



# NGHỊ ĐỊNH

126/2024/NĐ-CP NGÀY 08/10/2024 CỦA CHÍNH  
QUY ĐỊNH VỀ TỔ CHỨC, HOẠT ĐỘNG QUẢN LÝ H

## TIGHTENING THE SCREWS ON CIVIL SOCIETY

An analysis of Decree 126 on associations

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# KEY POINTS

- On November 26, 2024, the Vietnamese government started implementing Decree 126, a new policy that violates the right to freedom of association.
- According to the government, Decree 126 was needed to:
  - Ensure party control over associations.
  - Prevent foreign influence on domestic affairs.
  - Clarify the role of associations in policymaking.
- Decree 126 places new restrictions on associations operating in the country. Specifically, it:
  - Makes it more difficult to establish an association.
  - Requires associations to receive government approval before they can operate legally.
  - Gives the government more power to control and monitor associations.
  - Grants the government broad powers to suspend and dissolve associations.
- Decree 126 is the latest in a series of policy measures that are part of a new wave of repression that has completely decimated civil society in Vietnam.
  - In 2020, the government issued Decree 56, Decree 80, and Decision 6, all of which impose onerous requirements on organizations.
  - Since that year, Vietnam has shut down the only independent journalists' association, the only independent publishing house, and the only independent anti-corruption organization operating in the country.

- The legislative process behind Decree 126 was driven by a political agenda set by the Communist Party of Vietnam (CPV).
  - Directive 24 frames foreign influence on Vietnamese civil society as a threat to national security.
  - In Directive 24, Vietnam's leaders order the government to end foreign interference in policymaking and to stop international actors from using increased international cooperation to promote the development of civil society.
  - In a 2023 communication from the Ministry of Home Affairs (MOHA) to the prime minister, Directive 24 was listed as one of the political agendas driving Decree 126.

# EXECUTIVE SUMMARY

On November 26, 2024, the Vietnamese government enacted Decree No. 126/2024/NĐ-CP, a new policy that imposes extreme restrictions on associations.<sup>1</sup> Compared to Decree No. 45/2010/NĐ-CP, which it replaces, the new decree makes it more difficult to establish an association and gives the government more power to control and monitor the activities and funding sources of associations once they are established. Most notably, Decree 126 grants the government the power to suspend and dissolve associations—a power it did not previously have.

Under the decree, Vietnamese citizens must seek government permission to form an association. This means that if someone wanted to start a group to plant trees in the local community, they would have to follow an onerous registration process and wait for government approval before they could do so. If the association is approved, the government is then empowered to control and monitor its activities, and even suspend or dissolve it with little oversight or legal recourse. Should the association choose to disband, it would first need to secure government approval.

Vietnamese citizens have a constitutional right to free association, which is also guaranteed under international law. But Decree 126 grants the government unfettered authority to stop people from forming associations and to stop associations from operating independently. For this reason, the decree contradicts Vietnam's constitution and international law.

Decree 126 is the latest in a series of policy measures that represent a new wave of repression in Vietnam. In 2020, the government enacted Decree 56 and Decree 80, which impose onerous requirements on local organizations that receive foreign funding.<sup>2</sup> Decision 6, also announced in 2020, requires government approval to host any conference or seminar that relates to national sovereignty, security, human rights, ethnicity, or religion.<sup>3</sup>

And, on July 13, 2023, the Communist Party of Vietnam issued Directive 24, which frames foreign influence on Vietnamese civil society as a threat to national security and orders further restrictions on local organizations.<sup>4</sup> In a communication to the Prime Minister about Decree 126, the Ministry of Home Affairs named Directive 24 as one of the political agendas informing the new decree<sup>5</sup>. This highlights how Directive 24 is not “business as usual”, but rather is part of a new wave of repression that is shaping policymaking in a way that will further suppress civil society.

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# GLOSSARY

<b>CPV</b>	Communist Party of Vietnam
<b>Decree 45</b>	Decree No. 45/2010/NĐ-CP
<b>Decree 88</b>	Decree No. 88/2003/NĐ-CP
<b>Decree 126</b>	Decree No. 126/2024/NĐ-CP
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>MIC</b>	Ministry of Information and Communications
<b>MOF</b>	Ministry of Finance
<b>MOFA</b>	Ministry of Foreign Affairs
<b>MOHA</b>	Ministry of Home Affairs
<b>MPS</b>	Ministry of Public Security
<b>Resolution 4</b>	Resolution 04-NQ/TW
<b>UDHR</b>	Universal Declaration of Human Rights

# BACKGROUND

The Communist Party of Vietnam has long restricted the right of its citizens to form and operate associations. In principle, the right to freedom of association was guaranteed by the Democratic Republic of Vietnam in the 1946 constitution.<sup>6</sup> But as early as 1957, Ho Chi Minh signed a law that allowed the government to shut down associations viewed as harmful to the state and imprison their leaders.<sup>7</sup>

After the country was reunified at the end of the war, these restrictions were maintained. Following the *đổi mới* market reforms in the 1980s and 1990s, however, organizations pressed for more rights. In 2003, the government issued Decree No. 88/2003/NĐ-CP. Decree 88 was intended to be used as a trial run for a new law on associations, but progress on a new law was blocked by leaders that wanted to suppress the emergence of an independent civil society.<sup>8</sup> Instead, Decree 88 was replaced in 2010 by another decree on associations: Decree 45.

Decree 45 set Vietnam's policies on associations for more than a decade.<sup>9</sup> The decree set the rules for establishing associations, what organizational structures are permitted, the rights and obligations of associations, and the state agencies charged with managing associations.<sup>10</sup>

However, in 2014, only four years after Decree 45 was enacted, a consensus emerged among the top party brass that the decree didn't go far enough in controlling associational life in the country. Party leaders wanted more control over associations and less dependence among these groups on the state budget.<sup>11</sup> To rectify this situation, the CPV's Political Bureau ordered the Ministry of Home Affairs (MOHA) to replace Decree 45.<sup>12</sup>

MOHA weighed the benefits of amending Decree 45 as opposed to replacing it entirely, but in the end determined that replacing it was the best option.<sup>13</sup> MOHA was of the view that Decree 45 did not impose sufficient obligations or regulations on



associations—a policy gap which allowed some associations to act in opposition to the state, threaten national security, divide national unity, and finance terrorism.<sup>14</sup> A new decree was deemed necessary.

As this policymaking process dragged on, in 2016 an effort was made by the National Assembly to push through a law on associations.<sup>15</sup> The law, which would have increased restrictions on associations, was rejected when several National Assembly deputies objected to restrictions that had been introduced at the last minute. These objections were made following an advocacy campaign spearheaded by civil society groups.<sup>16</sup>

Between 2014 and 2023, there were at least eight drafts of new association decrees.<sup>17</sup> However, it was not until 2024—after To Lam’s Ministry of Public Security had silenced civil society activists and neutralized reformers—that sufficient consensus was achieved to issue a new decree.<sup>18</sup>

As we outline in the next section, there were a number of reasons why Hanoi wanted a new decree on associations.

# THE NEED FOR A NEW DECREE

The government has outlined several reasons why Decree 45 needed to be replaced:

- To ensure party control over associations in the country.<sup>19</sup>
- To prevent foreign influence on domestic affairs.<sup>20</sup>
- To increase government control over the funding of associations.<sup>21</sup>
- To create the legal authority to suspend and dissolve associations.<sup>22</sup>

A communication sent by MOHA in October 2023 made clear that the Ministry of Public Security (MPS) was pushing for more restrictions. MPS wanted to disqualify people with a criminal record from participating in associations, to monitor and regulate foreign funding to associations, and to give the government the power to suspend and dissolve associations.<sup>23</sup> Each of these proposals was adopted in Decree 126. Taken together, the government's reasons for replacing Decree 45 paint a picture of paranoid leaders who want to tighten their chokehold on associations in the country.

## ENSURING PARTY CONTROL

According to MOHA, replacing Decree 45 was necessary to ensure that the CPV can maintain control over all associations in the country.<sup>24</sup> A conclusion by the Secretariat of the Central Party Committee stated that, in the absence of a law on associations, a new decree was needed to institutionalize party directives, such as Directive 24.<sup>25</sup> The CPV had developed a series of policies, but the new policies were not yet reflected in the country's regulations on associations.<sup>26</sup> Further, according to MOHA, hostile forces were abusing associations to undermine the leadership role of the CPV.<sup>27</sup> Thus, additional restrictions and regulations on associations were deemed necessary.

The fears of the communist party towards an independent civil society have been known for some time. In various fora, the party has expressed concern about the potential for an independent Vietnamese civil society to interfere with the CPV's

control over the country's internal affairs, particularly with regards to setting government policy.

In 2016, for instance, the party leadership passed Resolution 04-NQ/TW, which expressed hostility to the very concept of civil society.<sup>28</sup> Resolution 4 states that party members advocating for a stronger civil society 'undermines the leadership role of the party'.<sup>29</sup> A guidance note on the implementation of the resolution warns that the 'enemy and reactionary forces have stepped up activities against us', singling out 'the US and other Western countries [that] are using aid to shape [Vietnam's] law and policy', while 'providing aid to domestic "non-governmental" organizations to promote a Western model of "civil society"'.<sup>30</sup>

In sum, one major goal of Decree 126 is to ensure that associations in Vietnam will remain under state control. A related objective is to tighten control over associations as the country further integrates with the international community.

## ADDRESSING FEARS OF INTERNATIONAL INTEGRATION

The government has stated that Decree 126 was issued due to fears that Decree 45 did not adequately address Vietnam's increased international integration. Dr. Tran Anh Tuan, Chairman of the Vietnam Association of Administrative Sciences, speaking at a workshop held in coordination with MOHA to discuss the drafting of Decree 126, stated that 'in the context of comprehensive and extensive international integration', Decree 45 was not sufficient to control associations.<sup>31</sup> Elsewhere, Pham Thi Than Tra, the Minister of Home Affairs, stated that Decree 45 needed to be replaced in light of increasing international integration.<sup>32</sup>

This is not the first time in recent years that Hanoi has expressed its fears related to international integration. In Directive 24, Vietnam's leaders ordered the government to end foreign interference in policymaking and to stop international and local actors from using increased international cooperation to promote an independent civil society.<sup>33</sup>

Directive 24 claims that ‘hostile and reactionary forces’ have taken advantage of international cooperation efforts by ‘impacting policymaking and legislative development [... and] forming civil society alliances and networks, independent trade unions, and [...] domestic political opposition groups’.<sup>34</sup> This foreign interference is possible, so says the directive, because associations are not strictly regulated. Decree 126, insofar as it is guided by Directive 24, was issued to prevent foreign actors from promoting the development of an autonomous civil society in Vietnam.

## CONTROL OVER FUNDING

Decree 126 is also designed to give the government increased control over the financing of associations. MOHA has indicated that the government must have the ability to approve funding for associations in the country.<sup>35</sup> Elsewhere, the government has expressed the need to amend regulations on associations that receive and use funds from domestic and foreign sources.<sup>36</sup> Due to fears of foreign funding, the government has articulated a desire for new disclosure requirements on associations that would require these groups to reveal their funding sources and to report on their finances regularly.<sup>37</sup>

In a separate but related goal, the government has also claimed that the new decree was necessary to reduce the amount of government spending on associations.<sup>38</sup> For instance, MOHA has stated Decree 126 will restrict state funding only to associations with close ties to the party or state.<sup>39</sup>

NGOs operating in Vietnam have told Project88 that restrictions on foreign funding have made it extremely difficult to get approval for these projects, especially if the projects have a policy advocacy component or promote the development of civil society.<sup>40</sup> In recent years, the Vietnamese government has held up billions of dollars in foreign aid.<sup>41</sup> Decree 126 will likely make it even more difficult for associations to receive foreign funding for their work.

## INCREASED SANCTIONS AGAINST ASSOCIATIONS

Finally, the government made clear that a major problem with Decree 45, and a reason it needed to be replaced, was its lack of sanctions for associations that violated the law. In 2022, Deputy Minister of Home Affairs Vu Chien Thang emphasized that the government must have the ability to ‘dissolve legal entities that violate the law or operate ineffectively’.<sup>42</sup>

Likewise, Dr. Tran Anh Tuan acknowledged that, as of December 2022, the government ‘still lacks sanctions for violations’ of the country’s regulations on associations.<sup>43</sup> In addition, MOHA and the Binh Dinh Union of Science and Technology Associations have separately stated that the lack of sanctions for violations of Decree 45 was a primary driver for replacing the decree.<sup>44</sup> Finally, in 2023, MOHA restated that a major problem with Decree 45 was that the decree lacked specific regulations on the suspension and dissolution of associations.<sup>45</sup>

Decree 45 did not grant the government the authority to suspend associations and only permitted the dissolution of associations for a narrow range of offenses. Decree 126, conversely, gives the government a legal basis to forcibly close associations at its discretion. In this way, the new decree further subordinates these groups to the state.

In this section, we provided an overview of the reasons given by the government to replace Decree 45. According to official statements, a new decree was needed to ensure the CPV’s control over associations, to prevent foreign influence on domestic affairs, to increase control over foreign funding, and to grant the government the legal authority to suspend and dissolve associations. These justifications indicate a deeper motivation: that Hanoi views the proliferation of associations as a trojan horse for an independent civil society that could threaten one-party rule.

In the next section, we will explain what types of associations are subject to regulation under Decree 126.

# TARGETS OF REGULATION

Under Decree 126, associations are defined as organizations or coalitions of organizations that operate as nonprofits to promote a certain field, industry, or interest.<sup>46</sup> Such associations cannot be set up in an informal manner—they must be registered with the government.

Decree 126 has a wide scope. According to MOHA, as of December 2022, there were 71,669 registered associations operating in Vietnam.<sup>47</sup> Student groups, community organizations, and civil society advocacy coalitions, as well as artistic collectives and social clubs, fall within the parameters of the decree. Except for the exempted groups listed below, all of these associations are subject to this regulation.

Several categories of associations are exempt under Decree 126. First, religious organizations do not have to follow Decree 126.<sup>48</sup> In addition, employee organizations established under the Law on Labor are exempt.<sup>49</sup> Finally, state associations and associations directly affiliated with the CPV, including the Vietnam Fatherland Front, the Vietnam General Confederation of Labor, the Vietnam Farmers' Association, and the Vietnam Union of Science and Technology Associations (under which many NGOs are registered), are exempt from abiding by the decree.<sup>50</sup>

This section established that Decree 126's scope of regulation is wide. In the next section, we will provide an overview of the content of Decree 126.

# OVERVIEW OF DECREE 126

Decree 126 regulates the establishment, organization, operation, and management of associations in Vietnam.<sup>51</sup> The decree is 109 pages in length, with eight chapters, 53 articles, and three appendices. The main issues covered by the new decree are the procedure for establishing associations, the permitted organizational structure of associations, the rights and obligations of associations, and the power of the government to suspend and dissolve associations, as well as regulations on associations assigned by the party or state, and the role of different agencies in overseeing associations.

## ESTABLISHMENT PROCEDURE

Decree 126 sets conditions on how to establish an association in the country. An association must not violate social ethics.<sup>52</sup> Further, the decree states that the main field of operation for a newly established association cannot overlap with a previously existing association, implying that only one association is permitted to work in any given field.<sup>53</sup> Another condition that must be met is the association must 'have assets to ensure the operation of the association'.<sup>54</sup> Finally, the name of the association must be in Vietnamese, not in a foreign language or an ethnic minority language.<sup>55</sup>

The decree also sets a complicated procedure process for setting up an association. Those who want to establish an association must first set up a campaign committee.<sup>56</sup> The head of the committee must have good 'political and moral qualities'.<sup>57</sup> The committee must submit highly detailed information about the proposed association and its members to the authorities.<sup>58</sup> And, before an association can begin operating, it must receive permission from the government.<sup>59</sup>

## ORGANIZATIONAL STRUCTURE

Decree 126 sets forth the permitted organizational structure for associations. Each association must have a congress, a standing committee, and an inspection board.<sup>60</sup> The government also sets the rules on how associations are permitted to make decisions, the timeline upon which the congress and other committees can be formed, and what decisions associations can make independently.<sup>61</sup> As with the head of the campaign committee, an association's president cannot have a criminal record and must have 'good political and moral qualities'.<sup>62</sup>

## RIGHTS AND OBLIGATIONS

Article 23 of the decree outlines the rights that associations have. Most notably, associations have the right to participate in policy criticism, but only at the request of state agencies.<sup>63</sup> Associations also have the right to receive, manage, and use funding, including from foreign organizations.<sup>64</sup> However, this funding is subject to government oversight and approval.<sup>65</sup>

Article 24 sets forth the obligations that associations must follow. Associations must not harm national security, social order, public morality, traditions, or the nation's cultural identity.<sup>66</sup> The decree does not define any of these terms. Associations must also comply with regulations on the receipt, management, and use of foreign aid and regularly report on their activities to relevant government agencies.<sup>67</sup>



## SUSPENSION AND DISSOLUTION

Decree 126 gives the government the power to suspend or dissolve associations.<sup>68</sup> Associations can be suspended by government authorities for a number of reasons.

An association faces suspension if it generates a profit.<sup>69</sup> In addition, a suspension is possible, if, in the operation of an association, ‘there are complicated issues related to national security or social order’.<sup>70</sup> The decree does not define “complicated issue”. Finally, an association may be suspended if it violates regulations on the receipt, management, and use of donations and aid, including foreign aid.<sup>71</sup> The decree does not establish or refer to any independent body that associations may appeal to if their operations are suspended by the government.<sup>72</sup>

Associations can be dissolved by the government if they harm national security, social order, or public morality. They can also be dissolved if they don’t report their finances and funding sources for two years or if they operate without permission of the government.<sup>73</sup> While an association can file a complaint if it believes it was wrongfully dissolved, there is no real appeals process to challenge a government determination for dissolution.<sup>74</sup> And if an association itself wishes to cease operating, even that requires government approval.<sup>75</sup>

## ASSOCIATIONS ASSIGNED BY THE PARTY OR STATE

Decree 126 outlines specific operational regulations for associations that are assigned functions by the CPV or the government.<sup>76</sup> These associations are established, controlled, and managed by the CPV or government and they are designed to implement the policies of the party and state and perform public services.<sup>77</sup> Examples of these associations are the Vietnam Journalists Association, Vietnam Lawyers Association, Vietnam Medical Association, and the Vietnam Red Cross.<sup>78</sup> Unlike general associations, Decree 126 gives associations assigned by the party or state the right to comment on policy decisions, regardless of whether they have been invited to do so by the government.<sup>79</sup>

## STATE MANAGEMENT

Decree 126 also lays out the responsibilities of various government agencies, including the ministries of home affairs, finance, public security, information and communications, and foreign affairs, as well as of provincial and district-level people's committees.

MOHA takes the lead in the overall state management of associations, making sure that all other government agencies are familiar with the decree's regulations and is in charge of approving the receipt, management, and use of funding by associations.<sup>80</sup> The Ministry of Finance has the primary responsibility for inspecting the finances of associations.<sup>81</sup> The Ministry of Public Security is responsible for monitoring and preventing law breaking by associations.<sup>82</sup> The Ministry of Information and Communications is responsible for the management of media associations established in accordance with the Law on the Press.<sup>83</sup> The Ministry of Foreign Affairs is responsible for the management of any international activities undertaken by associations.<sup>84</sup> Decree 126 assigns many state agencies roles in regulating associations in the country.

In addition, depending on the association's geographical scope, different government agencies are responsible for oversight.<sup>85</sup> For nationwide associations, MOHA oversees the establishment, approval, and dissolution of these groups.<sup>86</sup> For regional associations, provincial or district-level People's Committees oversee the establishment, approval, and dissolution of associations.<sup>87</sup>

This section of the report has provided an overview of Decree 126. In the following section, we will look to some of the most problematic provisions of Decree 126 and analyze those provisions under international law.

# PROBLEMS WITH DECREE 126

Article 25 of Vietnam's constitution guarantees that all citizens have the right to form associations.<sup>88</sup> Likewise, Article 22 of the International Covenant on Civil and Political Rights (ICCPR), which Vietnam ratified in 1982, guarantees the right to freedom of association. This right is also enshrined in Article 20 of the Universal Declaration of Human Rights.<sup>89</sup>

Decree 126 contains several provisions that likely violate the constitution as well as international law. First, the decree imposes an onerous registration process to establish a new association in the country. Second, associations must receive prior approval from the government before they can operate. Third, government officials are granted broad discretion to monitor the activities of associations. Fourth, and finally, the decree gives the government the power to suspend or dissolve associations at will without an opportunity for associations to effectively challenge the decision.

## REGISTRATION PROCESS

As described in the previous section, Decree 126 sets forth highly restrictive rules to establish an association. For instance, the decree states that associations can only have members who are Vietnamese.<sup>90</sup> Moreover, while the decree states that associations cannot violate social ethics, customs, or national cultural traditions, these terms are left undefined in the policy.

The failure to define these terms creates an opening for government officials to arbitrarily prevent the establishment of associations. In addition, because the head of the campaign committee and the president of the association must be people with good 'political and moral qualities', it is likely that anyone considered to be a dissident by the government would be excluded from this role.<sup>91</sup> Finally, these positions are only open to people who have never been convicted of a crime.<sup>92</sup>

Under international law, associations must be able to choose their own members free from government interference.<sup>93</sup> Registration procedures must be simple, and best practice is the automatic registration of an association as soon as authorities are notified that it was created.<sup>94</sup> Regardless of the registration status, freedom of association is guaranteed equally to registered and unregistered associations.<sup>95</sup> For this reason, members of unregistered organizations still have the right to carry out their activities.<sup>96</sup> Decree 126, however, makes it illegal for unregistered associations to carry out any activities, thereby contradicting international law.

Finally, the decree only allows Vietnamese citizens or organizations to be members of associations. However, Human Rights Council Resolution 15/21 affirms that 'everyone has the rights to freedom of peaceful assembly and of association'.<sup>97</sup> Further, Article 2 of the ICCPR mandates that Vietnam must ensure that all individuals within its territory have the freedom of association, with no distinction based on nationality.<sup>98</sup> As such, under international law it is not permissible for Vietnam to deprive people of other nationalities of the right to free association.

## CONTROL OVER ACTIVITIES

Under Decree 126, associations can only engage in policy advocacy at the request of the state.<sup>99</sup> They must abide by all government regulations, and cannot do anything to harm national security, social order, morality, or the cultural identity of the nation.<sup>100</sup> None of these terms are defined by the decree, leaving it up to the discretion of public officials to determine what precisely constitutes a harm to one of these government interests.

Conversely, under international law, associations have the right to operate free from undue government interference, and the government cannot determine decisions, activities, or membership requirements of associations in an arbitrary or nontransparent manner.<sup>101</sup> Associations must be free to determine their own structure, and activities free from state interference. Further, they have the right to express their opinions, disseminate information, and engage in public advocacy.<sup>102</sup>

## OVERSIGHT AND SURVEILLANCE

Decree 126 establishes a database on associations that tracks the members and activities of all associations permitted to operate in the country.<sup>103</sup> Authorities can request unlimited information, data, and financial statements of associations, and it does not appear that there is any way for an association to deny these requests without facing suspension or dissolution.

The establishment of this database can be understood as an institutional mechanism for the surveillance of associations. Decree 126 grants the government the authority to compel organizations to disclose potentially confidential or proprietary information with no justification necessary. But associations have important reasons to preserve the confidentiality or anonymity of sources, beneficiaries, partners, staff members, and others. People's safety may be put at risk if their identity or information is accessed by government officials or disclosed to third parties or the public. Indeed, many associations would not be able to function if they could not guarantee privacy and anonymity to the people they serve. For these reasons, the database mandated by Decree 126 is likely impermissible under international law.

## SUSPENSION AND DISOLUTION

Decree 126 gives the government the power to suspend associations if 'there are complicated issues related to national security or social order'.<sup>104</sup> While the decree does not clarify what a "complicated issue" might be, this language is also found in Directive 24. In the directive, the Political Bureau orders the government to '[p]roactively develop plans to prevent and control complicated situations relating to security and social order as Vietnam implements international commitments'.<sup>105</sup> Given that Directive 24 aims to prevent people from forming political opposition groups and stop civil society from shaping state policy and monitoring the implementation of international agreements, "complicated situation" likely refers to associations engaging in policy advocacy, government oversight, or political organizing.

Decree 126 empowers the government to forcibly dissolve an association if it harms national security, social order, or public morality. Given the expansive breadth of what might constitute a harm to one of these interests, government officials can wield this power in an arbitrary manner. For this reason, the use of such vague language is not permissible. Importantly, under international law, the entrenchment of a particular ideology, or of a particular political party, is not considered a threat to national security.<sup>106</sup> States may not invoke national security concerns to suppress political debate or criticism of the current government.<sup>107</sup> Advocating for a change in government policy, or even of the government itself, does not constitute a threat to national security.<sup>108</sup>

Under international law, suspension and involuntary dissolution of an association 'should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law'.<sup>109</sup> Decree 126, however, permits the suspension or dissolution of associations for far more reasons than this, and when softer measures would often be sufficient to protect the legitimate government interests at stake. The power to suspend and dissolve associations in this way is a violation of international law.

In this section, we argued that Decree 126 contains several provisions that will restrict the ability of Vietnamese civil society to operate independently of government control. Further, we made the case that many of these provisions violate international law. In the next section, we will compare the provisions of Decree 126 with those in Decree 45 to demonstrate that the new decree is far more restrictive than the policy it replaces.

# COMPARISON OF DECREE 126 WITH DECREE 45

There are several changes between Decree 126 and Decree 45 that make Vietnam's regulations of associations more restrictive.

First, Decree 126 adds several new conditions on the establishment of associations. The decree stipulates that associations must have assets sufficient to ensure the operation of the association. However, it does not clarify what "sufficient" assets might be. As such, the decree appears to grant officials the discretion to reject associations from forming by using financial requirements as pretext. In addition, the decree states that 'the main field of operation [for an association must] not overlap with the main field of activity of an association that has been legally established before'.<sup>110</sup> It is possible that this provision would prevent multiple associations from operating in the same field.

Second, Decree 126 adds that the name of a new association must not violate 'social ethics, customs, and national cultural traditions'.<sup>111</sup> Again, the language contained within this provision is vague enough to allow the government to block the approval of names of associations at its discretion.

Third, while Decree 45 did not establish a database on associations, Decree 126 does. As explained in the previous section, the database can be used to closely monitor the activities of associations and can be understood as an institutional mechanism for the surveillance of associations in the country.

Fourth, Decree 126 decreases the time given to associations to organize a congress. Under Decree 45, associations were given 90 days but, under Decree 126, associations are only given 60 days to do so.<sup>112</sup> Associations may struggle to set up a congress in this short period of time and, as such, this is yet another change that may make it more difficult to establish an association in the country.

Fifth, under Decree 45, associations only had to report their foreign funding.<sup>113</sup> Under Decree 126, by contrast, associations must apply for permission to receive foreign funding and send the government progress reports and financial statements when participating in foreign funded projects. In Decree 126, there appears to be a clear intent to stop what authorities view as efforts by foreign actors to interfere with the country's internal decision-making.

Sixth, and finally, Decree 126 provides the government with increased power to suspend or dissolve associations. Under Decree 45, the government did not have the authority to suspend associations for violations and while the government could forcibly dissolve associations, it could only do so in narrow circumstances.<sup>114</sup> Decree 126, on the other hand, grants the government sweeping powers to suspend or dissolve associations.

The following table summarizes these differences between the decrees:

Area of regulation	Decree 45 (2010)	Decree 126 (2024)
Financial barriers	Not mentioned	One of the conditions that must be met to establish an association is to 'have assets to ensure the operation of the association'. <sup>115</sup>
One association per field	Not mentioned	'The main field of operation must not overlap with the main field or activity of an association that has been legally established before'. <sup>116</sup>



Area of regulation	Decree 45 (2010)	Decree 126 (2024)
<b>Naming</b>	There must be 'no overlap in name ... with an association that was previously legally established in the same territory'. <sup>117</sup>	The names of associations must be: <ul style="list-style-type: none"> <li>• Written in Vietnamese.</li> <li>• Different from, and not cause confusion with, associations that have already been established.</li> <li>• Not a violation of social ethics or national culture.<sup>118</sup></li> </ul>
<b>Database</b>	No database for monitoring associations.	Decree 126 creates a database of associations that makes it possible for the government to monitor and surveil associations. <sup>119</sup>
<b>Timing to establish a congress</b>	'Within 90 days..., the campaign committee for the establishment of the association must organize a congress'. <sup>120</sup>	Decree 126 shortens the time to organize a congress to 60 days. <sup>121</sup>
<b>Foreign funding</b>	The use of funds of the association must comply with the provisions of the law. Annually, the association must report on the financial settlement ... on the receipt and use of funding sources from foreign individuals and organizations'. <sup>122</sup>	Decree 126 requires associations to apply for permission and report progress and financing when participating in foreign-funded projects. <sup>123</sup>
<b>Suspension</b>	No power to suspend.	An association shall be considered for suspension of operation for a definite period ... when it is detected that the association violates one of the following provisions:

Area of regulation	Decree 45 (2010)	Decree 126 (2024)
<b>Suspension</b>	No power to suspend.	<ul style="list-style-type: none"> <li>a. Violating the non-profit principle.</li> <li>b. In the course of organization and operation, there are complicated issues related to security, social order, and safety.</li> <li>c. Violating the provisions of law on assets and financial management on receipt, management and use of donations and aid.</li> <li>d. Failing to report on the results of the congress ... or failing to fully comply with the reporting regime on annual financial statements ...</li> </ul> <p>Within 60 working days, the competent state agency ... requests the association in writing to perform one of the obligations and responsibilities specified in ... this decree but the association fails to implement it.<sup>124</sup></p>
<b>Dissolution</b>	<p>An association shall be dissolved ... when:</p> <ul style="list-style-type: none"> <li>1. It fails to operate for 12 consecutive months.</li> <li>2. Its leadership board fails to observe the congress's resolution on the association's dissolution.</li> </ul> <p>Its activities seriously violate law.<sup>125</sup></p>	<p>' An association shall be dissolved under a decision of a competent state agency ... when violating one of the following cases:</p> <ul style="list-style-type: none"> <li>a. Violating Clause 2, Article 24 of this Decree.</li> <li>b. Organizing the congress by itself without the permission of the competent state agency ...</li> </ul>

## Area of regulation Decree 45 (2010)

## Decree 126 (2024)

### Dissolution

- c. ... the association fails to organize the congress, except for force majeure reasons.
- d. Failing to report on operations and finances as prescribed or failing to publicize financial statements, settlement reports and conclusions of the audit (if any) for 2 consecutive years.<sup>126</sup>

Clause 2, Article 24: 'Taking advantage of the activities of associations to harm national security, social order, morality, customs, traditions, national cultural identity, legitimate rights and interests of organizations and individuals; taking advantage of beliefs and religions to carry out superstitious activities; illegal financial and business activities that disrupt the domestic market'.<sup>127</sup>

As detailed in the table above, Decree 126 introduces changes that, in each case, make Vietnam's regulations on associations more restrictive. Given this, the newly announced decree will further suppress civil society.

# CONCLUSION

Hanoi issued Decree 126 due to a desire to reassert party hegemony. As compared to Decree 45, which set Vietnam's policies on associations for the past 14 years, Decree 126 imposes more restrictive regulations on the organization, operation, and management of associations.

From a human rights perspective, these changes are deeply troubling. Decree 126 makes it more difficult to establish an association, requires government approval before an association can start carrying out its activities, gives the government more power to control the activities and funding sources of associations, and grants the government broad power to suspend and dissolve associations. In sum, the decree gives the government far too much power over the establishment, operation, and dissolution of associations.

In an ironic twist, one stated reason given by the government for the need for Decree 126 was to ensure that Vietnamese law complied with the international conventions that Vietnam had signed and ratified.<sup>128</sup> In reality, however, Decree 126 moves Vietnam further away from its obligations under international law.

Throughout history, it is civil society that has been the driving force of progressive social change. Civil society groups help shape policy, advocate for the needs of the people, provide essential services, and protect human rights. A necessary precondition for civil society to fulfill these functions, however, is that people must be able to form associations free from government interference. Decree 126 aims to prevent, rather than empower, people to create such groups. As the decree is put into effect, Vietnamese civil society will face more legal restrictions.

# RECOMMENDATIONS

Project88 offers the following recommendations to the **Vietnamese government**:

- Repeal Decree 126 and ensure that the country's regulations on associations comply with international law and the constitution.
- Repeal Directive 24 and stop issuing policies that lead to violations of human rights.
- Stop enacting policies—such as Decree 56, Decree 80 and Decision 6—that impose onerous requirements on associations.
- Stop forcibly closing associations at the discretion of government officials.
- Ensure that associations can engage in policy advocacy free from the threat of intimidation, harassment, and reprisal.
- Develop and implement training programs to improve the knowledge of government officers at all levels about freedom of association.

Project88 offers the following recommendations to the **US government**:

- In your forthcoming human rights report on Vietnam, acknowledge the series of policies that have led to a deterioration in the human rights situation and ensure that your overall assessment of Vietnam accounts for this new wave of repression. These policies include:
  - Decree 126
  - Decree 56
  - Decree 80
  - Decision 6
  - Directive 24
- Urge Vietnam to take all necessary steps to ensure that associations can participate fully in policy discussions and advocacy.

Project88 offers the following recommendations to **UN bodies and officials**:

- UN High Commissioner for Human Rights Volker Türk should issue a public statement condemning the crackdown on civil society in Vietnam and demand the repeal of Decree 126, Decree 56, Decree 80, Decision 6, and Directive 24.
- UN Special Rapporteur on the freedom of peaceful assembly and association Gina Romero should write a report on the series of policies Vietnam has enacted to curb free association, including Decree 126, Decree 56, Decree 80, Decision 6, and Directive 24.
- Special Rapporteur Gina Romero should also schedule a country visit to Vietnam to see firsthand the effect of these policies on civil society.

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