

Joint UN Recommendations on the Law on Associations

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Introduction

The Law on Association will be a fundamental legislation to guarantee the right to freedom of association which is provided for under the Constitution of Viet Nam, the Universal Declaration of Human Rights as well as a number of international human rights treaties ratified by Viet Nam:

- Art. 22, International Covenant on Civil and Political Rights (ICCPR) – ratified in 1982
- Art. 5, Convention on the Elimination of Racial Discrimination (CERD) – ratified in 1982
- Art. 7, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – ratified in 1982
- Art. 15, Convention on the Rights of the Child (CRC) – ratified in 1990
- Art. 21, Convention on the Rights of Persons with Disabilities (CRPD) – ratified in 2015

Under the periodic review of the above mentioned treaties, Viet Nam has received recommendations to create an enabling environment for rights-based and non-governmental organizations to be able to freely establish and operate in full compliance with international obligations on human rights.¹ In addition, Viet Nam has accepted a number of recommendations calling for further protection and promotion of the right to freedom of association during the second cycle of the Universal Periodic Review.² Significantly, Viet Nam has committed to take all necessary actions to uphold the most advanced international standards on freedom of association and develop a safe and enabling environment for all civil society actors to freely associate and express their views.³

The right to freedom of association serves as a vehicle for the exercise of many other civil, cultural, economic, political and social rights. This is underscored by the Sustainable Development Goals calling for enhanced partnerships with civil society that mobilize and share knowledge, expertise, technology and financial resources, to support the achievement of the 2030 Agenda.

The United Nations in Viet Nam recommends that Viet Nam adopt a Law on Associations that incorporates international normative standards and best practices on the right to freedom of association.

Basic principles and best practices

Under international law, the right to freedom of association obliges States to take positive measures to establish and maintain an enabling environment for exercising the right. On the other hand, States have an obligation not to unduly obstruct the exercise of the right to freedom of association. Based on these State obligations and the best practices described by

¹ Para. 25(b) of CEDAW Concluding Observations (CEDAW/C/VNM/CO/7-8, 2015); para. 26 of CRC Concluding Observations (CRC/C/VNM/CO/3-4, 2012); and, para. 17 of CERD Concluding Observations (CERD/C/VNM/CO/10-14, 2012).

² See the Report of the Working Group on the Universal Periodic Review (A/HRC/26/6, dated 2 April 2014) and its Addendum (A/HRC/26/6/Add.1, dated 20 June 2014).

³ Idem. See, in particular, following recommendations which were accepted by Viet Nam: 143.144, 143.145, 143.165, 143.169, 143.172, 143.173, 143.174, 143.178.

the UN Special Rapporteur on the rights to freedom of peaceful assembly and association,⁴ the UN's recommendations for the legal framework on the right to freedom of association are grouped into four as presented below.

1. Everyone has the right to form, join or lead an association without any discrimination

In pursuant to ICCPR and other international normative standards on human rights, Viet Nam is obliged to respect and ensure to all individuals within its territory and subject to its jurisdiction the right to freedom of association without distinction of any kind, such as age, nationality, ethnicity, language, religion, political or other opinion, property, gender, health conditions, birth or other status. This applies inter alia to minors, indigenous peoples, people living with HIV/AIDS, persons with disabilities, persons belonging to minority groups or other groups at risk, including those victims of discrimination because of their sexual orientation, gender identity, and non-nationals including stateless persons, refugees or migrants. To meet international standards, legislation should not set any specific limitation on certain individual's right to form and to join an association, including by prescribing conditions for becoming a leader of an association.

2. Restrictions to the right to freedom of association should be exceptional and subject to judicial review

The international standards recognize that the freedom is the norm and any restriction to the right is an exception and must comply with the international human rights law. Restrictions to the right should be prescribed by law and apply only when necessary in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others (Art. 22(2), ICCPR). In line with this understanding, only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Art. 20, ICCPR) or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law (Art. 5, ICCPR) should be deemed unlawful.

The suspension and the involuntarily dissolution of an association are the severest types of restrictions on the right to freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient.⁵ When the application to establish an association is rejected, or the operation of an association is suspended or terminated, individuals should be guaranteed an opportunity to challenge the decision before an independent and impartial court, and those who violate the right to freedom of association should be held accountable.

⁴ See: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (A/HRC/20/27, 2012).

⁵ In the case of *Komeenko v. Belarus*, the UN Human Rights Committee examined the prohibition of an unregistered association that was dissolved based on the improper use of equipment that it had received through foreign funding for the production of propaganda materials, as well as for deficiencies in the accompanying documentation. The Committee concluded that the dissolution of an association in response to deficient documentation was a disproportionate response. See UN Human Rights Committee, *Komeenko et al v. Belarus* (Communication no. 1274/2004, 31 October 2006), paras. 7.6-7.7.

3. Any association can operate freely and be protected from undue interference

International normative standards call for associations to be able to make use of a protective legal framework to assert their rights regardless of whether or not they are registered. For associations that decide to register to acquire legal personality, procedures for doing so should not be burdensome, but should be simple and swift to facilitate the process. A simple procedure that is considered best international practice is a one that associations are automatically granted legal personality as soon as the authorities are notified by the founders that an association has been created.⁶

If a registration procedure is nevertheless chosen, the legislation should at least provide for an implicit approval mechanism, so that approval is considered to be granted within a certain and adequate number of days following the application to the authorities. Most importantly, if the registration authorities are authorized to reject the application, then a clear legal basis should be provided in the legislation, with an explicit and limited number of justifiable grounds compatible with international human rights standards. A detailed and complex documentation requirement, overly broad discretion of the registration authority in registering associations or in conducting investigations or assessments of the intentions of the association as part of the registration process can effectively prevent associations from being registered and unduly restrict the right to freedom of association.

In general, associations enjoy the same rights and freedoms as individuals including the right to privacy as stipulated in Art. 17 of the ICCPR.⁷ Therefore, legislation should not enable authorities to condition any decisions and activities of the association; reverse the election of board members or the leader of the association; request that an internal decision be withdrawn; request associations to submit annual reports in advance; and enter an association's premises without advance notice. In addition, the right to freedom of expression is fundamental to the exercise of the right to association.⁸ For an association to be autonomous and self-responsible, any decisions concerning its activities and operations shall be decided by its members or a body designated by its members to do so without any undue interference. The use of new technology could be instrumental in exercising the right to freedom of association, including through forming an association online.

4. Any association has the right to access funding and resources

The ability for associations to seek, access and receive funding and resources is an integral and vital part of the right to freedom of association. Any associations, both registered or unregistered, should be guaranteed the right to seek and secure funding and resources from domestic, foreign, and international entities. Allowing for a diversity of sources will better secure autonomous, self-responsible and self-financing principles of an association. Any restrictions on access to resources from abroad and foreign or international sources must be prescribed by law, pursue a legitimate aim in conformity with the specific permissible grounds of limitations to the right set out under Art. 22 of the ICCPR. Simultaneously, any reporting requirements must not place an excessive or costly burden on the organization. Associations should, at most, be expected only to carry out a notification procedure on the

⁶ See para. 58, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (A/HRC/20/27, 2012).

⁷ See para. 9, Human Rights Committee, General Comment No.31 on the nature of the general legal obligation imposed on States Parties to the Covenant (CCPR/C/21/Rev.1/Add. 13, 2004).

⁸ See para. 4, Human Rights Committee, General Comment No.34 on Article 19: Freedoms of opinion and expression (CCPR/C/DC/34, 2011).

receipt of funds and to submit reports on their accounts and activities, and should not be expected to obtain prior authorization from the authorities. To meet international standards, blanket ban or overly restrictive measures to receiving foreign funding should be removed and reporting procedures should be simplified.

Summary of key recommendations

1. *Everyone should have the right to form, join or lead an association without any discrimination*
 - a. Ensure that the right to freedom of association is enjoyed by everyone without any discrimination, including through registered or unregistered entities;
2. *Restrictions to the right to freedom of association should be exceptional and subject to judicial review*
 - a. Any restrictions on the right to freedom of association should be prescribed by law and proportionate to the aim;
 - b. Associations should be able to challenge any rejection of registration, or suspension or termination of their operations, in an impartial and independent court;
 - c. Law enforcement authorities that violate the right to freedom of association should be held accountable for such violations;
3. *Any association should be able to operate freely and be protected from undue interference*
 - a. Any associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment;
 - b. For associations that decide to register, the procedure should be simple, easily accessible, nondiscriminatory, non-onerous, and free of charge;
 - c. Associations should be free to determine their statutes, structure and activities and to express opinions and make decisions without undue State interference;
 - d. The right to freedom of association can be exercised through new technologies, including through the Internet;
4. *Any association should have the right to access funding and resources*
 - a. Associations should be able to access domestic and foreign funding and resources without prior authorization.