ICESCR. The restrictions are not prescribed by law as required under the legal certainty principle, but by administrative decisions. These restrictions are disproportionate, and as is necessary in a democratic society, are not justified on the grounds of the interests of national security, public safety, public order, public health or morals or protection of the rights and freedoms of others as defined in various General Comments by the Human Rights Committee, which are the only permissible grounds under the ICCPR.<sup>10</sup>
- The proposed Decree which impacts upon the enjoyment of the rights of assembly, association, and to participate in cultural life only targets NGOs, and conferences and workshops with an international dimension, be it their membership, their audience or their source of funding. This distinction in treatment, which negatively affects the enjoyment of fundamental rights based on national origin, amounts to discrimination and is in contravention of Viet Nam’s international obligations under Articles 2 (1) of ICCPR and 2 (2) of ICESCR.

The United Nations would like to emphasize that fully addressing these issues would also support Viet Nam in meeting its agreed commitments under the Universal Period Review, ahead of the 3rd cycle review session in early 2019. Under the 2nd cycle review, Viet Nam accepted, among others, the following related recommendations:

- Take all necessary actions to respect and promote the right to freedom of expression, peaceful assembly and association in line with its international human rights obligations

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<sup>6</sup> CESCR, General Comment 21 on article 15, par 52 (e).

<sup>7</sup> See Special Rapporteur on the rights to freedom of peaceful assembly and of association report, A/HRC/23/39.

<sup>8</sup> See Special Rapporteur on the rights to freedom of peaceful assembly and of association report, A/HRC/20/27 para. 90 and 95.

<sup>9</sup> See Special Rapporteur on the rights to freedom of peaceful assembly and of association report, A/HRC/20/27 para. 97 to 99.

<sup>10</sup> See Articles 21 and 22 (2) of ICCPR and CESCR, General comment no. 21, par 19.

- Encourage strengthening of NGOs by promoting a legal, administrative and fiscal framework, in which such institutions can be created and developed, and perform their activities without any obstacles and with freedom of expression
- Facilitate the development of a safe and enabling environment for all civil society actors to freely associate and express their views by ensuring that national legislative provisions are not invoked to stifle legitimate and peaceful dissent<sup>11</sup>

The draft Decree will directly affect the enjoyment of the rights of peaceful assembly, freedom of association, and the right to participate in cultural life, as guaranteed under Chapter II of the 2013 Constitution of the Socialist Republic of Viet Nam. Any statutory limitations on such rights must be clear and in line with the permissible grounds for restrictions under the Constitution, as per Paragraph 2, Article 14: “The human rights and the rights of citizens shall only be statutorily restricted if required by reason of national defense, national security, social order and security, social morality, and the health of the community”.

**The United Nations recommends that the dispositions in the draft Decree related to the organization of international conferences and workshops and the operation of foreign NGOs be repealed and that the overall regulatory framework for the organization of international conferences and workshops and the operation of foreign NGOs in Viet Nam be revised and brought into compliance with Viet Nam’s international obligations under the ICCPR and ICESCR.**

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<sup>11</sup> See Report of the Working Group on the Universal Periodic Review – Viet Nam, A/HRC/26/6.