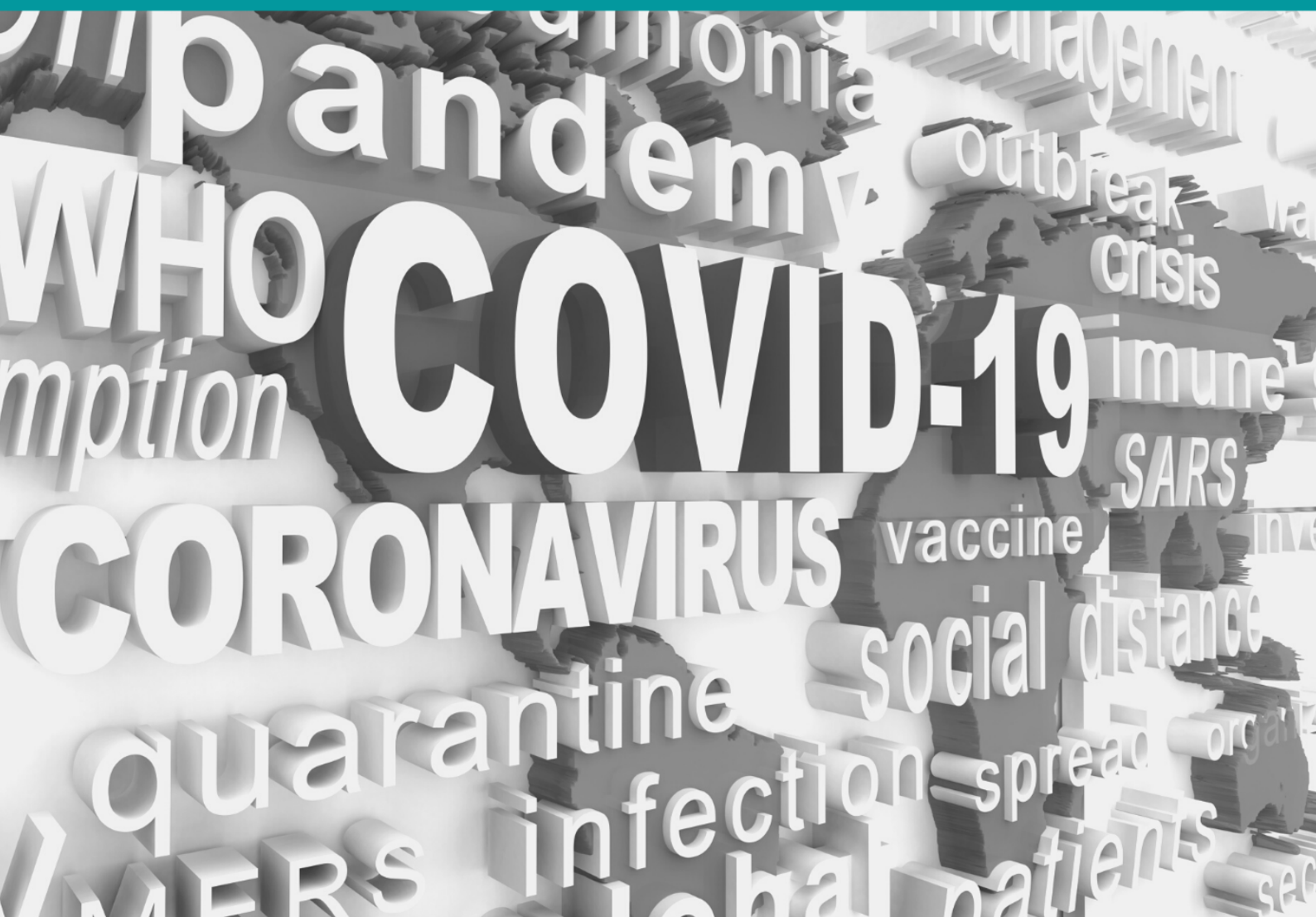




ASSESSING LEGAL REGULATIONS ON THE STATE OF EMERGENCY IN THE CONTEXT OF PANDEMIC AND DEVELOPING RECOMMENDATIONS ON THE IMPROVEMENT OF THE LAWS ON STATE OF EMERGENCY TO PREVENT AND CONTROL THE COVID-19 PANDEMIC



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The findings and views expressed in the Study are those of the Research Team and do not necessarily represent those of the Ministry of Justice or any other state agencies of Viet Nam, EU, UNDP, and UNICEF.

ABBREVIATION

International Covenant on Civil and Political Rights	ICCPR
International Covenant on Economic, Social and Cultural Rights	ICESCR
Acute respiratory infections caused by a new strain of the Corona virus	COVID-19
Prevention and Control of Infectious Diseases	PCID
State of Emergency	SoE
Supreme People's Court	SPC
Human Rights Council	HRC
Standing Committee of the National Assembly	SNCA
Legal Normative Document	LND
World Health Organization	WHO

TABLE OF CONTENT

EXECUTIVE SUMMARY	6
INTRODUCTION	11
CHAPTER I – ASSESSMENT OF THE LEGAL SYSTEM OF VIET NAM RELATING TO A STATE OF EMERGENCY IN THE CONTEXT OF COVID-19 PANDEMIC PREVENTION AND CONTROL	14
1.1. Characteristics of a state of emergency and a state of emergency in case of pandemic	14
1.2. The legal documents system of Viet Nam on a state of emergency and a state of emergency in case of pandemic.....	18
1.3. Regulations on the definition of state of emergency and state of emergency due to pandemic	23
1.4. Regulations on conditions, authority, and procedures for declaring the state of emergency and the state of emergency in case of pandemic	25
1.5. Regulations on conditions, authority and procedures for abolishing the state of emergency in case of pandemic	29
1.6. Regulations on measures applied in the state of emergency and the state of emergency in case of pandemic	30
1.7. Regulations on supervision mechanism in the state of emergency and the state of emergency in case of pandemic.....	32
1.8. Regulations on sanctions applied in the state of emergency and the state of emergency in case of pandemic	33
1.9. Regulations on organizing the implementation of measures applied in the state of emergency and state of emergency in case of pandemics	36
1.10. General assessment on the legal document system on the state of emergency and the state of emergency in case of pandemics.....	42
CHAPTER II – INTERNATIONAL EXPERIENCES ON THE REGULATION OF A STATE OF EMERGENCY IN THE CONTEXT OF THE COVID-19	53

1. Characteristics of the state of emergency and the state of emergency in case of pandemics according to international laws and regulations of some countries	53
2.2. Conditions, authority and procedures for declaring and terminating the state of emergency	59
2.3. Enforcing the state of emergency to prevent and control the COVID-19 pandemic in some countries	62
2.4. Some comments and lessons learned for Viet Nam	66
CHAPTER III – CONCLUSIONS AND RECOMMENDATIONS FOR THE COMPLETION OF THE LAWS ON STATE OF EMERGENCY FOR RESPONSE TO THE COVID-19 PANDEMIC	69
ANNEX I – PRACTICES ON RESPONSE AND THE STATE OF EMERGENCY DECLARATION TO RESPOND TO COVID-19 PANDEMIC IN SOME COUNTRIES/TERRITORIES	78
ANNEX II – LIST OF SOME LEGAL NORMATIVE DOCUMENTS PROPOSED FOR AMENDMENT, SUPPLEMENTATION AND REPLACEMENT	94
ANNEX III – LIST OF REFERENCES.....	101

EXECUTIVE SUMMARY

More than two years after the outbreak, the COVID-19 pandemic is still spreading globally with complicated developments, threatening the lives and health of millions of people. Various countries around the world have had to declare a state of emergency (SoE) in response to the pandemic. A number of countries have also promulgated, amended or supplemented existing laws as part of the strong and unprecedented measures taken under their pandemic SoE. While not having declared a pandemic SoE in accordance with the Ordinance on SoE and Law on PCID of 2007, after announcing the pandemic itself, Viet Nam has implemented many reasonable measures to effectively control the pandemic. While this has helped to achieve many important results, a number of problems, inadequacies, and gaps have been observed in the legal provisions on disease prevention and control as well as relating to a SoE in the context of a pandemic.

In the context of the pandemic, it is essential to evaluate the legal provisions on SoE that are currently in place to handle the pandemic. Building on the “*Report on reviewing the current legal framework of Viet Nam for the implementation of Recommendation 6A of the Human Rights Council in the context of the COVID-19 pandemic*”, the EU Justice and Legal Empowerment Programme (EU JULE) and the Department of Criminal and Administrative Legislation (Ministry of Justice) have collaborated in commissioning the present “*Report on assessing legal regulations on the state of emergency in the context of pandemic, and developing recommendations on the improvement of the laws on state of emergency to prevent and control the COVID-19 pandemic*”. The report aims to evaluate the policies and regulations of Viet Nam and several other countries on the imposition of a SoE in the light of international standards on human right protection, as well as the practice of COVID-19 pandemic prevention and control in Viet Nam and several other countries since the beginning of the pandemic. The Report was prepared based on comprehensive research on policies, legal regulations and analytical opinions of Vietnamese and foreign researchers. The countries and regions selected for the in-depth study include Finland, Sweden, Germany, South Korea and Taiwan. The development of the Report also included the organization of technical meeting and consultation workshop to gather useful input and comments.

Through the study and assessment of Vietnamese policies and laws, as well as international experiences on SoE and measures for COVID-19 prevention and control, the Research Team has arrived at some conclusions including:

First, it is necessary to promulgate a separate law on SoE since the Constitution of 2013 only addresses the authority to declare SoE and some conditions of principle nature under which the State may limit human rights. The Ordinance on SoE and Law on PCID of 2007, which were promulgated before the Constitution of 2013, still comprise some provisions that are not in line with regulations of the Constitution of 2013, as well as the current practical context. International experience has shown that following the COVID-19 pandemic outbreak, several nations, including Viet Nam, have revealed gaps, deficiencies, or irrelevancies in their legal system in relation to their response to the pandemic. Legislative bodies in several countries have had to promptly promulgate a law on SoE to respond to the COVID-19 pandemic and also define the conditions under which rights may be restricted under the constitution of each country in the event of an emergency.

Second, the legal definition of a SoE or the provision of its content and specific characteristics depends on the national political and legal system. International experience shows that when the imposition of a SoE affects the enjoyment of human rights, many countries have stipulated specific and clear legal conditions to avoid overuse and ensure social stability. The legal documents on SoE, as well as its application by the authorities, should ensure *the legality and necessity* of any order on SoE, in line with the principles of *proportionality* and *non-discrimination*.

Third, although several countries have declared a SoE in response to the COVID-19 pandemic, most nations and territories have chosen a cautious approach to this issue. Some countries and territories that have not declared a SoE have chosen to respond to the COVID-19 impacts in accordance with their applicable laws or decided to amend and supplement medical laws to implement disease prevention and control tasks on this basis, instead of issuing a SoE. Some other countries distinguish between several types of SoE including state of exception, states of siege, state of alarm, etc. In the recent period of COVID-19 prevention and control, Viet Nam has referred to a “state of urgency” but it has not provided specific concepts or characteristics of this state. This being so, in developing legal documents on SoE, it would be important to address and define the different levels of exceptional situations that may arise in the country and the responsibility for the relevant authorities in each situation.

Fourth, as a common point in the countries that have declared SoE in the recent period, the laws and policies introduced in response to the pandemic have generally authorized the Government to: (i) temporarily limit or suspend some,

but not all, constitutionally guaranteed human rights; (ii) concentrate power to the executive bodies and the central government; (iii) postpone elections in some specific circumstances. In the context of COVID-19 pandemic prevention and post-pandemic economic recovery, the central government of various countries plays a key role during the application of SoE. If the armed forces are relied on to support the fight against pandemic, the armed forces are placed under the Government's management to operate under civilian laws, rules and regulations. The COVID-19 pandemic has also revealed the difficulties of multi-level state governance structure, such as the coordination between the central government and local government. While Viet Nam has also faced similar difficulties, the policies and laws of Viet Nam have proven appropriate and largely correspond to the response measures of other countries.

From the conclusions drawn above, the Research Team wishes to present the following recommendations:

First, develop and issue a law on SoE

The recent practice of prevention and control against the COVID-19 pandemic shows the urgent need to develop a law on SoE to ensure that the disease fighting measures that may limit human rights or citizen rights must be prescribed by laws, which is accordance with the Constitution of 2013. The revision and development of the Ordinance on SoE into a law on SoE would also serve to ensure the synchronicity and consistency of the legal system and thereby create a more complete legal background for the exercise for necessary state measures in emergency situations.

The Law on SoE would be a general law on SoE. Based on the general principles established by this law, separate laws could govern specific areas or circumstances that require specific regulations in the context of a SoE. For instance, a SoE due to communicable diseases could be governed by the Law on PCID, while a SoE due to natural disasters could be governed by the Law on Natural Disaster Prevention and Control. Similarly, a SoE relative to matters of security and national defense would be dealt with in the Law on National Defense, Law on National Security.

Drawing on international experience and practice in Viet Nam in disease prevention and control, in the event that Viet Nam promulgates a Law on SoE, the following contents should be well addressed: (i) The situations in which a SoE may be declared; (ii) Characteristics, criteria (quantitative and qualitative criteria) of circumstances that would determine the “situation” and “level” of an

exceptional situation; (iii) The scope and level of legally acceptable restrictions on human rights, as well as the establishment of a mechanism to protect legitimate rights and interests of the people, organizations/businesses in each “situation” or “level” of SoE; (iv) A clear definition of the authority to (1) declare a SoE, (2) determine each “situation” or “level” of SoE, and (3) permit the application of each measure, with the competence and responsibility to supervise and ensure the suitability and conformity of decisions and measures with the Constitutions and Laws, etc.

Second, improve the legal system on prevention and control of infectious diseases

The Law on PCID of 2007 is currently the document with highest legal authority as regards disease prevention and control, including dangerous diseases that may necessitate a declaration of a SoE. However, the COVID-19 pandemic has proved that several regulations of the Law on PCID of 2007 no longer meet today’s requirements, especially as regards the recent work on prevention and control against the COVID-19 pandemic. To realize the new objectives set forth by the Party and the State on prevention and control of COVID-19 and commence the “new normal” situation, the following priorities should be given attention before Viet Nam promulgates the Law on SoE: (i) Protect human rights during the application of measures for disease prevention and control; (ii) Improve the organization and operation of the Steering Committee for disease prevention and control; (iii) Improve the regulations on the competence and responsibilities of state agencies in the event of a SoE in a pandemic, specifically in the context of the COVID-19 pandemic; (iv) Improve the regulations on a statute of limitations and time limit in accordance with provisions of the law, if and when a SOE is declared due to COVID-19 pandemic or where measures are applied to prevent and control a pandemic in exceptional situations, without applying the order to declare the COVID-19 pandemic, (v) Specify the relation and legal effectiveness of documents issued by state agencies for disease prevention and control; and (vi) Supplement regulations on the implementation of urgent tasks for disease prevention and control in special circumstances.

Third, improve legal documents in other areas to respond to SoE in general and SoE in case of pandemics

The recent practice of applying measures for the prevention and control of the COVID-19 pandemic has proved the necessity to consider amending related legal documents including: An adjustment of the manner in which work and procedures

are managed moving from conventional, direct ways to more unconventional and indirect ways; The development and promulgation of LNDs in relation to SoE due to COVID-19 pandemic; A revision to more clearly define the criminal law response to acts of spreading dangerous infectious diseases to people; An improvement of legal documents stipulating the mobilization and participation of socio-political organizations, socio-professional organizations, charity funds, social funds in disease prevention and control, etc.

INTRODUCTION

The World Health Organization (WHO) on March 11, 2020 declared the novel coronavirus disease 2019 (COVID-19) outbreak a global pandemic. Shortly thereafter, the Prime Minister of Viet Nam signed a decision to announce a nationwide COVID-19 pandemic on April 1, 2020¹. After more than two years of outbreak, the COVID-19 pandemic is still spreading globally with complicated developments, threatening the lives and health of millions of people. As a result, various countries around the world have had to declare a state of emergency (SoE) in response to the pandemic. A number of countries have also promulgated, amended or supplemented existing laws as part of the strong and unprecedented measures taken under their pandemic SoE.

In spite of not having declared a pandemic SoE in accordance with the Law on PCID, after announcing the pandemic itself, Viet Nam has implemented many reasonable measures to effectively control the pandemic, such as medical quarantine, social distancing in areas with COVID-19 cases; entry and exit restriction; public transport suspension; for students, temporarily school leaves for students and pupils; temporarily close of restaurants, barbershops, amusement parks, etc.; work from home; postponement or cancellation of meetings, conferences and seminars; information and communication promotion, prevention of fake news and false information about the COVID-19 pandemic, etc. While this has helped to achieve many important results, a number of problems, inadequacies, and gaps have been observed in the effective legal provisions on disease prevention and control and pandemic SoE.

During the period of the fourth outbreak control and prevention in Viet Nam (since April 27, 2021)², the Government and the Prime Minister focused on directing the drastic, synchronous, and timely implementation of solutions to prevent and control the pandemic in all fields with the spirit of "fighting the pandemic like fighting the enemy". With this policy the Government was determined to achieve the "dual goal" of effectively preventing the pandemic and focusing on socio-economic recovery and development, ensuring social security. The 15th National Assembly decided to expand the powers of the Government and

¹ Decision 447/QĐ-TTg dated April 1, 2020 on Declaration of COVID-19 pandemic.

² Tran Quang Vinh, *From pandemic to "endemic disease": Lesson 2: Viet Nam determines to live safely with COVID-19*, Vietnam News Agency – Information on COVID-19, 11 March 2022, <https://ncov.vnnet.vn/tin-tuc/tu-dai-dich-toi-benh-dac-huu-bai-2-viet-nam-xac-dinh-song-chung-an-toan-voi-covid-19/8187362a-beba-4be1-88aa-160d7ff72d22>

the Prime Minister with regard to COVID-19 pandemic prevention and control³. During this period, the Government issued Resolution 128/NQ-CP dated October 11, 2021 on temporary regulations on “Safety, flexibility, and effective control of COVID-19 pandemic”, recognizing initial results of COVID-19 pandemic prevention and control and transition to the "new normal", meeting the needs of socio-economic development, as well as improving the adaptability of all areas in the social life of the country.

In the context of the pandemic, in recognition of complicated developments as well as the need to prepare for the "new beginning" period, it is essential to evaluate the current legal provisions on SoE to handle the pandemic. Building on the *“Report on reviewing the current legal framework of Viet Nam for the implementation of Recommendation 6A of the Human Rights Council in the context of the COVID-19 pandemic”* which focuses on analyzing human rights limitations in relation to the international human rights instruments in the context of the COVID-19 pandemic in 2020, the EU Justice and Legal Empowerment Programme (EU JULE) and the Department of Criminal and Administrative Legislation (Ministry of Justice) have collaborated in commissioning the present *“Report on assessing legal regulations on the state of emergency in the context of pandemic, and developing recommendations on the improvement of the laws on state of emergency to prevent and control the COVID-19 pandemic”*. The report aims to evaluate the policies and regulations of Viet Nam and several other countries on SoE in the light of international standards on human right protection, as well as the practice of COVID-19 pandemic prevention and control in Viet Nam and several other countries since the beginning of the pandemic. The study of international experiences aims to propose suitable experiences and measures for Viet Nam. The assessment of Viet Nam's policies, measures and legal regulations aims to identify legal inadequacies, gaps and enforcement obstacles so as to create the basis for recommendations to improve regulations, guaranteeing the consistency, the synchronism of the legal system, and the compatibility with international human rights instruments to which Viet Nam is a party. These recommendations will focus on appropriate policies and measures to

³ Resolution 30/2021/QH15 dated 28 July, 2021 on the first Meeting of the National Assembly XV, section 3

Lan Anh, *Resolution 30/2021/QH15: Create a reliable legal basis for the prevention and control of COVID-19*, e-portal of National Assembly, 15 August 2021, <https://quochoi.vn/tintuc/Pages/tin-hoat-dong-cua-quoc-hoi.aspx?ItemID=58023>

protect and support organizations and individuals, especially vulnerable groups in pandemic situations or pandemic SoE.

To be consistent with the topic and scope of research, this Report only focuses on evaluating general regulations on SoE and regulations on SoE or measures by the Government on COVID-19 prevention and control. Regulations related to SoE in case of natural disasters and national security, social order and safety threats are outside the scope of the Report.

The Report was prepared based on comprehensive research on policies, legal regulations and analytical opinions of Vietnamese and foreign researchers. The countries and regions selected for the in-depth study include Finland, Sweden, Germany, South Korea and Taiwan. The selection of countries for research is intended to ensure a balanced representation of different models of government and state structure (unitary and federal), and to provide further understanding of the competence, methods and results in pandemic control, both in situation where a SoE was declared and those where such a decision was not taken. Other characteristics relating political system, geographical location, etc. have also been taken into account.

A technical meeting with departments of the Ministry of Justice and a number of related ministries and research institutions, and a consultation workshop with the participation of representatives from central and provincial state agencies, research institutions and various universities were also organized during the finalization of the Report. These activities have assisted the Research Team in collecting objective comments, assessments, as well as useful information and input data for the completion of the Report.

The Report consists of 3 main parts:

- Chapter I – Assessment of the legal system of Viet Nam relating to a state of emergency in the context of COVID-19 pandemic prevention and control
- Chapter II – International experiences on the regulation of a state of emergency in the context of the COVID-19
- Chapter III – Conclusions and recommendations for the completion of the laws on state of emergency for response to the COVID-19 pandemic.

CHAPTER I – ASSESSMENT OF THE LEGAL SYSTEM OF VIET NAM RELATING TO A STATE OF EMERGENCY IN THE CONTEXT OF COVID-19 PANDEMIC PREVENTION AND CONTROL

1.1. Characteristics of a state of emergency and a state of emergency in case of pandemic

The declaration of a SoE applies to exceptional situations where the Government must immediately apply special measures to protect the nation, protect the people, or maintain stability of social security and order. In the laws of many countries, the following situations may lead to the declaration of a SoE: natural disasters such as tsunamis, earthquakes, volcano eruptions; war or unrest seriously affecting public order such as riots, terrorism; large-scale disease; technological risks such as leakage or explosion at nuclear power plants.

A SoE is not a normal situation of society. It is a special, “abnormal” status, that makes it impossible for the state and population to conduct their activities as usual.

It is necessary to identify the characteristics of SoE in general as well as to distinguish them from the specific characteristics of a SoE in response to a pandemic in particular. The development and application of response measures in the context of a SoE will only be appropriate and effective when the similarities and dissimilarities between SoE and SoE on pandemic are accurately identified and recognized.

a. Overview of the characteristics of a state of emergency

A SoE has the following characteristics⁴:

Firstly, the scope of events leading to a SoE is considerable, which can include natural phenomena such as earthquakes, volcano eruptions, tsunamis, droughts, floods, etc.; or social phenomena arising from human actions such as wars, invasions, riots, terrorist attacks, etc. It can also include widespread pandemics. Some countries also consider serious technological risks as a category of phenomena within the scope of the SoE declaration. However, not all phenomena that cause a crisis or instability in society are considered as a SoE. For example, economic crises also result in serious socio-economic instability, causing a series of banks to collapse, unemployed people falling into poverty, conflicts between

⁴ Nguyen Thi Thu Van, Ministerial-level Science Project 2021, *Completing the laws on State of Emergency – Theme 1: Some theoretical issues about State of Emergency and the laws on State of Emergency*, Institute of Law research (Ministry of Justice), p. 3-11.

people and the police or army, etc. However, the nature of economic crises is different from the crises in the context of a SoE. In economic crises, human life, social order, safety and the normal operation of public agencies are not immediately threatened. There is no “urgency” in this case, nor is the danger as serious as in the SoE⁵.

Secondly, natural disasters, social events, and pandemics cannot be automatically included in the scope of SoE. Such phenomena only become SoE when they become so severe as to turn the normal social status into an abnormal one. This is an important factor, because the competent authorities not only identify the occurrence of the phenomenon, but also assess the time at which it becomes so severe as to make society unable to function normally. The identification of the conditions and criteria for promulgating SoE will help the competent authorities decide exactly *When? Where? To what extent? And in what field?* the State must declare a SoE.

Thirdly, the nature of a SoE is always associated with an expansion of the authority for the executive branch. This is an objective requirement because the state apparatus must respond urgently, resolutely and promptly when a SoE occurs. This is a very serious situation that immediately affects the state of society, disrupts the normal functioning of society, requires the government to concentrate all resources to immediately protect national interests, as well as ensure security and social safety. To meet this requirement, among the institutions of the state apparatus, the legislative bodies (the National Assembly) as well as the judicial bodies (the Courts) cannot respond quickly and promptly – only the executive bodies (the Government) can respond quickly and promptly exploit its management resources to deal with SoE. Therefore, when a SoE occurs, most national laws provide for measures and policies that concentrate power to the executive bodies, so that these institutions can respond to the crisis proactively, promptly and strongly to protect the nation and maintain social order and safety.

Fourthly, the basic measures applied in a SoE are often associated with limiting the enjoyment of human rights. In a SoE, to protect the public interests, the government must use special measures to quickly prevent and limit the consequences of the situation at hand. Those policies and measures may lead to restrictions of democratic freedoms, individual freedoms, or restrictions on citizens’ political, economic or social rights. During the COVID-19 outbreak, the

⁵ Elliot Bulmer, *Emergency Power – International IDEA's Constitution-Building Primers* 18, International IDEA, 2018, page 15.

Governments of many countries, including Viet Nam, have applied several measures to limit citizenship and human rights as one of the solutions to cope with the pandemic (besides vaccination, disease treatment, etc.), without declaring a SoE. The commonly applied measures are restrictions on freedom of movement (isolation, prohibition of leaving the residence, restriction on public transport), freedom of business (temporary closure of restaurants, service facilities, entertainment), freedom of assembly (prohibition of mass gatherings, suspension of religious ceremonies), etc. During a SoE, the right to an individual's private life, personal secrets, family secrets are also restricted (citizens must declare their travel and activity schedules). In terms of property, the state agencies also have the right to requisition assets of citizens and businesses to support the SoE response. The imposition of these restrictions can be immediate, drastic, widespread, and sometimes over a period of several months, so life becomes difficult for the general population. However, these are necessary measures that the competent state agencies are forced to prioritize to deal with serious and urgent consequences of a SoE beside the implementation of human rights or individual freedoms.

Fifthly, a SoE is a special, temporary situation and must be limited in terms of space and time. By its nature a SoE is abnormal, exceptional, urgent, occurring instantaneously state of affairs, and it can therefore not be considered as a stable, long-lasting phenomenon. Therefore, the measures applied in SoE must also be of a temporary nature. When declaring the measures to be taken, the competent authorities must specify the period in which they will remain in force. The implementation of the measures should be subject to continuous review and scrutiny to ensure they are in accordance with the laws and commensurate with the developments of the situation. Because the measures applied in SoE often involve restrictions of the basic citizen rights, human rights (for example, restricting the right to movement during quarantine, restricting freedom of business, assembly, etc.), this would result in difficulties in people's normal life and business operations, so the scope of application of such measures must be considered reasonably and carefully both in terms of space and time. According to international standards (which will be further analyzed in the following sections), in a SoE it is necessary to ensure the following four basic principles when putting in place measures that affect the basic rights of citizens:

- (i) *Legality*: The restriction must be set forth in the national law of general application in effect at the time the restriction is applied. The law must not

be arbitrary or unreasonable, and must be clear and accessible to the public;

- (ii) *Necessity*: The restriction introduced must be necessary to protect one of the subjects outlined in the ICCPR, including public health, meeting urgent societal needs;
- (iii) *Proportionality*: The restriction must be appropriate to achieve its protective function; and it should be the least intrusive of the options that can achieve the desired result;
- (iv) *Non-discrimination*: No restriction contrary to the provisions of international human rights law on non-discrimination.

As stated in Annex I, Korea, Sweden, and Taiwan have not declared SoE but applied the above principles.

b. Characteristics of the state of emergency in case of pandemic

Similar to all phenomena within the scope of a SoE of a general nature (such as natural disasters, riots, and terrorism), a SoE in the context of a pandemic meets all the general characteristics of SoE as analyzed above. However, compared with other phenomena, a SoE in the time of a pandemic has the following basic differences:

Firstly, for SoEs in the context of armed terrorism, riots or natural disasters, the situations occur in a particular area, one or several cities, or a few identified residential areas, which means that the number of affected people is usually limited. In a SoE in case of a pandemic, especially a global pandemic such as COVID-19, the risk of being infected is not clearly geographically confined. This difference needs to be recognized, because policies and measures applied to a SoE with a narrow scope such as riots or natural disasters are not necessarily appropriate when applied to a SoE in case of pandemic.

Secondly, regarding natural disasters, riots or terrorism, people can clearly recognize the “shape” of the “enemy”, and predict the developments – though unusual, still predictable – to determine how to respond. However, in a pandemic situation, it is sometimes hard to identify “subjects that require SoE application” because of the unpredictable and rapidly changing circumstances. During the COVID-19 pandemic, new variants are evolving at ultrafast speed – in just a short time, there have been 5 strains classified as variants of concern by WHO, including Alpha, Beta, Gamma, Delta and Omicron. In particular, Delta variant is

considered the most dangerous, and Omicron variant becomes the dominant infectious variant globally because of its fast spreading.

Thirdly, except for a state of war that can last up to several years, a SoE in the context of riots, terrorism, and natural disasters usually occur in a relatively short time (a few days, a few weeks, maybe in a few months). However, in the case of pandemic is not that simple. Human history has witnessed the Spanish flu pandemic with a duration of nearly three years (from January 1918 – December 1920). The current COVID-19 pandemic has also occurred for more than two years, and it is not easy to determine when the pandemic will end.

To sum up, there are certain differences between the SoE in case of a pandemic and the SoE in general, and these differences stem from the characteristics, scale, impact, scope and unpredictability of the pandemic itself. This requires regulations on the requirements, authority, and procedures for declaring or ending a SoE in the context of a pandemic. The measures applied in the process of pandemic prevention and control need to be considered against similar characteristics that apply in a SoE of a general nature on the one hand, and the specifics of a SoE in case of pandemic, so that appropriate policies and measures can be taken.

1.2. The legal documents system of Viet Nam on a state of emergency and a state of emergency in case of pandemic

Currently, Viet Nam's legal system governing SoEs in general includes the Ordinance on SoE issued by the Standing Committee of the National Assembly (SCNA) in 2000⁶ (still in effect). This is a valuable document for the overall adjustment of the content of SoEs. In addition to the Ordinance on SoEs, the Constitution of 2013 also contains provisions referring to SoEs⁷. Several laws in specific fields also have provisions on SoEs, such as the Law on National Defense of 2018⁸, the Civil Code of 2015, the Law on Prevention and Control of Natural Disaster of 2013, the Law on Prevention and Control of Infectious Diseases of

⁶ The Ordinance 20/2000/PL-UBTVQH dated March 23, 2000 of SCNA on SoE.

⁷ Article 70, clause 13 of the Constitution 2013 stipulates the powers of the National Assembly in a SoE; Article 74, clause 10 stipulates the tasks and powers of the SCNA to declare or abolish a SoE nationwide or in each locality; Article 88, clause 5 stipulates the tasks and powers of the State President in declaring and abolish the SoE in case the SCNA cannot hold meeting or announce the abolition of the SoE in the whole country or in each locality; Article 32, clause 3 stipulates that the State can conduct expropriation or requisition with compensation the properties of organizations and individuals at market prices in SoE.

⁸ Law 22/2018/QH14 dated June 8, 2018. This Law dedicates Chapter 3 to the state of war, national SoE in case of defense, martial law, and curfew. This is considered a complete institution of SoE in case of national defense.

2007 (Law on PCID), the Law on Dikes of 2006⁹, the Law on National Security of 2004, etc. In accordance with the Ordinance on SoE, the Government has issued some Decrees guiding the implementation of the Ordinance in each case such as in the context of national security, social order and safety, pandemics¹⁰.

In addition to the documents mentioned above, some of the following laws also contain regulations related to SoEs, namely: the Law on Organization of National Assembly of 2014¹¹, the Law on Organization of Government of 2015¹², the Law on Promulgation of Legal Normative Document of 2015 (Law on Promulgation of LND)¹³, the Law on Militia and Self-Defense of 2019¹⁴, etc.

During the COVID-19 pandemic, key laws and guiding documents related to disease prevention and control include: the Law on PCID, the Law on Pharmaceuticals, the Law on Bidding, the Law on Pricing, the Law on Entry, Exit, Transit and Residence of Foreigners in Viet Nam, the Law on Exit and Entry of Vietnamese citizens, the Ordinance on SoE and documents of the Government, ministries guiding the Laws, Ordinance mentioned above. However, not all of the above documents contain regulations related to SoE in case of a pandemic.

In order to direct the mission of COVID-19 prevention and control, the National Assembly, the Government and the Prime Minister have also promulgated many documents on directing and managing COVID-19 prevention and control. Despite not being legal documents issued in the context of Viet Nam's promulgating SoE in case of pandemic, these are the documents issued to directly manage the mission of COVID-19 pandemic prevention and control over the past time and the facts show these documents have helped to remove many obstacles in the prevention and control of COVID-19 pandemic. Therefore, it is necessary to evaluate and review the documents in this Report in each period as follows:

Period from 2020 to March 2021 with the first three pandemic outbreaks:

On April 1, 2020, the Prime Minister signed the Decision on a declaration of a nationwide COVID-19 pandemic¹⁵. During this period, Viet Nam did not

⁹ Amended and supplemented in 2020.

¹⁰ Decree 71/2002/NĐ-CP dated July 23, 2002 detailing the implementation of a number of articles of the Ordinance on the SoE in case of great disasters or dangerous pandemics;

¹¹ Article 17, Article 57.

¹² Article 18, clause 4.

¹³ Article 16, clause 2, para. dd; Article 17, clause 1.

¹⁴ Article 32, clause 2 and clause 3.

¹⁵ Decision 447/QĐ-TTg on April 1, 2020 promulgated by the Prime Minister on declaration of COVID-19 pandemic.

promulgate a SoE due to the pandemic¹⁶. The reason behind this determination is that the provisions of Law on PCID and Decree 101/2010/ND-CP do not provide for specific and strong measures suitable for COVID-19 prevention and control in this period. When the pandemic began to penetrate into Viet Nam, the Ministry of Health promulgated “Interim guidelines for monitoring, prevention and control of the acute respiratory infections caused by a new strain of the Corona virus (COVID-19)”¹⁷. At the beginning of the first pandemic outbreak, the Prime Minister promulgated a number of documents such as Directive 15/CT-TTg dated March 27, 2020 on climax stage of COVID-19 control effort, Directive 16/CT-TTg dated March 31, 2020 on implementation of urgent measures for prevention and control of COVID-19, Directive 19/CT-TTg dated April 24, 2020 on a new stage of prevention and control of COVID-19, and a number of decisions, official telegrams, official dispatches in order to implement necessary measures to prevent the pandemic such as conditions on mass gathering, the minimum distance for safety, the operation of business, transportation activities, religious activities and festivals, etc. at different times¹⁸. In particular, Directive 16 is the most forceful document of the Government on COVID-19 prevention and control with regard to “social distancing”. On the basis of the requirements under the above directives of the Prime Minister, the localities issued guidance documents, as well as implemented the measures to minimize the possibility of the outbreaks.

¹⁶ General Department of Preventive Medicine – Ministry of Health, *Why Vietnam hasn't declared state of emergency?*, February, 2020, <https://vncdc.gov.vn/vi-sao-viet-nam-chua-cong-bo-tinh-trang-khan-cap-nd15085.html>

¹⁷ Decision 343/QĐ-BYT dated February 7, 2020 promulgated by the Ministry of Health on promulgation of “Interim guidelines for monitoring, prevention and control of COVID-19”

¹⁸ On January 28, 2020, the Prime Minister promulgated Directive 05/CT-TTg on some urgent COVID-19 prevention and control measures. After that, to conform with the situation of epidemic prevention in each period, the Government, the Prime Minister and the Ministries, Agencies promulgated many documents which are the Directive 15/CT-TTg promulgated by the Prime Minister on climax stage of COVID-19 control effort, Directive 16/CT-TTg on implementation of urgent measures for prevention and control of COVID-19, Directive 19/CT-TTg on a new stage of prevention and control of COVID-19, etc. The National Steering Committee for COVID-19 Prevention and Control promulgated Decision 2686/QĐ-BCĐQG on the regulation on assessment of risk levels and administrative measures to prevent and control COVID-19 epidemic, etc. The Office of the Government promulgated the Official Dispatch 2601/VPCP-KGVX dated April 3, 2020 on implementation of Directive 16/CT-TTg on COVID-19 prevention and control and a number of official telegrams, Statement and Monitoring Conclusion of Prime Minister on the mission of COVID-19 prevention and control, etc.; the Ministry of Education and Training promulgated the Official Dispatch 269/BGDDT-GDTC dated February 3, 2020 on guiding the school absence for students, undergraduates for COVID-19 prevention and control, etc.; the Council of Justices of the SPC promulgated the Official Dispatch 45/TANDTC-PC dated March 30, 2020 on trial for criminal offences against regulations on prevention and control of COVID-19 pandemic, etc.

Period from April 2021 the fourth pandemic outbreak to November 2021

This is the period when Viet Nam experienced the fourth pandemic outbreak of the Delta variant. During this period, Viet Nam also did not declare a SoE. The National Assembly assigned the Government and the Prime Minister to: (i) decide on the application of other measures that can be introduced in a SoE; (ii) decide and organize the implementation of the measures which have not been described by law or are different from the applicable law and ordinance's provisions; (iii) use resolutions, directives, official telegrams, official dispatches and other forms of documents within authority to stipulate, organize the implementation of urgent measures. During this outbreak, some localities had to implement social distancing measure such as Hanoi, Ho Chi Minh City. Other provinces such as Binh Duong, Long An, Bac Lieu, Tra Vinh, Tay Ninh, Dak Lak, Dong Thap issued directives on the COVID-19 prevention and control in their areas¹⁹ in which a number of measures were specified to be applied in SoE to meet the requirement of the situation at hand²⁰.

Similar to the previous period, the provisions of the Law on PCID and Decree 101/2010/ND-CP did not propose specific and strong measures suitable for the mission of COVID-19 prevention and control. The Government continued to apply measures for pandemic prevention and control in accordance with Directive 15 and Directive 16. In some phases, the Government and some localities required to apply stricter measures to conform with the requirement of each directive.

To tackle the obstacles in directing, managing, promptly and effectively responding to the complex developments of the COVID-19 pandemic situation during the fourth outbreak, the National Assembly promulgated Resolution 30/2021/QH15 dated July 28, 2021 on allowing the Government and Prime Minister to continue to be proactive, flexible and implement a number of urgent measures for COVID-19 prevention and control as mentioned above. In addition, the National Assembly also allowed the Government and Prime Minister to apply special, specific and exceptional mechanisms in licensing, circulation registration, production and procurement of drugs, medical equipment, chemicals and

¹⁹ Such as Directive 17/CT-UBND promulgated by the Hanoi People's Committee dated July 23, 2021 on social distancing in Hanoi for COVID-19 prevention and control; Directive 11/CT-UBND promulgated by the Ho Chi Minh People's Committee dated August 22, 2021 on strengthening social distancing and measures for COVID-19 prevent and control in Ho Chi Minh City

²⁰ Such as restricting a number of vehicles, ordering the citizens not to leave their residences for a given time, in some necessary zones and areas; organizing forces to ensure security, social order and safety in the pandemic-affected areas; applying special measures on communication, using means of communication; from restricting to preventing all foreigners from the entry of Vietnam

investment in facilities. This also allowed procurement in a higher quantity than the actual demand to prevent complicated developments of the pandemic. In the event of taking urgent measures on issues within the authority of the National Assembly and the National Assembly Standing Committee, the Government shall report to the National Assembly Standing Committee for its review and consideration before implementation. Moreover, “in case it is necessary to promulgate regulations on pandemic prevention and control which are different from the provisions of law, while the National Assembly is not in session, the Government shall report to the SCNA for consideration and decision according to the simplified order, procedures before implementation”.

In order to implement Resolution 30/2021/QH15 mentioned above, on August 6, 2021, the Government promulgated Resolution 86/NQ-CP on urgent measures for COVID prevention and control. This measure assigned the Chairmen of provinces and centrally-run cities in accordance with Decision 2686/QD-BCDQG dated May 31, 2021 to promulgate regulations on evaluating risk levels. They were also tasked with proactively deciding and directing subordinate offices to strictly apply measures in proportion to risk levels in accordance with Directives 15, 16 19 of the Prime Minister, with the motto of being earlier but not slower, lower in applying measures for pandemic prevention and control, particularly the implementation of social distancing. Moreover, they are entitled to allow localities based on the direction of Central Government to proactively promulgate regulations on pandemic prevention and control within authority, with the aim to ensure synchronization, consistency, effectiveness and efficiency, conformity with the requirements in pandemic prevention and control in the areas.

On October 11, 2021, the Government promulgated Resolution 128/NQ-CP regarding provisional regulations on “safety, flexibility and effective control of COVID-19 pandemic”. This resolution was aimed at managing the strategies on pandemic prevention and control, with a total of anti-pandemic measures applied nationwide in conformity with 4 levels of pandemic which are low risk, medium risk, high risk and very high risk.

All in all, the system of new legal documents only partially meets the requirements of COVID-19 prevention and control since this pandemic’s characteristics are new in Viet Nam and the world. Therefore, in the past period, the Government promulgated a number of guiding and executive documents in order to meet the unprecedented requirements of pandemic prevention and

control. The Government also carefully studied the possibility of declaring SoE in case of pandemic to prevent and control the COVID-19 pandemic.

1.3. Regulations on the definition of state of emergency and state of emergency due to pandemic

a. Concept of state of emergency

As mentioned, Vietnamese laws provide many regulations that refer to SoEs²¹. The document containing the most general rules with direct application in SoE is the Ordinance on SoEs. However, this Ordinance does not contain a general concept of SoE but only lists the scope of situations that can lead to a SoE being declared, including: (i) natural incidents or disasters; (ii) human-caused incidents and disasters; (iii) dangerous pandemics which spread on a large scale and seriously threaten properties of the State and organizations, people's lives, health and properties, national security and social order and safety.²²

In addition to the Ordinance on SoEs, which is a legal document regulating SoE in general, Viet Nam's specialized laws also have several regulations on the SoE as mentioned above. In the medical field, there are the Decree 71/2002/ND-CP detailing the implementation of several articles of the Ordinance on SoE in case of major disasters, dangerous pandemics, and the Law on Anti-Corruption 2007.

A review of the legal regulations shows that there is no document in the current legal document system of Viet Nam stipulating a specific legal definition of SoE. However, there is a concept relevant to the concept mentioned in the Law on Bidding 2013 to apply to disease prevention and control, which is the concept of "state of urgency". According to this Law, one of the bidding packages eligible for the contractor appointment is "*a bidding package for the purchase of medicines, chemicals, supplies and medical equipment to conduct the pandemic prevention and control activities in state of urgency*"²³. However, the Law on Bidding 2013 and its guiding documents do not clearly explain the concept content of "state of urgency" for the subjects applying the law to know whether

²¹ Such as the Constitution 2013, the Civil Code 2015, the Law on Natural Disaster Prevention and Control 2013, the Law on National Defense 2018, the Law on Anti-Corruption 2007, the Law on Dikes 2006 (amended and supplemented in 2020).

²² Citing Nguyen Thi Minh Ha, *Authority, and application of measures to restrict human rights in the SoE according to Vietnamese laws and the issues raised*; Pham Hong Thai, Ta Duc Hoa, *Authority and procedures for declaring a SoE under Vietnamese laws and issues raised*; Report at the International Online Seminar on Law on SoE organized by School of Law – Vietnam National University, dated June 15 - 17, 2020. For more information, please visit: Report on reviewing legislation related to the COVID-19 pandemic of the Prime Minister's Working Group (draft), page 26.

²³ The Law on Bidding 2013, Article 22, clause 1, para. a.

this concept is similar to the concept of “SoE” or not. This vague regulation has recently caused confusion and difficulties for state authorities when purchasing medical supplies and medicines during the COVID-19 pandemic prevention and control period²⁴. Therefore, Resolution 79/NQ-CP of the Government dated July 22, 2021 on procurement of medicine, chemicals, supplies, equipment and means for the prevention of COVID-19 pandemic had to determine to *“immediately deploy the bidding package to avoid causing direct harm to the lives, health and properties of the community and purchase medicine, chemicals, supplies, equipment and means for prevention, fighting against the COVID-19 pandemic is a state of urgency to implement the measure of contractor appointment”*.

Currently, the draft Mobile Police Law that is being drafted is also expected to regulate "state of urgency" for mobile police to be entitled to mobilize people and vehicles, which has attracted the interest of the public²⁵. If the concept of “state of urgency” becomes official in the Law on Mobile Police when it is approved, along with the term “state of urgency” which is defined in the Law on Bidding 2013, it is still necessary to clarify whether the two concepts "SoE" and "state of urgency" are similar in terms of content? If yes, why use two concepts? If not, what are the differences of the concepts and the mechanisms that could be applied in each circumstance?

Similarly, in the field of pandemic prevention and control, there are currently two concepts in current legal documents. These are the concept of “SoE” [in case of pandemic] used in Decree 71/2002/ND-CP and the concept of “state of urgency” used in the Law on Bidding 2013 as analyzed before. However, the two documents only mentioned the terms without introducing the explanation of these concepts. The lack of a clear concept of SoE has made the management of COVID-19 prevention and control activities difficult.

²⁴ VTV, *In state of urgency, localities may appoint contractors to procure equipment for COVID-19 prevention and control*, May 2021, <https://vtv.vn/kinh-te/truong-hop-cap-bach-dia-phuong-duoc-chi-dinh-thau-mua-sam-thiet-bi-phong-chong-dich-covid-19-20210517163217111.htm>; Hong Nhung, *Proposal to increase investment and amend financial mechanism for healthcare*, Auditing News, May 2021, <http://baokiemtoannhanuoc.vn/y-te/kiem-ghi-tang-dau-tu-sua-doi-co-che-tai-chinh-danh-cho-y-te-147597>

²⁵ Van Toan, *It is necessary to clarify in which cases mobile police are entitled to "mobilize people and vehicles"*, People News, 2021, <https://nhandan.vn/tin-tuc-su-kien/can-lam-ro-truong-hop-nao-can-h-sat-co-dong-duoc-phep-huy-dong-nguoi-phuong-tien-671311/>

b. Concept of state of emergency in case of pandemic

The SoE in case of pandemic is a special legal institution allowing a country to apply exceptional measures to deal with a particularly dangerous situation related to the pandemic causing serious human health crises.

A review of Viet Nam's current legal regulations shows that there is no legal document that defines the concept of SoE in case of pandemic, but only the use of the concept SoE as generally applicable to a pandemic as analyzed before. The Law on Anti-corruption 2007 is a specialized legal document that regulates pandemic prevention in general. This law has stipulated the SoE declaration in case of pandemic²⁶ but has not defined the concept of SoE in case of pandemic.

1.4. Regulations on conditions, authority, and procedures for declaring the state of emergency and the state of emergency in case of pandemic

a. Conditions for declaring the SoE and the SoE in case of pandemic

Conditions for declaring the SoE, or in other words, the criteria for the competent agency to use to declare SoE is regulated differently depending on the socio-economic conditions of each country. It is necessary to specify the conditions for the declaration of SoE, because based on these criteria, the competent agency will assess when it is necessary to take measures to change the society from a normal state to an abnormal state due to a SoE. However, a review of Vietnamese laws shows that the conditions for the declaration of SoE have not been specified in any LND.

Vietnamese LNDs only provide qualitative regulations on the conditions for the declaration of SoE in case of pandemic, while some countries in the world provide specific quantitative regulations on the conditions for the declaration of SoE (see Chapter II). In accordance with the Ordinance on SoE, one of the cases of the declaration of SoE is when there is a dangerous pandemic spreading on a large scale, seriously threatening the properties of the State and the organizations, life, health and properties of the people. The Law on PCID stipulates “*When a pandemic rapidly spreads on a wide area, seriously threatening human health and life and the national socio-economic situation, a SoE must be declared*”²⁷. Thus, the Ordinance on SoE and the Law on PCID have relatively uniform regulations on the conditions for the declaration of SoE in case of pandemic with qualitative criteria as follows: (i) when the scale of the pandemic spreads over a

²⁶ Section 2 Chapter IV Law on PCID

²⁷ Law on PCID, Article 42, clause 1, para. a.

wide area and (ii) when the impact of the pandemic seriously threatens human life and health, or the properties of the State/socio-economic of the country.

However, the Ordinance on SoE and the Law on PCID have not yet agreed on the level of danger the pandemic is to display in order to meet the requirement for the declaration of SoE in case of pandemic. Under the Ordinance on SoE, in order to declare the SoE, the pandemic must be a “*dangerous pandemic*”. Pursuant to the specialized law, the Law on PCID provides for Group A (extremely dangerous infectious diseases) and Group B (dangerous infectious diseases)²⁸, however, it does not specify the dangerous nature of the pandemic as a condition for the declaration of SoE in case of pandemic²⁹.

The Law on PCID also specifically stipulates the content of the declaration of SoE when there is a pandemic, including: (i) reason for declaration of SoE; (ii) geographical area placed under the SoE; (iii) hour and date of commencement of SoE and (iv) authority to organize the enforcement of the resolution or order to declare the SoE.

It should also be noted that the Law on PCID stipulates two cases: (i) *pandemic announcement*; and (ii) *declaration of SoE in case of pandemic*. The conditions for the declaration of SoE in case of pandemic have been analyzed above, and the conditions for pandemic announcement are specified in the Prime Minister’s Decision 02/2016/QĐ-TTg stipulating conditions for pandemic announcement and declaration on the end of infectious diseases³⁰. However, pandemic announcement and declaration of SoE in case of pandemic are two different issues. The pandemic announcement is made in the normal state, when there is a dangerous pandemic; the declaration of SoE in case of pandemic is an abnormal state of society, when the danger level of the pandemic is much higher than that of the normal announcement of pandemic.

²⁸ Law on PCID, Article 3.

²⁹ Law on PCID, Article 42.

³⁰ Article 2 Decision 02/2016/QĐ-TTg providing criteria for declaring pandemic outbreak as follows:
1. For infectious diseases of class A: at least one patient has been diagnosed with infection confirmation.
2. For infectious diseases of class A and C: a) A commune, ward or township (hereinafter referred to as commune) is considered to have an pandemic when the number of infected people exceeds the average number of infected people of the same month in the last 3 years.; b) A district, town or provincial city (hereinafter referred to as district) is considered to have an pandemic when there are 2 or more communes having pandemic; c) A province or a centrally-run city (hereinafter referred to as province) is considered to have an pandemic when there are 2 or more districts having pandemic.

b. Authority for declaring the SoE and the SoE in case of pandemic

The Constitution of 1992 stipulates two institutions having the authority to declare a SoE throughout the country or in a particular region namely, the SCNA and the State President³¹. On the basis of the provisions of the Constitution of 1992, the Ordinance on SoE concretizes the authority to declare the SoE in order to clearly define the case in which the SCNA issues the declaration of SoE and the case in which the State President issues the declaration of SoE. Specifically, the SCNA issues a resolution to declare the SoE at the proposal of the Prime Minister. In cases where the SCNA cannot immediately hold a meeting, the State President shall order a SoE to be declared at the proposal of the Prime Minister. This authority continues to be recognized in the Constitution of 2013³² and the Law on PCID³³. Thus, it can be seen that the Ordinance on SoE and the Law on PCID uniformly stipulate the authority to declare the SoE in general, including SoE in case of pandemic.

The content analyzed above about the authority of the SCNA and the State President applies to the declaration of SoE in case of pandemic under the Law on PCID. The authority of pandemic declaration is different from that of the declaration of a SoE in case of pandemic because the pandemic declaration under the Law on PCID can be issued by many different entities at both the central and local levels (such as by the Chairman of Provincial People's Committee; the Minister of Health in case when two or more provinces have announced the pandemic; or by the Prime Minister when the pandemic rapidly spreads from one province to another, seriously affecting human life and health³⁴). Meanwhile, the National Assembly - the agency of highest state power (with the SCNA acting as its standing agency), or the state president (the supreme commander-in-chief of the Vietnam People's Armed Forces) will be entitled to declare SoE in case of pandemic.³⁵

c. Procedures for declaring the SoE and the SoE in case of a pandemic

The Ordinance on SoE and the Law on PCID stipulate that the two entities having the authority to declare the SoE are the SCNA and the State President. The ordinance is associated with two different forms of documents, including

³¹ Constitution 1992, Article 91, clause 10, Article 103, clause 6.

³² Constitution 2013, Article 74, clause 10, Article 88, clause 5.

³³ Law on PCID, Article 42, clause 2.

³⁴ Law on PCID, Article 38.

³⁵ Constitution 2013, Article 74, clause 10, Article 88, clause 5.

Resolution of the SCNA and Order of the State President. Under the Law on Promulgation of LND, the Resolution of the SCNA and the Order of the State President declaring the SoE are determined as the LND³⁶. Therefore, the order and procedure for declaring resolution of the SCNA, order of the State President in this case must comply with the provisions of the Law on Promulgation of LND.

The Law on Promulgation of LND determines that in a case of emergency in accordance with the provisions of the law on SoE, the LND may be developed and issued according to the simplified order and procedures³⁷. In the prescribed order³⁸, the drafting of these documents does not require the establishment of a Drafting Committee or consultation with relevant agencies, organizations and individuals on the draft document. If it is necessary to hold consultations, the time limit shall not exceed 20 days. The agency in charge of the appraisal is responsible for verifying the draft within 7 days. On that basis, the drafting agency shall complete the draft and submit it to the Prime Minister for consideration and a decision on submission of the draft to the SCNA or the State President with the following documents: draft, report, inspection report. The order of reviewing and approving a draft resolution of the SCNA and a draft order of the State President according to the simplified procedures is similar to that of a draft document with normal procedures. But in the case of a SoE, to ensure that the document will be promulgated as quickly as possible, the Law on Promulgation of LND has specified a separate order and procedure for the approval of the draft document of the SCNA at the nearest meeting or session³⁹. The State President will consider and sign the order right after receiving the draft order⁴⁰.

After the resolution or the order on the declaration of SoE is passed, the declaration will be in accordance with the provisions of the Law on PCID as follows⁴¹:

- The Vietnam News Agency, the Voice of Vietnam, the Vietnam Television, the People Newspaper, and the People's Army Newspaper are responsible for immediately publishing the full text of the resolution of the SCNA or the order of the State President on the declaration of SoE in case of

³⁶ Law on Promulgation of LND 2015, Article 4, clause 3, clause 4, Article 16, clause 2, para. d and Article 17, clause 1.

³⁷ Law on Promulgation of LND 2015, Article 146.

³⁸ Law on Promulgation of LND 2015, Article 147, 148 and 149.

³⁹ Law on Promulgation of LND 2015, Article 77, Article 149, clause 2, para. b.

⁴⁰ Law on Promulgation of LND 2015, Article 81, Article 149, clause 2, para. c.

⁴¹ Law on PCID, Article 45.

pandemic. This also includes decisions of the Prime Minister to organize the implementation of the resolution of the SCNA or the order of the State President on the declaration of SoE in case of pandemic; timely reporting on measures that have been applied in the geographical area(s) placed under SoE and the situation of overcoming the consequences of the pandemic.

- The resolution of the SCNA or the order of the State President on the declaration of a SoE in case of pandemic shall be publicly posted at the headquarters of agencies, organizations and public places.
- Other mass media at central and local levels are responsible for reporting on the declaration of SoE in case of pandemic and the process of overcoming the consequences of the pandemic.

1.5. Regulations on conditions, authority and procedures for abolishing the state of emergency in case of pandemic

a. Conditions for abolishing the SoE and the SoE in case of pandemic

In accordance with the provisions of the Ordinance on SoE and the Law on PCID, the SoE in case of pandemic will be abolished when the pandemic has been stopped or extinguished⁴². The Law on PCID specifically stipulates the conditions for *declaring the end of the pandemic* as follows⁴³:

- No new cases of disease are detected after a certain period of time and other conditions are met for each disease as prescribed by the Prime Minister.
- The anti-pandemic measures specified in Section 3, Chapter IV of the Law on PCID are implemented.

Decision 02/2016/QĐ-TTg of the Prime Minister has specific regulations on conditions for declaring the end of infectious diseases, including specific instructions for conditions when “*no new cases of disease are detected after a certain period of time for each disease*” by specifying this content in the Appendix issued with this Decision. In 2020, the Prime Minister issued Decision 07/2020/QĐ-TTg amending and supplementing Decision 02/2016/QĐ-TTg with the content: Adding the average incubation period and the period when no new cases are detected for COVID-19, as a basis for declaring the end of the infectious disease. Accordingly, COVID-19 is classified as infectious diseases of class A, with the average incubation period of 14 days and the period when no new cases

⁴² Law on PCID, Article 44.

⁴³ Law on PCID, Article 40.

detected as 28 days (the period count begins the day on which the latest confirmed case is isolated at a health facility).

b. Authority for abolishing the SoE and the SoE in case of pandemic

The Ordinance on SoE and the Law on PCID stipulates that the SCNA issues a resolution or the President issues an order to abolish the SoE declared by them at the proposal of the Prime Minister⁴⁴. This regulation is consistent with the authority of the SCNA and the State President in the Constitution of 2013 and in accordance with the authority to repeal the LND in the Law on Promulgation of LND⁴⁵. Accordingly, the LND can only be repealed by the LND of the state agency that has issued such documents.

c. Procedures for abolishing the SoE and the SoE in case of pandemic

As analyzed above, the abolition of SoE must also be expressed in the form and with the authority of a document equivalent to the document declaring the SoE. Therefore, the procedure for promulgating the resolution of the SCNA or the order of the State President must comply with the provisions of the Law on Promulgation of LND. The resolution of the SCNA or the order of the State President on abolition of SoE in case of pandemic is also publicly announced in the same way as the announcement of the resolution to declare the SoE as analyzed above.

1.6. Regulations on measures applied in the state of emergency and the state of emergency in case of pandemic

Because the SoE in general and the SoE in case of pandemic in particular is a special social state, the measures applied in these situations are also special measures without precedent. The SoE allows the competent agency in the name of the public interest to promulgate policies and implement measures that would be difficult or impossible to implement under the normal circumstances.

The Vietnamese legal system on SoE has some specific regulations on measures to be applied in the SoE. The Ordinance on SoE does not prescribe general measures applicable to all types of emergency situation, but regulates the appropriate measures to be taken in each type of emergency situation (natural disasters, dangerous pandemic, situations threatening national security, social order and safety). As analyzed above, as regards the measures applied in the SoE

⁴⁴ Law on PCID, Article 44.

⁴⁵ Constitution 2013, Article 74 clause 10; Article 88 clause 5; Law on Promulgation of LND 2015, Article 12 clause 1.

in general and the SoE in case of pandemic in particular, there are, in addition to the rescue measures, and the organization of medical examination and treatment, a number of measures that will limit certain individual liberties or human rights.

For the SoE when there is a dangerous pandemic, the Ordinance on SoE and the Law on PCID allow the application of measures to limit human rights as follows⁴⁶:

- Restrictive measures on the right to enjoy culture and information: closing theaters, cinemas and public places; controlling the mass media.
- Restrictive measures on freedom of movement, freedom of lawful residence: banning or restricting people and vehicles from entering and leaving pandemic-affected areas, suspending air, waterway, railway, and roadway operations.
- Restrictive measures on freedom of business: banning the movement of goods, animals, food, and beverages capable of transmitting disease out of pandemic-affected areas; inspecting or closing public food service establishments.
- Restrictive measures related to property rights: being able to requisition means and property of individuals and organizations in case of necessity.

For measures applied in emergency situations affecting national security and social order and safety, the Ordinance on SoE allows to apply some stronger and tougher measures such as: ban on strikes; organized school leave; organized cessation of trade and ban on protests and mass gatherings. Furthermore, the captain of the special patrol team has the right to order the arrest or search of people, places of residence, vehicles and objects of persons who commit acts harmful to the national security, social order and safety⁴⁷. In emergency situations, people's essential needs may be severely affected, which includes shortages of food, electricity and water. Therefore, the Ordinance on SoE stipulates that the agencies and units in the fields of electricity, water, post and telecommunications, broadcasting, sanitation, and healthcare must ensure their regular and continuous operation during the SoE. The regulation is based on the obligation of the state

⁴⁶ Reference: Nguyen Minh Hoa - Ta Duc Hoa, *Authority and application of measures to limit human rights in the SoE under the Vietnamese laws and issues raised*, Report at the International Online Seminar on the Law on SoE organized by the Faculty of Law - Vietnam National University, Hanoi, dated June 15-17, 2020. See further: Law on PCID, Articles 52, 55.

⁴⁷ According to Nguyen Minh Hoa - Ta Duc Hoa, *Authority and application of measures to limit human rights in the SoE under the Vietnamese laws and issues raised*, Report at the International Online Seminar on the Law on SoE organized by the Faculty of Law - Vietnam National University, Hanoi, dated June 15-17, 2020.

authority to secure the basic needs of the people, such as the rights to food, health, housing, social protection, electricity, water and sanitation, education, etc. that remain in effect even during SoE. Rather, it is more often the case that SoEs call for even more attention and action to protect economic, social, and cultural rights, especially those of the most marginalized groups of society.

1.7. Regulations on supervision mechanism in the state of emergency and the state of emergency in case of pandemic

The SoE requires the extension of authority to agencies of the executive branch. This also includes the requirement of processes and procedures to be shortened to ensure timely application of countermeasures to the SoE. It must also be recognized that the requirements may lead to abuse of power by entities in the SoE. Therefore, it is necessary to have a supervision mechanism for the application of measures in the SoE to minimize negative impacts from the implementation of the measures. According to international experiences (as analyzed in the Chapter II) and other studies, the supervision mechanism can be exercised by the legislative branch through the National Assembly, or the judicial branch through the Court system⁴⁸.

In Viet Nam, the supervision mechanism in the SoE is provided for in the Ordinance on SoE, which assigns the SCNA as the competent entity to supervise the compliance of the law in the implementation of the resolution or the order on the declaration. The People's Procuracy is the competent entity to supervise the compliance of law in the implementation of the resolution or the order on the declaration of SoE. In addition, the supervision of the implementation of regulations on SoE from non-state institutions is assigned to the Vietnamese Fatherland Front and its member organizations⁴⁹.

For the SoE in case of pandemic, the Law on PCID assigns the function of supervising the implementation of the law on PCID to the Vietnamese Fatherland Front and its member organizations⁵⁰. However, this regulation governs supervision during the pandemic in general, not during the SoE in case of pandemic. Previously, Decree 71/2002/ND-CP had no regulation providing for a supervision mechanism in the SoE in case of pandemic.

⁴⁸ Reference: Nguyen Hoang Anh, *SoE in case of pandemic under the Vietnamese law and some other countries in the world*, Report at the International Online Seminar on *the Law on SoE* organized by the Faculty of Law - Vietnam National University, Hanoi, dated June 15-17, 2020.

⁴⁹ Ordinance on SoE, Article 5 clause 2.

⁵⁰ Law on PCID, Article 7 clause 2.

In the past 2 years of COVID-19 prevention and control, although Viet Nam has not declared a SoE, the supervision mechanism on law compliance and enforcement when applying pandemic prevention and control measures has been implemented in accordance with the Ordinance on SoE. As for the legislative branch, the National Assembly has supervised the Government's measures and policies in pandemic prevention and control through supervision activities of the Committees of the National Assembly. Specifically, the National Assembly's Social Committee has held meetings to verify the Report on COVID-19 prevention and control and the implementation of Resolution No. 30/2021/QH15⁵¹. For the executive branch, the supervision mechanism has been also implemented through the oversight activities of the Government Office and the inspection activities of the Government Inspectorate in relation to the Ministry of Health and localities in the implementation of regulations related to pandemic prevention and control, i.e., vaccination, procurement of medical equipment and supplies, etc. The supervision mechanism has also operated through the activities of the Party system. For example, the Inspection Committees at all levels carry out regular monitoring to promptly detect organizations and individuals that do not strictly abide by the regulations on the implementation of measures to prevent and control the COVID-19 pandemic. Monitoring through the activities of the Vietnam Fatherland Front and its member organizations has also been carried out⁵².

1.8. Regulations on sanctions applied in the state of emergency and the state of emergency in case of pandemic

Sanctions applied in SoE in general and SoE in case of pandemics in particular include administrative sanctions and criminal sanctions. As for administrative sanctions, the Government's Decree 117/2020/ND-CP dated September 28, 2020 on administrative sanctioning of violations in the health sector has specified 17 acts that will be sanctioned in relation to the prevention and fight against COVID-19⁵³. As for criminal sanctions, Article 240 of the Criminal Code 2015 provides

⁵¹ Social Committee (National Assembly), The Social Committee examines the report on COVID-19 prevention and control and the implementation of Resolution No. 30/2021/QH15 of the National Assembly, 19 Oct 2021, <https://quochoi.vn/uybanvecacvandexahoi/giamsat/Pages/giamsat.aspx?ItemID=1610>

⁵² Phu Tho Fatherland Front, *Provincial Fatherland Front supervise the implementation of policies to support people due to the Covid-19 epidemic in Thanh Ba district*, 05 June 2021, <http://matrantoquoc.phutho.gov.vn/Chuyenmuctin/Chitiettin/tabid/92/title/1099/ctitle/83/Default.asp>.

⁵³ People's Committee of Thua Thien Hue province, Guidance on a number of regulations on administrative sanctioning violations in the prevention and control of COVID-19 pandemic, 4 August, 2021, <https://stp.thuathienhue.gov.vn/?gd=25&cn=584&tc=6237>.

sanctions for the crime of spreading dangerous infectious diseases to people⁵⁴. The current practice of COVID-19 prevention and control shows that there are many violations of regulations on pandemic prevention and control, causing the spread of disease. This includes escaping from quarantine places, failing to comply with regulations on quarantine, refusing or evading the application of quarantine measures and enforced quarantine, failing to make medical declarations, making incomplete or false declarations to intentionally move infectious people or people at high risk of infection illegally out of the pandemic-affected areas, quarantine and blockade areas, resulting in further spreading the disease.

However, at present, there is no normative document guiding the specific provisions of the Criminal Code 2015 on “other acts that spread dangerous diseases to people”⁵⁵ for procedure-conducting agencies (People’s courts, People’s procuracies, investigation agencies) to apply uniformly. On March 30, 2020, the Supreme People’s Court (SPC) issued Official Dispatch 45/TANDTC-PC to specify and list a number of violations that can be criminally handled in accordance with the regulation “*other acts that spread dangerous diseases to people*” of the Criminal Code 2015 to enhance people’s legal consciousness during the COVID-19 prevention and control process. However, this is only an internal document of the SPC directing the people’s courts at all levels in the consistent application of the law – not a LND to apply uniformly and fully for the prosecution of criminal liability.

The settlement of criminal cases according to the Criminal Procedure Code 2015 amid the COVID-19 pandemic has in some instances been delayed, especially in the localities in the epicenter of the pandemic, or when the participants in the proceedings, the proceedings-conducting persons are infected with COVID-19 or in the blockade or medical isolation areas, etc. This has greatly affected the progress of the case settlement, as well as the assurance of basic criminal procedural principles, such as ensuring the quick resolution of criminal cases, ensuring right to defense, ensuring the participation of relevant people and agencies. During the prevention and control of COVID-19, there have also been a number of cases where the time limit for investigation and prosecution has expired in case of the prolonged pandemic situation. However, the procedural law does not have any provision to apply to solve this situation. To overcome the

⁵⁴ Criminal Code 2015, Article 240.

⁵⁵ Criminal Code 2015, Article 240, Clause 1, para. c.

above-mentioned difficulties and problems, the Supreme People's Procuracy has coordinated with the Government to propose the National Assembly to amend and supplement the Criminal Procedure Code 2015. This involves supplementing the grounds for suspending the settlement of denunciations, information on crime, petition for prosecution. It further regulates the grounds for suspension of investigation and suspension of prosecution in case of force majeure in case of natural disasters or pandemic that the competent agency cannot handle as specified in clause 1, Articles 148, 247, 299 and 247 of the Criminal Procedure Code 2015⁵⁶.

In the context of the pandemic, some types of violations (such as theft, motorbike racing, traffic accidents) have decreased significantly⁵⁷. However, there are still some problems, including: (i) some new or existing violations with more complicated developments,⁵⁸ such as taking advantage of the complicated developments of the pandemic to propagate against the Party and State; (ii) abusing positions and powers to make economic profit from the vaccination against COVID-19, as well as taking advantage of vehicles registered with "green flow" identification codes to transport contraband and banned goods, including transporting drugs. In particular, there have been prominent cases of corruption in the procurement of test kits or profiteering to arrange for overseas Vietnamese to return to Viet Nam to escape the hardship imposed by the pandemic, etc. Some local government officials, civil servants and medical staff who perform their duties without a clear understanding of the regulations, have been found to abuse, overdo or even exceed the measures prescribed by laws, causing anger among the

⁵⁶ The Criminal Procedure Code 2015, Article 148, "Suspension of the processing of denunciations, criminal information disclosed and requisitions for charges", Article 247 "Suspension of cases", Article 299 "Pronouncement of a Court's judgments and rulings".

⁵⁷ Ministry of Public Security, *Strengthening crime prevention, ensuring social order and safety during and after the COVID-19 pandemic*, 1 February, 2022, <http://bocongan.gov.vn/tin-tuc-su-kien/tang-cuong-phong-chong-toi-pham-dam-bao-trat-tu-an-toan-xa-hoi-trong-va-sau-dai-dich-covid-19-tren-dia-ban-thanh-pho-ho-chi-minh-d17-t30354.html>

⁵⁸ (i) Taking advantage of cyberspace to misrepresent Viet Nam's pandemic prevention and control work; stepping up activities of disguised "humanitarian relief", promoting prestige, connecting and enticing people to participate in reactionary organizations with many dangerous tricks.; (ii) Taking advantage of difficulties of people and businesses to implement "black credit"; (iii) Obtaining property by fraud in cyberspace; trading in fake COVID-19 treatment drugs, fake medical equipment; (iv) Smuggling COVID-19 treatment drugs, selling or advertising antiretroviral drugs that have not been licensed for circulation or are in the period of clinical trials at high prices; (v) Illegally transporting passengers; (vi) Increasing risks of violence and abusing against women and children, including child sexual abuse; increasing the resistance to law enforcement officers; developing drug addiction in complicated manner, etc.

public. These violations have been processed and handled by the competent authorities of Viet Nam in accordance with the law⁵⁹.

It is important to note that measures that are of an exceptional nature and restrict human rights in SoE should be taken in line with the general principles of international human rights laws and must be implemented in accordance with criteria of lawfulness, necessity, proportionality, and non-discrimination; especially when applying sanctions for violations of regulations on restricting human rights during SoE. Any exceptional measures introduced that restrict human rights must be taken on a humane basis, in accordance with the principle of proportionality. It should also be noted that sanctions for violations must not be arbitrary or discriminatory. In addition, sanctions relating to deprivation of liberty should always be considered as the last resort, and when applied must comply with national and international laws together with protection measures under appropriate procedures. The implementation of sanctions applied in the prevention and control of the COVID-19 pandemic in Viet Nam recently shows that the above principles have been followed and the enforcement of those sanctions is consistent with the provisions of the international laws on human rights in the SoE (see more detailed analysis in Chapter II).

1.9. Regulations on organizing the implementation of measures applied in the state of emergency and state of emergency in case of pandemics

a. Responsibility of the State in organizing measures to be applied in SoE and SoE in case of pandemic

It is stipulated in the Ordinance on SoE that the Prime Minister is the competent person to organize and direct the implementation of resolutions or orders declaring the SoE, as well as to decide the measures applied in SoE in general and SoE in case of pandemics in particular.

In accordance with the Law on PCID, the Anti-pandemic Steering Committees are established immediately after the pandemic is announced, including:

⁵⁹ Thai Son, *Company Viet A 's Test Kit Case: Detaining many leaders at the Ministry of Health and the Ministry of Science and Technology*, 01 January, 2022, Thanh Nien, <https://thanhnien.vn/vu-kit-xet-nghiem-cong-ty-viet-a-bat-giam-nhieu-lanh-dao-tai-bo-y-te-va-bo-kh-cn-post1417142.html>; Online Newspaper of the Government, *Prosecuting the Director, Deputy Director of the Consular Department for "Bribery "*, 31 January, 2022, <https://baohinhphu.vn/khoi-to-cuc-truong-pho-cuc-truong-cuc-lanh-su-ve-toi-nhan-hoi-lo-102220128193548677.htm>; Luong Ket, *Handling the Viet A case, the bribery case at the Consular Department, anti-corruption was raised to a higher level*, Dan Viet, 02 February, 2022, <https://danviet.vn/xu-ly-vu-viet-a-vu-nhan-hoi-lo-o-cuc-lanh-su-viec-chong-tham-nhung-duoc-nang-len-o-muc-cao-hon-20220201224603135.htm>.

- *The National Anti-pandemic Steering Committee* consists of representatives from the agencies of health, finance, information and communication, foreign affairs, national defense, public security and other relevant agencies⁶⁰. Depending on the scope of the area where the pandemic is announced and the nature of the pandemic, the Prime Minister may himself act as the head of the Steering Committee or appoint a Deputy Prime Minister or the Minister of Health to this task. The Ministry of Health is the standing body of the Steering Committee;
- *Provincial, district and commune level anti-pandemic steering committees* include representatives from the agencies of health, finance, information and communication, army, public security and other relevant agencies. The head of the anti-pandemic steering committee is the Chairman of the People's Committee at the same level. The health agency at the same level shall be the standing body of the Steering Committee.
- The anti-pandemic steering committee is responsible for organizing the implementation of anti-pandemic measures, identifying ways to overcome the consequences of the pandemic, setting up a mobile anti-pandemic team to directly perform the tasks of first aid, as well as provide medical treatment and deal with pandemic foci⁶¹. The time to set up anti-pandemic steering committees at all levels is within 24 hours from the time of announcement of the pandemic by the competent person⁶².

The anti-pandemic steering committees at all levels⁶³ operate under the collective regime and the members work under the part-time regime. Mobile anti-pandemic teams are set up under the provisions of the Law on PCID⁶⁴. At the time when the COVID-19 pandemic broke out, the Prime Minister met weekly with the National Steering Committee and received the reports delivered by Steering Committees on pandemic prevention and control in provinces.

In addition, the Steering Committee also has anti-pandemic subcommittees⁶⁵ including: (i) At national and provincial levels there are the following sub-

⁶⁰ Law on PCID, Article 46, clause 2.

⁶¹ Law on PCID, Article 46 clause 3.

⁶² Law on PCID, Article 38 clause 3.

⁶³ The anti-pandemic steering committees at all levels operate in accordance with Decision 56/2010/QĐ-TTg dated September 16, 2010 of the Prime Minister.

⁶⁴ Law on PCID, Article 46 clause 3.

⁶⁵ The anti-pandemic steering subcommittees are specified in clause 2 Article 2 Decision 56/2010/QĐ-TTg dated September 16, 2010 of the Prime Minister.

committees: Supervision, Treatment, Propaganda and Logistics, the composition, tasks and activities of which are specifically decided by the Head of the Anti-pandemic Steering Committee; (ii) At district and communal levels: The head of the Anti-pandemic Steering Committee decides whether or not to set up anti-pandemic subcommittees and assigns specific tasks to members to perform anti-pandemic tasks; (iii) The standing body of the Steering Committee is located at the health agency of the same level and the head of that health agency shall be the person in charge. The sub-committees are in charge of different areas. The coordination mechanism of the sub-committees works closely with the competent authorities at the central level through the provision and sharing of information on the pandemic situation, as well as solutions to pandemic prevention and control. Sub-committees report directly to the Steering Committee. However, at the local level, the coordination mechanism between local sub-committees and authorities is still weak.

At the initial phase of fighting against the pandemic, the Prime Minister issued Decision 170/QĐ-TTg dated January 30, 2020 to establish the National Steering Committee for the prevention and control of acute respiratory infections caused by the new strain of Corona virus. The National Steering Committee is considered the highest directing body for the COVID-19 prevention campaign with the motto “4 on the spot”, including Directing on the spot, Forces on the spot, Vehicles on the spot and Logistics on the spot.⁶⁶

After the establishment of the National Steering Committee, the Prime Minister issued Decision 447/QĐ-TTg on the pandemic announcement. In the fourth outbreak with the Delta variant, the Prime Minister consolidated the National Steering Committee through Decision 1438/QĐ-TTg dated August 25, 2021. The Prime Minister as the head of the Steering Committee took charge as the nature and extent of the pandemic became complicated with an increasing number of infections in the southern provinces. The Prime Minister – as the Head of the National Steering Committee also established 8 Subcommittees with specific functions and tasks in pandemic prevention and control and the Government’s special working group to carry out pandemic prevention and control in localities. The sub-committees thus established include: (i) Social Security Sub-committee, (ii) Social Order Sub-committee, (iii) Finance and Logistics Sub-committee, (iv) Health Sub-committee, (v) Sub-committee on Production and circulation of

⁶⁶ Decision 56/2010/QĐ-TTg stipulates the authority to establish, organization and operation of the Anti-pandemic Steering Committees at all levels promulgated by the Prime Minister, Article 3, clause 1.

goods, (vi) Sub-committee on Social Mobilization and Advocacy, (vii) Sub-committee on Mass Mobilization, and (viii) Sub-committee on Communication⁶⁷. After being established, the sub-committees under the National Steering Committee have consolidated the organization of members, developed plans and operating regulations, as well as assigned tasks to the leaders in the sub-committee⁶⁸. In addition to assigning members of the Government to participate in the activities of sub-committees, the Prime Minister - Head of the National Steering Committee - also assigned senior personnel of the National Assembly, Central Party and Central Committee of the Fatherland Front to participate in the prevention and control of the COVID-19 pandemic⁶⁹. On the basis of the request to streamline the operation mechanism of the steering committees for pandemic prevention and control, the steering committees for pandemic prevention and control in localities were also consolidated in the period of September 2021.

The research results reveal that the current laws have no provisions on the working relationship between the lower-level and higher-level Steering committees. Nor do they specify the types of documents that the anti-pandemic Steering committees are entitled to issue. The order, procedures and authority to establish a Steering Committee for anti-pandemic corresponding to the classification of pandemics (Class A, B, C) are also yet to be clearly defined. In the case of SoE, the establishment of the Anti-pandemic Steering Committee is complied with the model of the Anti-pandemic Steering Committee in the condition “under the level of SoE”. However, in the case of a SoE in the context of a pandemic, the levels of infectious diseases are different, requiring different procedures, organizational models and operation of the Steering Committee. Practice shows that as soon as there was full information about the possibility of infectious disease spreading in the world, the Prime Minister proactively established a National Steering

⁶⁷ Decision 84/QĐ-BCĐ of the Head of the National Steering Committee for the prevention and control of COVID-19 promulgating working regulations and assigning tasks to members of the National Steering Committee for the prevention and control of COVID-19 dated 28 August, 2021.

⁶⁸ The Ministry of Home Affairs, *The Sub-committee on Mass Mobilization under the National Steering Committee for the prevention and control of COVID-19 met for the first session to deploy activities under the direction of the Prime Minister*, 08 September, 2021, <https://moha.gov.vn/tin-tuc-sukien/diem-tin/tieu-ban-dan-van-thuoc-ban-chi-dao-quoc-gia-phong-chong-dich-covid-19-hop-phien-thu-nhat-trien-khai-hoat-dong-theo-chi-dao-cua-thu-tuong-chinh-phu-46551.html>; Communist Party of Vietnam Online Newspaper, *Working Regulations of the Sub-committee on Communications, National Steering Committee for the prevention and control of COVID-19*, 03 September, 2021, <https://dangcongsan.vn/tu-tuong-van-hoa/quy-che-lam-viec-cua-tieu-ban-truyen-thong-ban-chi-dao-quoc-gia-phong-chong-dich-covid-19-589938.html>;

⁶⁹ Decision 84/QĐ-BCĐ of the Head of the National Steering Committee for the prevention and control of COVID-19 promulgating working regulations and assigning tasks to members of the National Steering Committee for the prevention and control of COVID-19 dated 28 August, 2021.

Committee for COVID-19 prevention and control. This did not cover the establishment of subcommittees, as the scale, nature and degree of control of the pandemic in Viet Nam were ensured through the operation of the Steering Committee. However, by the fourth outbreak, the composition, number, and operation model of the subcommittees in accordance with the provisions of the Law on PCID and its guiding documents were not sufficient to guarantee pandemic prevention and control. As a result, the Prime Minister decided to establish 8 subcommittees directly under the Steering Committee to address the difficulties and obstacles encountered in pandemic prevention and control.

b. Participation mechanism of non-state organizations in SoE in case of the pandemic and the protection of vulnerable groups

With regard to SoE in general, the Ordinance on SoE stipulates that the Vietnam Fatherland Front and its member organizations are responsible for propagating and mobilizing people to strictly abide by the regulations on SoE, coordinating and assisting agencies, organizations, and people to take special measures in the SoE and supervising the implementation of regulations on SoE.

The Law on PCID only stipulates the responsibilities and participation mechanism of the Vietnam Fatherland Front and its member organizations in propagating and mobilizing people to participate in anti-pandemic actions and participating in supervising the implementation of the law on anti-pandemic⁷⁰. The law does not prescribe the responsibilities and mechanisms for participation of socio-political organizations, socio-professional organizations, charity funds, social funds in pandemic prevention and control, except for the mechanism of participating in financial contributions to the support fund for pandemic prevention and control of organizations and individuals. Pursuant to the provisions of the Law on PCID, funding for disease prevention and control includes: (i) State budget; (ii) Monetary assistance; (iii) Other funding sources as prescribed by law. Annually, the State ensures an adequate and timely budget for anti-pandemic activities; the anti-pandemic budget cannot be used for other purposes⁷¹.

To have more resources for COVID-19 prevention and control, the Government has set up a COVID-19 vaccine fund and called for all individuals and organizations to participate. By the end of November 29, 2021, the Vaccine Fund for COVID-19 Prevention and Control had mobilized VND 8,797.5 billion with the contribution of 567,847 organizations and individuals. The money raised is

⁷⁰ Law on PCID, Article 7, clause 2

⁷¹ Law on PCID, Article 60

mainly used to buy vaccines and support vaccine research and testing⁷². The State also has a policy of giving priority to vaccination for 16 target groups, including the elderly, the poor, social policy beneficiaries, self-employed workers, etc. and recently children⁷³.

The leader of the Vietnam Fatherland Front is also a member of the National Steering Committee for Pandemic Prevention and Control⁷⁴. The participation of leaders of the Vietnam Fatherland Front will support coordination and cooperation between ministries, sectors, and localities in organizing the implementation of plans, tasks and solutions for pandemic prevention and control, especially propagating, mobilizing, and calling on the people to strictly and efficiently implement measures to prevent and control the pandemic⁷⁵.

Other socio-political organizations such as Vietnam Women's Union, Ho Chi Minh Communist Youth Union, the Red Cross, etc. have implemented a number of activities to support members; establishing a logistics support team, participating in preparing food, drinking water, necessities at concentrated treatment facilities and poor neighbourhoods; providing oxygen for home treatment, mobilizing people to support the vaccine fund, etc.⁷⁶ Localities, even many businesses and agencies have also established community COVID Teams, or COVID Safety Teams to mobilize the strength of the community in accompanying the Government in disease prevention⁷⁷.

In addition to the participation of socio-political agencies and organizations in pandemic prevention and control, many organizations, businesses, and

⁷² COVID-19 Vaccine Fund, December 29, 2021, <https://quyvacxincovid19.gov.vn/>.

⁷³ Decision 3355/QĐ-BYT of the Ministry of Health dated July 8, 2021 on the Plan to implement the COVID-19 vaccination campaign in 2021-2022

⁷⁴ Decision 1438/QĐ-TTg of the Prime Minister on August 25, 2021 on consolidating the National Steering Committee for COVID-19 prevention and control.

⁷⁵ Notice No. 228/TB-VPCP dated August 31, 2021 on the conclusions of Prime Minister Pham Minh Chinh at the meeting of the Government Standing Committee with the leaders of the Central Mass Mobilization Commission and the Central Committee of the Vietnamese Fatherland Front and socio-political organizations on the prevention and control of COVID-19.

⁷⁶ Vietnam Women's Union, *"Millions of gifts to share love" mobilized VND 185.86 billion*, dated November 26, 2021, <http://hoilhpn.org.vn/web/guest/tin-chi-tiet/-/chi-tiet/-034-trieu-phan-qua-san-se-yeu-thuong-034-van-%C4%91ong-%C4%91uoc-185-86-ty-%C4%91ong-42422-6602.html>; Thanh nien Newspaper, *Honouring 420 volunteers for the community in the prevention of COVID-19*, November 13, 2021, <https://thanhvien.vn/ton-vinh-420-tinh-nguyen-vien-vi-cong-dong-trong-phong-chong-dich-covid-19-post1401043.html>.

⁷⁷ Ministry of Health, *Community COVID Team – Viet Nam's unique anti-pandemic weapon is effective in Bac Giang*, 15 June, 2021, https://moh.gov.vn/tin-lien-quan/-/asset_publisher/vjYyM7O9aWnX/content/to-covid-cong-ong-vu-khi-chong-dich-oc-ao-cua-viet-nam-phat-huy-hieu-qua-tai-bac-giang

individuals have actively participated in the prevention and control of COVID-19 so far. They do not only limit their activities to the responsibilities required by the Law on PCID⁷⁸, but also actively carry out other activities such as: providing medical supplies and equipment to hospitals, treatment facilities, etc. distributing necessities to people in need, especially vulnerable groups: women, children, people with disabilities in pandemic areas, quarantine places, places under blockade, etc. Such spontaneous activities have also partly reduced the responsibility of the State and socio-political organizations. These initiatives have also showed the need to improve the legal provisions related to spontaneous volunteering activities, handling assets donated during the anti-pandemic period, such as assets donated to temporary treatment facilities, field hospitals, isolation areas, etc. During that period, Decree 64/2008/ND-CP dated May 14, 2008 of the Government on mobilizing, receiving, and using voluntary contributions to support people to overcome difficulties caused by natural disasters, fires, serious incidents, patients with fatal diseases, was assessed as not being able to promote the strength of the people in prevention and control activities against COVID-19 pandemic as well as natural disasters, fires, and serious incidents, etc. As a result, this Decree has been replaced by Decree 93/2021/ND-CP on mobilizing, receiving, distributing, and using voluntary contributions to support overcoming difficulties caused by natural disasters, pandemics, situations; supporting patients with critical illnesses in the 4th quarter of 2021.

1.10. General assessment on the legal document system on the state of emergency and the state of emergency in case of pandemics

a. Achieved results

- *About the system of legal documents governing SoE and SoE in case of the pandemic*

In general, presently, the system of legal documents governing SoE in general and SoE in pandemics in particular has been established. From the provisions of the Constitution to specialized laws and guiding documents, there are regulations that refer to the connotations related to SoE in general and SoE in pandemics in particular. These legal documents have contributed to creating a legal basis for anti-COVID-19 activities so far.

Through the review and assessment of the current legal system, it has been shown that the regulations on SoE and SoE in case of pandemic in the subsequently

⁷⁸ Law on PCID, Article 7.

promulgated legal documents are clearer and more specific than those promulgated previously.

In the COVID-19 prevention and control over the past time, a number of documents have been promulgated by the National Assembly, which have created the effective legal basis for Viet Nam's epidemic prevention and control activities despite not being the documents promulgated in the context of Viet Nam's declaring SoE. In particular, the Resolution 30/2021/QH15 promulgated by the National Assembly and Resolution 86/NQ-CP promulgated by the Government helped to overcome many obstacles in the mission of COVID-19 prevention and control. The Resolution 128/NQ-CP promulgated by the Government changing methods of preventing and controlling COVID-19 from "Zero Covid" to "Safe Adaptation"⁷⁹ contributed to protecting human rights, economic rights in Viet Nam.

- *About the scope of situations in which the SoE can be declared*

Although promulgated more than 20 years ago and in the form of an Ordinance, after researching, comparing with regulation of SoE in some countries⁸⁰, it can be concluded that the approach of the Ordinance on the SoE has shown a broad thinking and appropriate approach that is completely in line with the trend of amending legal regulations in countries around the world on SoE at present time. That is to regulate SoE in such situations as natural disasters, man-made disasters, and pandemics on a large scale. From the comprehensive approach of this Ordinance, subsequent legal documents of Viet Nam, including the Constitution 2013, specialized laws and decrees guiding the implementation of the laws, all maintain the approach of the Ordinance and only makes it clearer and more detailed for each specific field facing SoE. This is a positive point that should be inherited when building and perfecting the system of legal documents on SoE in the future.

⁷⁹ Tuoi tre, *Prime Minister: Shifting from zero COVID to safe adaptation, promoting economic developments*, 09/2021, <https://tuoitre.vn/thu-tuong-chuyen-tu-khong-co-covid-sang-thich-ung-an-toan-thuc-day-phat-trien-kinh-te-20210925164521448.htm>

⁸⁰ See: Législation comparée - Le régime de l'état d'urgence (Allemagne, Belgique, Espagne, Italie, Portugal, Royaume Uni), Direction de l'initiative parlementaire et des délégations, Sénat, mars 2016; see also Chapter II of this Report: International experiences on regulation of state of emergency in the context of the COVID-19.

- *About measures to be applied in SoE in the context of COVID-19 pandemic prevention and control*

In the past two years of fighting against the COVID-19 pandemic, pursuant to the provisions of the Ordinance on SoE, the Law on PCID, Decree 71/2002/ND-CP guiding the implementation of the Ordinance on SoE together with other relevant legal documents, the State has put into application relatively effective measures to prevent and control the pandemic, such as social distancing, restricting mass gatherings, etc. The Law on PCID also includes stipulations on pandemic news reporting in the SoE. These measures, as analysed above, are an objective requirement when the State has to prioritize the pandemic prevention, protection of community interests, and people's safety and health. They affect and limit a number of human rights and citizens' freedoms, but they have proved certain positive effects in the fight against the pandemic. The use of such measures is in line with the spirit of the international conventions on human rights to which Viet Nam is a state party. During the fourth outbreak of the COVID-19 pandemic, based on an assessment of the pandemic situation for each locality, Viet Nam has applied social distancing measures. During that time, economic, political, cultural, and social activities were often delayed. A number of social distancing measures have been applied such as: factories, schools, churches, pagodas, tourist areas, scenic spots, entertainment places were temporarily closed; cultural, sports and tourism activities were temporarily suspended and mass gatherings of people, meetings and seminars were postponed (or transitioned from face-to-face to online); public transport activities, entry and exit across the country's borders were limited to the maximum. These measures affected the entire socio-economic life of the country, resulting in a large number of employees lose their jobs. This being so, the measures imposed had a strong impact on the guarantee of human rights and citizen rights in all fields. As a state party to the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), the measures that Viet Nam has taken in recent years to prevent and control the COVID-19 pandemic have always based on the principles of a limited time, proportionate, necessary, and non-discriminatory, in the spirit of the ICCPR and ICESCR.

- *About protecting the rights of the vulnerable during the COVID-19 prevention and control*

As analysed above, SoE in case of pandemic has different characteristics compared to other situations of SoE (such as natural disasters, riots), as the spread

of the pandemic does not exclude anyone. Measures applied to limit the COVID-19 pandemic recently have affected the daily life of individuals and businesses, especially the vulnerable.

In that context, although economy potential is still limited, the State of Viet Nam has policies to support businesses and people – including the vulnerable groups – that are affected by the pandemic⁸¹. For businesses, the Government has taken measures to extend tax payment and land rent for those affected by the COVID-19 pandemic according to Decree 41/2020/ND-CP dated April 8, 2020; reduce 15% of payable land rent in 2020 according to Decision 22/2020/QD-TTg dated August 10, 2020; reduce 30% of corporate income tax in 2020 for businesses, cooperatives and other organizations with total revenue not exceeding VND 200 billion according to Resolution 116/2020/QH14 dated June 19, 2020 and regulated in detail the implementation of such measures in accordance with Decree 114/2020/ND-CP dated September 25, 2020 of the Government. In addition, the Government also promulgated policies such as promoting the disbursement of public investment capital to support growth during the COVID-19 pandemic, reducing interest rates, suspending social insurance contributions, and trade union fees to reduce the burden on enterprises; restructuring debt terms, exempting/reducing loan interest to support businesses, as well as credit support packages from banks. The Government also reformed administrative procedures to fit the implementation capacity of people, businesses, and state agencies in the context of social distancing, shortened the time to approve the loan applications for businesses, etc. The COVID-19 pandemic has given rise to many social problems related to livelihoods, poverty, food insecurity and discrimination between migrant employees, people in pandemic areas, and infected people. The impact of the pandemic on migrant employees, informal employees, women, and other vulnerable groups is serious. Therefore, in 2020, with people (including vulnerable groups), the Government promulgated the policy to support social security according to Resolution 42/NQ-CP dated April 9, 2020 on support

⁸¹ Since 2020, the Government has taken a series of measures to support employees affected by the COVID-19 pandemic, such as Resolution 68/NQ-CP dated July 1, 2021 of the Government on a number of policies to support employees and employers facing difficulties due to the COVID-19 pandemic; Decision 23/QD-TTg of the Prime Minister on the implementation of a number of policies to support employees and employers affected by the COVID-19 pandemic, dated July 7, 2021; Resolution 116/NQ-CP on policies to support employees and employers affected by the COVID-19 pandemic, dated September 24, 2021; Decree 145/NQ-CP adjusting, amending, supplementing regimes, policies in anti-COVID-19, etc. See further at Nguyen Hung Quang – Nguyen Thuy Duong, *Thematic study: Evaluation of the implementation of Resolution 02/NQ-CP from the perspective of the private sector to improve the business environment and support post-pandemic recovery*, 2020, pages 20-30, USAID LinkSME.

measures and Decision 15/2020/QĐ-TTg stipulating the implementation of policies to support people facing difficulties due to the COVID-19 pandemic. About VND 62 trillion was disbursed to about 20 million employees whose jobs were delayed or lost due to the impact of the pandemic during this period⁸².

In 2021, before the heavy impacts of the fourth wave of the COVID-19 pandemic, the Government continued to issue a support package worth VND 26 trillion, including 12 support policies. This includes resources from the Social Insurance Fund, the Unemployment Insurance Fund and the Insurance Fund for Occupational Accidents and Disease. In addition, the Government has 5 times reduced electricity bills, electricity prices for people affected by the COVID-19 pandemic with a total reduction of about VND 17,000 billion⁸³. At the same time, the Government has also asked localities to reduce the price of clean water for people affected by the COVID-19 pandemic⁸⁴.

For women and children, as soon as the 4th wave of pandemic broke out at the end of April 2021, policies were promptly put in place to support children who are infected persons (F0), persons of close contacts (F1)⁸⁵, pregnant women, and people raising children under 6 years old. In addition to the policies of the State, there is also the contributions of the community with programs such as: donation of safety bags, food and food support; support scholarships of VND 3 million/school year for students who have lost their parents due to the COVID-19 pandemic until they finish high school; program to receive sponsorship and patronage for orphans with difficult circumstances due to the COVID-19 pandemic in Ho Chi Minh City. Along with that, many mental health and psychosocial care activities for children have also been implemented.

Initial assessments show that the policies promulgated during this period by the Government were quite timely, diversified and covered many groups, including those that rarely received support before. The policies did not only ensure social security to support people and businesses who have difficulties maintaining basic

⁸² National Economics University – JICA, *Report on Assessment of policies to cope with COVID-19 and recommendations*, Hanoi, 2020.

⁸³ Vietnam Electricity, Infographic: EVN reduces electricity prices and electricity bills in the 5th phase, <https://www.evn.com.vn/d6/news/Infographic-EVN-thuc-hien-giam-gia-dien-tien-dien-dot-5-9-134-28898.aspx>, 13/02/2022.

⁸⁴ Ministry of Health, *Urgently adjust clean water prices for people affected by the COVID-19 epidemic*, February 13, 2022, https://moh.gov.vn/tin-tong-hop/-/asset_publisher/k206Q9qkZOqn/content/khan-truong-ieu-chinh-giam-gia-nuoc-sach-cho-nguoi-dan-bi-anh-huong-dich-covid-19

⁸⁵ Ministry of Health, *Latest definition of COVID-19 cases: What is considered F0?*, December 29, 2021, https://moh.gov.vn/tin-lien-quan/-/asset_publisher/vjYyM7O9aWnX/content/-inh-nghia-moi-nhat-ve-ca-benh-covid-19-the-nao-uoc-coi-la-f0-

income, but also provided essential services during the pandemic such as remote medical examination and treatment, supporting HIV/AIDS patients, supporting students in disadvantaged areas⁸⁶.

b. Shortcomings and inadequacies

Although Viet Nam's legal system on SoE in general and SoE in pandemics in particular have been formed over the course of more than twenty years and is being continuously built and perfected, the unprecedented development of a pandemic like COVID-19, has revealed a number shortcoming and inadequacies in the legal system on prevention and control of pandemic in SoE, that have caused difficulties for the implementation of pandemic prevention and control in reality, specifically as follows:

- *About the concept of SoE*

The LNDs related to SoE gives no clear definition of SoE, but only lists the situations that can be declared as an SoE. Therefore, the promulgation of LNDs in pandemic conditions has faced much confusion.

In addition, there are a number of concepts in current legal documents that have similar connotations to the concept of SoE, such as the concept of “*state of urgency*” that have not been clearly explained and have not been distinguished in terms of connotation with the concept of “SoE”. This has caused many difficulties and obstacles in the implementation of measures to prevent and control the COVID-19 pandemic.

- *Regarding the legal form and content of the Ordinance on SoE*

The Ordinance on SoE was issued for more than 20 years. Since then, a series of legal documents with higher legal force have been promulgated with broader and more specific provisions than this Ordinance. For example, in addition to the Law on PCID as mentioned above, the Law on National Defense of 2018 stipulates that the SoE in relation to national defense is a social state of the country where there is a risk of a direct invasion, or an armed aggression or riot, but not to the extent of being declared a state of war. The use of the people's armed forces and the application of military measures in a state of war and state of national defense emergency shall comply with the orders of the State President.

⁸⁶ CSAGA and Oxfam, Research Report “*Quick Assessment of State Relief Reconstruction Programs Responding to the COVID-19 Pandemic from the Lens of Gender and the Rights of Vulnerable Groups*”, 2021.

The Law on Cybersecurity of 2018 stipulates in the direction that the Prime Minister shall consider, decide, or authorize the Minister of Public Security to consider, decide, and handle dangerous cyber security situations nationwide for each locality or for a specific goal.

The Law on Veterinary Medicine of 2015 stipulates that in case an animal pandemic spreads rapidly on a large scale, seriously threatening human life and health, or causing serious socio-economic damage, the Minister of Agriculture and Rural Development shall report to the Prime Minister to request the competent state agencies to declare SoE in accordance with the laws on SoE.

Thus, the Ordinance on SoE does not really meet the new conditions in our country today, requiring the upgrade of the Ordinance to a Law on SoE to ensure uniformity and consistency in the legal system.

- *Regarding the authority of some entities in the SoE in case of the pandemic*

Regarding authority, the Ordinance on SoE of 2000 assigns the responsibility for declaring SoE to the State President or the SCNA. The Ordinance on SoE also sets out measures to be applied in the SoE in each field: when there is a disaster, when there is a pandemic, and when there is a SoE for reasons of national security and social order and safety. In the field of health care, the Law on PCID and Decree 71/2002/ND-CP details the implementation of a number of articles of the Ordinance in case of major disasters or dangerous pandemics. During more than two years of the COVID-19 pandemic, these documents were used as the basis for the Prime Minister to issue a number of decisions and directives when administering COVID-19 prevention and control activities.

In accordance with the Constitution of 2013, the types of authority related to SoE are prescribed as follows:

- The authority to regulate SoE belongs to the National Assembly;
- The authority to declare and abolish the SoE belongs to the SCNA. In the event that the SCNA cannot hold a meeting, the authority to declare and abolish the SoE in the whole country or in each locality shall be vested with the State President;
- The authority to execute orders of general mobilization, local mobilization, orders to declare SoE and other necessary measures is vested with the Government.

In the Constitution of 2013, the Ordinance on SoE and the Law on PCID, there is no authority related to the regulation of SoE prescribed for the executive position of the Prime Minister individually.

It can be said that, *on the one hand*, the provisions on announcement of a pandemic of the Law on PCID are not equivalent and cannot substitute for the regulations related to SoE. Pandemic announcement and announcement/declaration of SoE (in case of pandemics) are very different, and accordingly, the level of declaration of an SoE when there is a pandemic must be much more serious than the announcement of normal pandemic. *On the other hand*, in terms of legal form, the Prime Minister's decisions and directives are only executive documents and must not contain legal regulations. However, some directives issued by the Prime Minister during the pandemic do in fact contain many legal regulations, including those that restrict human rights, for example Directive 16/CT-TTg of the Prime Minister. In this Directive, although it is not officially declared SoE in case of the COVID-19 pandemic, the measures applied under this Directive are special and exceptional and would under normal circumstances be impossible or very difficult to implement, especially on a large scale (Directive 16 on social distancing for 15 days). Without considering the necessity of measures (because in fact the distancing measure at that time had a really positive effect in preventing the spread of the pandemic), the requirement of legitimacy, i.e., the legality of the measures according to Directive 16 is not achieved. The Government did not declare a SoE but applied special and exceptional measures that should have been put in place only in a SoE. This fact clearly shows that Viet Nam's legal system on SoE still has many gaps, contradictions, and contains unreasonable contents, which has made the Government's administration difficult in recent years.

One of the characteristics of SoE is its urgency. This is the characteristics that requires competent authorities to react quickly, strongly, and promptly to respond and minimize damage. These characteristics lead to the need to expand and give the authority to deal with SoE to the executive agencies headed by the Prime Minister. But the Constitution of 2013, the Ordinance on SoE, and the Law on PCID confer the authority (to declare, announce, terminate) related to SoE to the President or the SCNA - institutions that by their very nature cannot have quick and timely responses. Even the authority to execute the "order to declare SoE and other measures" of the Constitution of 2013 is also vested with the collective Government, not the Prime Minister individually.

Furthermore, the Constitution of 2013 assigns to the National Assembly the authority to regulate on SoE, which means that the National Assembly will promulgate these regulations in a legal document to apply in the SoE. However, at present, there is still a document in effect that is the Ordinance on SoE, which is issued by the SCNA, not the National Assembly. This is an existing reality that is not consistent with the provisions of the Constitution (the Constitution of 2013 has been in force for nearly 9 years).

From the above analysis, it can be seen that although Viet Nam has a number of legal regulations on SoE in general as well as SoE in some fields in particular (pandemic, national defense, etc.), these documents are not specified and still have a lot of gaps. There are many conflicting and overlapping provisions and some provisions are unreasonable, leading to confusion and inadequate implementation. These limitations suggests that there is a need to promulgate a LND on SoE to replace the Ordinance on SoE promulgated in 2000.

- *About the supervision mechanism*

As analysed above, the Ordinance on SoE assigns the People's Procuracy to supervise the compliance with the law in the SoE. However, since the Law on Organization of the People's Procuracy of 2002, the People's Procuracy no longer performs the general procuracy function (including the law observance function), but only has the functions of exercising the power to prosecute and control judiciary activities. Thus, the provisions of the Ordinance on SoE are in conflict with the current regulations on the functions of the Procuracy. The Ordinance on SoE was promulgated before the Law on Organization of the People's Procuracy of 2002 and 2014. This means that the provisions of the Ordinance in this field are no longer suitable both theoretically and practically. For this reason, there is a need to promptly amend this situation in order to ensure the establishment of an effective monitoring mechanism to respect, protect, and ensure human rights in the implementation in SoE in general and in SoE due to pandemic in particular.

- *Some other shortcomings*

The Law on PCID does not stipulate special measures to be applied in SoE. Currently, although there is no declaration of SoE on pandemics under the provisions of the Law on PCID, many measures being applied would also be used in the SoE, such as placing signboards, guard stations and instructions on travel by passing pandemic zones; request on disposal of means of transport before they leave pandemic zones, etc.

In addition, the Law on PCID and the regulations on measures to prevent and control pandemics stipulate a number of measures that are allowed when there is a pandemic without the need to declare SoE. This includes the organization of first aid and medical examination and treatment; the organization of medical isolation; restrictions on entering and leaving pandemic zones as normal anti-pandemic measures. Meanwhile, Decree 71/2002/ND-CP sets out special measures to be applied in SoE in the context of dangerous diseases. In addition, the measure “*limiting mass gatherings*” in the case of a normal pandemic situation as prescribed at Law on PCID and the measure of “*prohibiting mass gatherings*” in the SoE⁸⁷ does not have specific instructions. Accordingly, the application of measures to handle administrative violations during the recent pandemic period basically carries the connotation of the regulation prohibiting mass gatherings. This matter needs to be overcome through the amendment and issuance of new legal documents on SoE, ensuring the uniformity of the legal system. The normal pandemic prevention and control measures must be different from pandemic prevention and control measures in SoE.

In addition, the provisions related to the announcement of the pandemic and the announcement of the end of the pandemic do not correspond to present requirements. The concept of “*pandemic-affected areas*”⁸⁸ does not cover the case of pandemic occurring on a national scale, so it is difficult to apply it to anti-pandemic measures such as compulsory vaccination for people entering and leaving pandemic-affected areas. The pandemic announcement content⁸⁹ follows the way of announcing a pandemic-affected area, leading to the concern that the pandemic announcement will affect the local socio-economic development. There is no regulation for the case where a locality announces the end of the pandemic while the whole country announces the pandemic.

Due to the complicated development of the COVID-19 pandemic, many localities have to apply social distancing measures, restricting people from going out when not necessary. Therefore, the implementation of rights and obligations of people and businesses to the state is directly affected. Many state agencies are unable to perform their duties and powers in the fields that must be carried out directly at the grassroots, especially those activities subject to regulations on time limit⁹⁰ and

⁸⁷ Law on PCID, Article 52, clause 1, point c, Article 54, clause 2, point d.

⁸⁸ Law on PCID, Article 2, clause 4

⁸⁹ Law on PCID, Article 39

⁹⁰ Under Article 144, Civil Code 2015, time limit means a length of time calculated from one point of time to another point of time.

statute of limitations⁹¹. Meanwhile, the laws do not contain stipulations for cases where social distancing measures are applied to confront the pandemic as a force majeure event or an objective hindrance that is excluded from the time limit and statute of limitations.

⁹¹ Under Article 149, Civil Code 2015, statute of limitations means a time limit provided by law where, upon its expiry, a legal consequence arises as prescribed by law.

CHAPTER II – INTERNATIONAL EXPERIENCES ON THE REGULATION OF A STATE OF EMERGENCY IN THE CONTEXT OF THE COVID-19

1. Characteristics of the state of emergency and the state of emergency in case of pandemics according to international laws and regulations of some countries

The concept and characteristics of SoE are mentioned in international treaties on human rights, because the declaration of SoE often involves the risk of human right violations. ICCPR is of particular relevance in this regard, as it acknowledges that States may need additional powers to manage and address exceptional situations and circumstances. Article 4 of the ICCPR allows for a State to unilaterally derogate temporarily from a part of its obligations under the Covenant, but subject derogations as well as their consequences to a specific regime of safeguards. Under paragraph 1, Article 4, emergency measures must be limited to the extent strictly required by the situation. This key requirement pertains to the duration as well as geographical and material scope of the emergency measures and powers put in place.

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, adopted by the United Nations Economic, Social Council in 1984⁹², specifically state that restrictions must be:

- Provided for and carried out in accordance with the law;
- Directed toward a legitimate objective of general interest;
- Strictly necessary in a democratic society to achieve the objective;
- The least intrusive and restrictive available to reach the objective;
- Based on scientific evidence and neither arbitrary nor discriminatory in application; and
- Of limited duration, respectful of human dignity, and subject to review.

For States to invoke Article 4 of ICCPR, the situation at hand must meet two basic conditions: (1) the situation must amount to a public emergency that threatens the life of the nation, and (2) the State Party must have officially declared a state of

⁹² *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, United Nations, Economic and Social Council, 28 September 1984 (E/CN.4/1985/4)

emergency⁹³. When proclaiming a state of emergency that entails the derogation of human rights, the State further has to act within their respective constitutional and other legal provisions that govern the exercise of emergency powers. To be lawfully declared, a state of emergency needs be publicly and officially proclaimed, and the State must inform the affected population of the exact substantive, territorial and temporal scope of the state of emergency. In order for the public to be aware of any new legal rules, such information should be communicated in an accessible way and in all official languages, as well as many other languages widely spoken in the country as possible. A state of emergency should also be guided by principles of transparency and right to information.⁹⁴

Paragraph 2, Article 4 of the ICCPR explicitly states that no derogations can be sought from the following articles: article 6 (Right to life), article 7 (Prohibition of torture or cruel, inhuman or degrading treatment of punishment, or of medical or scientific experimentation without consent), article 8, paragraphs 1 and 2 (Prohibition of slavery, slave trade and servitude), article 11 (Prohibition of imprisonment because of inability to fulfil a contractual obligation), article 15 (The principle of legality in the field of criminal law, i.e. the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty), article 16 (The recognition of everyone as a person before the law) and article 18 (Freedom of thought, conscience and religion).

A fundamental condition for any derogation to be justifiable is that the measures envisaged do not involve or result in any form of discrimination on any grounds, such as race, colour, sex, sexual orientation and gender identity, disability, language, religion, political or other opinion, national or social origin, property, birth, or other status. In this regard, it should be noted that even though article 26 or other provisions relating to non-discrimination (Articles 2, 3, 14(1), 23(4), 24(1) and 25) are not listed among the non-derogable rights, there are core dimensions of the rights non-discrimination that cannot be derogated from under any circumstances, in particular those provided under clause 1, Article 4 of ICCPR referred to above.

⁹³ General Comment No.29, States of Emergency (article 4), Human Rights Committee, 31 August 2001 (CCPR/C/21/Rev.1/Add.11)

⁹⁴ Emergency Measures and COVID-19: Guidance, Office of the High Commissioner for Human Rights, 27 April 2020.

Another key condition for derogations under Article 4 is that any such measure cannot be inconsistent with the State's other obligations under international law. In other words, the provisions for derogation under Article 4 cannot be referred to as justification for derogation from the ICCPR if such a measure would be in breach of the State's other international obligations. This requirement is further reiterated under paragraph 2, Article 5, according to which there must be no restriction or derogation from any fundamental human rights recognized under other instruments under the pretext that the ICCPR does not recognize such rights or that it recognizes them to a lesser extent.

In addition, paragraph 3, Article 2 of the ICCPR requires States to ensure remedies for any violation of the provisions of the Covenant. While this requirement is not included in the list of non-derogable rights under paragraph 2, Article 4, the Human Rights Committee considers it a treaty obligation inherent in the Covenant as a whole. The rights recognized as non-derogable must be secured by procedural guarantees, including judicial guarantees. The Human Rights Committee has also established that the principles of legality and rule of law require that the fundamental requirement of fair trial must be respected during a SoE. Only a court of law may try and convict a person for a criminal offence and the presumption of innocence must always be guaranteed. Emergency measures, including derogation from human rights obligations, must further undergo periodic review by the legislature and any emergency legislation introduces should be subjected to adequate legislative scrutiny.

Under paragraph 3, Article 4, any State Party that avails itself of the right of derogation must immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations. This includes the provisions from which it has derogated and the reasons why such measures were introduced. The derogating State must also provide a further communication to the Secretary-General on the date on which it terminates such derogation.

Ultimately, the paramount objective of a derogating State must be to restore normalcy and full respect of all rights under the ICCPR as soon as possible. Although derogation or suspension of certain rights is permitted under international human rights law when such emergencies are declared, such measures should be avoided when the situation can be addressed through proportionate restrictions or limitation of certain rights. Even without formally imposing a SoE, States are authorized to introduce exceptional measures that

restrict the enjoyment of certain human rights in the interests of protecting public health, including freedom of movement, freedom of expression and peaceful assembly. In this context, it is important to recall that any such restrictions must be strictly time-bound and only apply on a temporary basis, with the aim being to restore full human rights enjoyments as soon as possible. Measures must also be based on the rule of law and meet the following fundamental requirements⁹⁵:

- *Legality*: The limitation must be contained in a national law of general application, which is in force at the time the limitation is applied. The law must not be arbitrary or unreasonable, and it must be clear and accessible to the public.
- *Necessity*: The restriction introduced must be necessary for the protection of one of the permissible grounds stated in the ICCPR, which include public health, and must respond to a pressing social need.
- *Proportionality*: The restriction must be appropriate to achieve its protective function; and it must be the least intrusive option among those that might achieve the desired result.
- *Non-discrimination*: No restriction shall be contrary to the provisions of international human rights law on non-discrimination.

In addition, any restrictions should be implemented and interpreted in a non-arbitrary manner and in favour of the rights in question. There should further be effective judicial oversight of the measures taken, as well as remedies for persons affected by the limitations. In all circumstances, the authorities have the burden of justifying any restrictions they impose on the protection and enforcement of human rights.

In order to declare SoE, countries can specify the characteristics of SoE in their constitutions or in relevant laws to determine the reasons why a SoE is declared, such as: the risk of war or the occurrence of war, serious threats to people's livelihoods, natural disasters, etc.⁹⁶ Constitutional recognition can be found in the Constitution of Sweden (one of the five countries studied) and many other

⁹⁵ Emergency Measures and COVID-19: Guidance, Office of the High Commissioner for Human Rights, 27 April 2020.

⁹⁶ Sean Molloy, *Emergency Law Responses to Covid-19 and the Impact on Peace and Transition Processes – Seventh Edinburgh Dialogue on Post-Conflict Constitution-Building 2020*, International IDEA – Edinburgh Centre for Constitutional Law – University of Edinburgh – PSRP, 2021, page 10.

countries⁹⁷. Legal recognition can be found in the Emergency Powers Act of Finland⁹⁸, the Law on SoE of France, the National Emergencies Act of the United States⁹⁹, and other countries¹⁰⁰.

If a SoE is stipulated in the constitution, this usually includes a general definition of the concept of the SoE, as well as the valid reasons for such a measure, such as war, war risk, natural disaster. Some countries have regulations on medical SoE, while others stipulate the SoE characteristics and specific obligations/powers in specific laws¹⁰¹. Some other countries do not define SoE specifically, but provide a general concept of SoE, such as the Russian Federation's Law on SoE of 2001¹⁰², and Canada's Emergencies Act of 1985¹⁰³.

The characteristics of SoE also vary between countries. Some countries distinguish different types of SoE in connection with the powers of the State, and the regulations and rules applicable to each type of SoE, such “state of exception”, “state of siege”, “state alarm”, etc.¹⁰⁴ Some countries provide regulations on types of SoE different from typical ones (war, natural disaster), such as state of serious economic crisis, the state of the stock market crashes in South Korea, India¹⁰⁵.

⁹⁷ Sean Molloy, *Emergency Law Responses to Covid-19 and the Impact on Peace and Transition Processes – Seventh Edinburgh Dialogue on Post-Conflict Constitution-Building 2020*, International IDEA – Edinburgh Centre for Constitutional Law – University of Edinburgh – PSRP, 2021, page 10.

⁹⁸ Emergency Powers Act, Section 2.

⁹⁹ National Emergency Act, Article 1601.

¹⁰⁰ Elliot Bulmer, *Emergency Powers – International IDEA Constitution-Building Primer 18*, International IDEA, 2018, page 15.

¹⁰¹ Sean Molloy, *Emergency Law Responses to Covid-19 and the Impact on Peace and Transition Processes – Seventh Edinburgh Dialogue on Post-Conflict Constitution-Building 2020*, International IDEA – Edinburgh Centre for Constitutional Law – University of Edinburgh – PSRP, 2021, pages 10, 11.

¹⁰² Cao Vu Minh, the Law on SoE of the Russian Federation and suggestions for Viet Nam, *Journal of Legislative Research* No. 10, May 2021. Accordingly, this Law introduces the concept of SoE as follows: “A SoE is a special legal regime [...], applicable throughout the territory of the Russian Federation or locally, allowing restrictions on rights and freedoms of citizens of the Russian Federation, foreigners, stateless persons, rights of social organizations and associations, or imposing additional obligations on these subjects”.

¹⁰³ See further at Annex I of this Report; *Loi sur les mesures d'urgence* (L.R.C. 1985), <https://laws-lois.justice.gc.ca/fra/lois/e-4.5/TexteCompleet.html>. This Act defines the term of “national emergency” as follows: “A national emergency is an urgent and critical situation of a temporary nature that (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada” (Article 3).

¹⁰⁴ Elliot Bulmer, *Emergency Powers – International IDEA Constitution-Building Primer 18*, International IDEA, 2018, page 15.

¹⁰⁵ See further at Annex I of this Report; Elliot Bulmer, *Emergency Powers – International IDEA Constitution-Building Primer 18*, International IDEA, 2018, page 16.

A review of the characteristics of SoE in several countries shows that regulations on SoE are necessary for each country and are often provided for in the constitution or documents promulgated by the National Assembly. There might be certain differences between countries in the characteristics of SoE, but the characteristics must all be in line with the ICCPR as mentioned above. As already discussed, the consequence of declaring a SoE is that the States are entitled to restrict some acts and rights of citizens (or derogation of rights). In addition to the ICCPR, ICESCR provides the primary legal framework for protecting the enjoyment of the highest attainable standard of physical and mental health. The Convention covers economic, social, and cultural rights which act as basis and contribute to the health, such as: the right to education; the right to an adequate standard of living, including adequate housing, food, water, and sanitation; the right to social security; the right to work as well as the right to culture. The ICESCR does not include a restriction provision, therefore, the recognition of rights set out in the ICESCR, which includes rights to food security, health, housing, social protection, water and sanitation, education adequate standard of living remains in effect even during period of SoE.

During the recent COVID-19 pandemic prevention and control period, countries have different ways of declaring or not declaring a SoE, depending entirely on the constitutions or laws of the countries which define whether the COVID-19 pandemic is the reason to declare SoE or not¹⁰⁶. According to statistics, only 110 countries and territories have declared “SoE” with different measures applied afterwards¹⁰⁷. Of the five countries studied (Finland, Germany, South Korea, Sweden, and Taiwan), Finland has made an emergency declaration and Germany has made an emergency brake¹⁰⁸. The remaining countries and territories did not declare SoE, but only applied different strict measures to conduct pandemic prevention and control.

In addition to the ICCPR, ICESCR also sets forth standards for the realization of economic, social, and cultural rights. Accordingly, the rights must be: (i) Adequate; (ii) Be physically and geographically accessible, on a non-discriminatory basis, and

¹⁰⁶ The Conversation, *State of emergency: how different countries are invoking extra powers to stop the coronavirus*, 2020, <https://theconversation.com/state-of-emergency-how-different-countries-are-invoking-extra-powers-to-stop-the-coronavirus-134495>, last accessed on December 15, 2021.

¹⁰⁷ International Center for Not-For-Profit Law, *COVID-19 Civic Freedom Tracker*, <https://www.icnl.org/covid19tracker/>, last accessed on December 15, 2021.

¹⁰⁸ See further at Annex I of this Report.

reasonably accessible to all; (iii) Acceptable, including respect for medical ethics, culture, and gender; and good quality¹⁰⁹.

To fulfil their obligations under the ICESCR, countries must: respect (not infringe), protect (protect from harms by third parties, including the private sector) and implement (take active measures to realize) these rights. States are also obliged to implement these rights progressively step by step, to the fullest extent of their available resources, through domestic action as well as international assistance and cooperation. For economic, social, and cultural right groups, only the right to strike and the right to work can be suspended.¹¹⁰

Thus, according to the ICCPR and ICESCR frameworks, the temporary suspension of some civil and political rights during SoE is justified and necessary, but the temporary suspension of economic, cultural, and social rights is rarely accepted¹¹¹.

2.2. Conditions, authority and procedures for declaring and terminating the state of emergency

The conditions, authority and procedures for the declaration and termination of SoE in the studied countries and other countries display a number of similarities as well as differences.

a. Similar characteristics in terms of conditions, authority and procedures for declare and terminating the SoE

- **Conditions for declaration:** War, the risk of war and natural disasters are considered valid reasons and conditions for promulgating the SoE. All 5 countries studied and some others, such as India, Afghanistan, Estonia, Kenya regulate the same condition¹¹². In addition, countries also set the condition that the promulgation of SoE must be based on the provisions of the constitution or laws. The duration of applying necessary measures under the declaration of the SoE must be clear and as the shortest possible. For example, the Federal Republic of Germany promulgated the Law on “temporary” SoE (Fourth Act) on April 23, 2021, which was only

¹⁰⁹ General comment No. 14: The right to the highest attainable, Article 12 of ICESCR.

¹¹⁰ Müller, *Limitations to and Derogations from Economic, Social and Cultural Rights*, page 601.

¹¹¹ Manisuli Ssenyonjo, *Economic, Social and Cultural Rights: An Examination of State Obligations* in: Sarah Joseph và Adam McBeth (Ed), *Research Handbook on International Human Rights Law*, Edward Elgar, 2010, page 38.

¹¹² See further in the Annex I of the Report; Elliot Bulmer, *Emergency Powers – International IDEA Constitution-Building Primer 18*, International IDEA, 2018, page 16.

applicable until June 30, 2021¹¹³. Likewise, Finland declared the SoE on March 1, 2020 but ended it on April 27, 2020. Both countries reviewed the measures to ensure that they are consistent with their human rights and non-discriminatory commitments.

- **Authority on declaration and termination:** 5 studied countries and a number of other countries have determined that the competent authority to declare, extend and terminate the SoE is mainly the head of the state (president) or national legislative agencies (assembly, parliament)¹¹⁴ or prime minister¹¹⁵. However, the competent agency with the authority to determine the need to declare the SoE is usually the executive branch. When the executive agency determines that it is necessary to issue the SoE, it proposes the competent agency to make the declaration¹¹⁶.
- **Procedures for declaration and termination:** Procedures for declaring and terminating the SoE depend on the authority to declare and terminate the SoE. For example, if the president declares the SoE, the process will follow the procedure of the president. If the National Assembly (parliament) declare the SoE, it will follow the promulgation procedure of the parliament.

b. Differences in terms of conditions, authority and procedures for the declaration and termination of the state of emergency

- **Conditions of declaration:** There are 110 countries that have approved communicable disease status is a reason to declare the SoE¹¹⁷. In our sample group, Finland and Germany are the two countries that approved the declaration of the SoE in case of the COVID-19 pandemic. While the remaining 3 countries and territories (Sweden, South Korea and Taiwan did not declare the SoE as mentioned above) but only applied a number of

¹¹³ Library of Congress, *Germany: Uniform Federal COVID-19 "Emergency Brake" Introduced*, <https://www.loc.gov/item/global-legal-monitor/2021-04-27/germany-uniform-federal-covid-19-emergency-brake-introduced/>, last accessed on December 15, 2021

¹¹⁴ See further at the Annex I of the Report; Elliot Bulmer, *Emergency Powers – International IDEA Constitution-Building Primer 18*, International IDEA, 2018, page 16.

¹¹⁵ International Center for Not-For-Profit Law, *COVID-19 Civic Freedom Tracker*, <https://www.icnl.org/covid19tracker/>, last accessed on December 15, 2021; Elliot Bulmer, *International IDEA Constitution-Building Primer 18*, International IDEA, 2018, page 37.

¹¹⁶ Elliot Bulmer, *Emergency Powers – International IDEA Constitution-Building Primer 18*, International IDEA, 2018, page 16.

¹¹⁷ International Center for Not-For-Profit Law, *COVID-19 Civic Freedom Tracker*, <https://www.icnl.org/covid19tracker/>, last accessed on December 15, 2021.

pandemic prevention and control measures that affect human rights. Researching other countries, the result shows that the French law stipulates that the government is only entitled to declare the SoE if it meets all 3 following criteria: (i) the prevalence of the patients in the general population must be more than 250 per 100,000; (ii) for people over 65 years old, the prevalence of the patients in the general population must be more than 100, and (iii) the proportion of COVID-19 patients requiring intensive care beds must be more than 60%. Thus, a number of countries determine specific quantitative criteria, based on which the competent authority declares at what time and within which territory the SoE will be applied.

- **Review mechanism:** Some countries and territories have a mechanism to review whether the order on declaring the SoE is in accordance with the constitution and laws through the Court (Germany, Korea), the National Assembly (Sweden, Taiwan)¹¹⁸ or the Ministry of Justice (Finland).
- **Supervision mechanism:** In some countries, such as Germany, Korea, Sweden, Taiwan, the Court has the right to review, supervise and/or recognize decisions on declaring the SoE and determine whether it is legitimate and consistent with the characteristics, conditions, and the authority on declaring the SoE. Some countries assign the National Assembly to this supervisory role. For example, in Germany, the National Assembly of the Federal Republic of Germany has implemented a number of high-level epidemic prevention and control measures since March 28, 2020. These have been extended many times over the past 20 months under the authority the Parliament¹¹⁹.
- **Notify the United Nations:** As analysed above, any Member State that adopts measures that derogate from their human rights obligations under the ICCPR (including provisions that restrict rights and why such measures are introduced) shall promptly notify the other States Parties on the restriction and the date of termination of the restriction through the United Nations Secretary-General under the regulations of the ICCPR. However, in 110 countries have issued the SoE, not many countries have carried out the procedure to notify the United Nations when applying measures to limit

¹¹⁸ Elliot Bulmer, *Emergency Powers – International IDEA Constitution-Building Primer* 18, International IDEA, 2018, page 37.

¹¹⁹ Reuters, *Germany's pandemic state of emergency to end Nov. 25 – Bild*, <https://www.reuters.com/world/europe/germanys-pandemic-state-emergency-end-nov-25-bild-2021-10-18/>, last accessed on December 15, 2021.

human rights based on the ICCPR. In addition, depending on the limitations on human rights in the declaration on the SoE, the content of the notification to the United Nations is different¹²⁰, as in the case of Finland (see further in the Annex I).

2.3. Enforcing the state of emergency to prevent and control the COVID-19 pandemic in some countries

When declaring the SoE, the authority of the state is supplemented one or all the following main areas: (i) the temporary restriction or suspension of some constitutional human rights; (ii) the concentration of power in the executive branch, and centralization of power in the central government; and (iii) in some cases, the postponement of elections¹²¹.

As mentioned above, when the COVID-19 pandemic broke out in the world, a number of countries applied some measures to prevent and control the pandemic with one or several measures that affected some basic human rights such as restricting movement, restricting gatherings, restricting freedom of expression or affecting privacy by means of "lock down", "social distancing" or "requiring medical declaration", etc. According to statistics, 58 countries have measures affecting the "right to freedom of expression", 153 countries have measures affecting the "right to freedom of assembly", and 61 countries have measures affecting the "right to privacy" of citizens¹²². As mentioned, countries will self-review their pandemic prevention and control measures to determine the level of impact on the ICCPR to decide to notify the United Nations or not. International experiences show that some countries have limited even fair trial rights – which is not consistent with the provisions of Article 4 of the ICCPR¹²³. In addition, during the SoE in case of diseases such as the COVID-19 pandemic, some countries have temporarily suspended the exercise of a series of basic rights,

¹²⁰ Centre for Civil and Political Rights, *States of Emergencies in Response to the Covid-19 Pandemic*, <https://datastudio.google.com/reporting/1sHT8quopdfavCvSDk7t-zvqKIS0Ljiu0/page/dHMKb>, last accessed on December 15, 2021

¹²¹ Elliot Bulmer, *Emergency Powers – International IDEA Constitution-Building Primer* 18, International IDEA, 2018, page 7 and 8

¹²² International Center for Not-For-Profit Law, *COVID-19 Civic Freedom Tracker*, <https://www.icnl.org/covid19tracker/>, last access on December 15, 2021.

¹²³ Gross and Aolain, *Law in Times of Crisis: Emergency powers in theory and practice*, page 267.

including economic, social, and cultural rights - which is not compatible with ICESCR.¹²⁴

In the 5 studied countries, when the COVID-19 pandemic occurred, all countries assigned the executive branch extra power to proactively take measures to prevent and control the pandemic. At the same time, the National Assembly and Courts in these countries continued to work normally and remained in charge of supervising the activities of the executive agencies. The activities of these agencies can take place in person or online (see further in Annex I).

To respond to the COVID-19 pandemic, the 5 countries all determined the agency responsible for developing pandemic prevention and control plans to be the health authorities. Proposals from health authorities on the application of measures related to human rights are sent to the Government for decision and monitoring agencies (Parliament or Court) in accordance with national legislation. In Germany which is a federal state, the central agency was assigned an active role in pandemic prevention and control at the national scale, but also had agreements and exchanges with the state government. All 5 countries focused on publicity and transparency of information in pandemic prevention and control to enhance public trust and take measures to fight fake news and misinformation about the pandemic.

In other countries, in order to fulfil the requirements of the State in applying the SoE, some countries use the civilian armed forces (police) to perform the task of maintaining the social order. However, many countries that have declared the SoE use the military to support law enforcement. These measures should be applied for limited periods of time and in specific context. Where the military is allowed to perform law enforcement functions, they are subject to civilian powers and are responsible for their actions under civil laws. Their activities are subject to applicable standards of law enforcement under international law¹²⁵.

The 5 selected countries have adopted a range of policies and strategies to limit the impact of COVID-19 and ensure their compatibility with international laws. Finland and Sweden provide noticeable experiences, as while these two are very

¹²⁴ Such as right to privacy, right to freedom of movement, right to health, right to non-discrimination, right to work, right to access mandatory vaccines, etc. Please visit: Amnesty International, *Responses to Covid-19 and States' Human Rights Obligations: Preliminary Observations*, (2020).

¹²⁵ Sean Molloy, *Emergency Law Responses to Covid-19 and the Impact on Peace and Transition Processes – Seventh Edinburgh Dialogue on Post-Conflict Constitution-Building 2020*, International IDEA – Edinburgh Centre for Constitutional Law – University of Edinburgh – PSRP, 2021, page 21; Elliot Bulmer, *Emergency Powers – International IDEA Constitution-Building Primer 18*, International IDEA, 2018, page 7.

similar countries in terms of governance and population size, they decided to tackle the COVID-19 crisis in quite different ways. While Finland was early and quick in introducing relatively wide-ranging measures, including travel restrictions and social distancing, Sweden endeavoured to keep society and the economy open as much as possible, despite the challenges posed by the pandemic. Despite their differences, what the two countries have in common is that they try to prioritize non-emergency measures before adopting stronger measures that have an impact on human rights.

Germany provides an example of a large federally governed country that has resorted to relatively comprehensive measures to control the pandemic. As two economically dynamic countries in Asia, South Korea and Taiwan have generally been seen as having found ways to successfully address the COVID-19 pandemic by using targeted measures to limit the spread of the disease and its socio-economic impact.

After the outbreak of COVID-19 affected the global economy, states quickly took finance measures to support people, businesses, and other measures to overcome difficulties from the pandemic. In all the 5 countries here studied, the governments quickly promulgated a number of business rescue packages for businesses and people. Depending on the characteristics of each country, countries have specific economic support measures. For example, Finland focuses on supporting some sectors that are heavily affected by COVID-19, such as the shipbuilding industry, maritime industry and food and beverage service. Sweden focused more on vulnerable groups besides supporting people and businesses in general. In addition to government agencies, Courts of other countries also have measures to support enterprises in restructuring and debt settlement for insolvent businesses¹²⁶.

In the 2 countries that declared a SoE, the authority, order, and procedures for promulgating and applying measures in the SoE were implemented as follows:

- The Finnish government declared a SoE and decided to resort to the 1991 Emergency Powers Act to control the situation on March 16, 2020 and again on March 1, 2021. The Government of Finland has the authority to declare a state of emergency under the Emergency Powers Act 1991. The SoE

¹²⁶ INSOL International and World Bank, Global Guide: Measures adopted to support distressed businesses through the COVID-19 crisis, Finland, Sweden, South Korea, Germany, https://insol.azureedge.net/cmsstorage/insol/media/documents_files/covidguide/30%20april%20updates/2-covid-map-17-may.pdf, last accessed on December 16, 2021.

declared was approved by the Government and Prime Minister of Finland through an Ordinance implementing the Emergency Powers Act 1991, after having been approved by the Finnish Parliament. The measures thus imposed included the following:

- (i) Closing all schools;
 - (ii) Closing most government-run public facilities (theatres, libraries, museums, etc.);
 - (iii) Regarding critical/essential personnel, exceptions were made to the provisions of the Working Hours Act and the Annual Holidays Act in both the private and public sector;
 - (iv) The number of participants was limited to max 10 people in a public meeting and people over 70 years old should avoid physical contact (if possible);
 - (v) Outsiders were forbidden from entering healthcare facilities and hospitals, excluding relatives of critically ill people and children;
 - (vi) The capacity of healthcare and social welfare services was increased in the public and private sectors, non-urgent activities will be reduced;
 - (vii) Preparing for border closure; citizens or permanent residents returning to Finland were subject to a 2-week quarantine;
 - (viii) A separate Act of Parliament (Act 153/2020) was enacted to close restaurants, allowing only for take-out orders. A number of urgent support measures were introduced, the most direct support being a financial support package of 15 billion euros for individuals and organizations affected by the Covid-19 pandemic and the elimination of the waiting period for claiming unemployment benefits. Freelancers and sole traders were also allowed to claim such benefits.
- The German Parliament issued a temporary SoE in response to the pandemic. It also issued orders to prevent and control the COVID-19 from March 28, 2020 which were continuously extended many times over a period 20 months¹²⁷. Most recently, at the end of August, the Federal

¹²⁷ Reuters, *Germany's pandemic state of emergency to end Nov. 25* – Bild, <https://www.reuters.com/world/europe/germanys-pandemic-state-emergency-end-nov-25-bild-2021-10-18/>

Parliament extended this status for another 3 months. The regulation was set to automatically expire if the Government did not propose the National Assembly to continue extending it. With the promulgation of the SoE, the Federal Republic of Germany applied the following measures:

- (i) Promulgating ordinances on vaccination, immigration or management of COVID-19 patients in intensive care, as well as on treatment capacity and the number of available intensive care beds throughout Germany.
- (ii) When the SARS-CoV-2 virus spread widely in Germany last year, the Parliament passed the Law on PCID (amended) with new legal bases to strengthen the legal framework for fighting the COVID-19, which was declared a "national epidemic situation". The law also empowered the federal government to take measures to prevent and control the pandemic. With this regulation, the federal Minister of Health can issue many regulations by ordinances without Parliament's approval. The federal Ministry of Health also recommends continuing to maintain basic epidemic prevention measures, such as maintaining AHA+L regulations (abbreviated for: keeping distance, epidemiological hygiene, wearing masks and ventilation), and 3G rules (vaccinated, recovered, tested) to allow the public to enter certain places and events.
- (iii) Germany is also one of the countries with the strongest financial support for operating businesses and start-ups, with up to 600 billion euros, of which 400 billion euros are for supporting obligations of debts of businesses¹²⁸. Germany also provides an amount of money for workers who have not been vaccinated but who must isolate for at least 5 days after they are in contact with an infected person or have returned from high-risk areas in other countries. Meanwhile, those who have been vaccinated are not required to be isolated.

2.4. Some comments and lessons learned for Viet Nam

According to the experience of 5 countries/territories studied in Annex I of the Report, the Research team found that in the process of responding to the impacts

¹²⁸ Bundesrepublik Deutschland Finanzagentur GmbH, *Economic Stability Fund*, <https://www.deutsche-finanzagentur.de/en/economicstabilisation/>

of the COVID-19 pandemic, in the group of 3 European countries and 2 Asian countries, there are 3/5 countries/territories (Korea, Sweden, Taiwan) that opted to respond to the impacts of the COVID-19 pandemic in accordance with current laws. This being so, they decided to amend and supplement the provisions of the laws on medical issues so that on the basis of these regulations, pandemic prevention and control were implemented within existing frameworks, instead of declaring SoE in case of pandemic. However, in all cases, most countries adopted the policy of “blockade” and “social distancing” as a good practice in the prevention and control of COVID-19 instead of just limiting “mass gatherings” as in the case of Sweden.

It should also be noted that all 5/5 countries/territories studied have promulgated, amended, or supplemented legal documents in the field of health, public order, or promulgated a separate law on COVID-19. They have also ensured the “legality”, “proportionality”, “non-discrimination” of the issued documents. Sweden does not have a regulation on SoE in case of pandemic, and as a result in the initial pandemic prevention phase, the regulations under the Public Order Act and the Law of Communicable Diseases Act were applied. The new COVID-19 Act was only promulgated after the pandemic situation had become more complicated. In the case of Korea and Taiwan, these two Asian countries/territories have had previous experiences in dealing with infectious diseases (MERS, SARS, etc.) so the legal framework on infectious diseases has been rather completed, which only required modification and supplementation to appropriately respond to the COVID-19 pandemic. Even so, many documents and policies in Korea and Taiwan were still issued to promptly deal with the crisis caused by COVID-19.

In addition, none of the countries studied has made notification in accordance with Article 4 of the ICCPR. The States consider that the restrictions on civil and political rights in response to the impact of the COVID-19 pandemic in their country comply with the current legal framework which has been regularly reviewed and evaluated by the United Nations. At the same time, the COVID-19 pandemic is also global in nature, and WHO has continued to issue recommendations about the level of danger. The application of "blockade" or "social distancing" policies is a common and good practice implemented by most countries when vaccines are not available or less effective during the emergence of Delta variants, or when the number of COVID-19 cases and mortality rates of COVID-19 increased at an alarming rate. Therefore, this is also good practice for Viet Nam to introduce similar measures of "blockade" or "social distancing" after considering factors of legality, necessity, symmetry, and non-discrimination.

As a result, Viet Nam can choose the approach of declaring or not declaring SoE in case of COVID-19 pandemic. In the event of a declaration in case of pandemic, it is necessary to empower the law enforcement agencies to ensure that measures are enacted and implemented in a timely manner to respond to the impacts of the pandemic. In the absence of declaring SoE in case of pandemic, it is necessary to promulgate, amend and supplement legal provisions to allow strong measures such as "blockade" or "social distancing" in the context of current pandemic prevention and control situation. In addition, the experiences of the studied countries show that strong financial support is needed to support people and businesses in overcoming the difficulties caused by the pandemic and recovering after the pandemic. The importance of rigorous judicial oversight and institutional monitoring was also clear from the countries' experiences.

CHAPTER III – CONCLUSIONS AND RECOMMENDATIONS FOR THE COMPLETION OF THE LAWS ON STATE OF EMERGENCY FOR RESPONSE TO THE COVID-19 PANDEMIC

WHO, numerous scientists and nations assume that it will be impossible to bring COVID-19 under total control until 2023¹²⁹. Therefore, to implement the objective of “*Safety adapting with both efficient prevention and control over the pandemic and socio-economic recovery and development, ensuring to calm the people down, ensuring people’s life and welfare, social order and safety*”, it is necessary to study, review, evaluate, and find relevant plans to improve the legal provisions on SoE so as to meet this objective.

Through the study and assessment of Vietnamese policies and laws as well as international experiences on SoE and measures for COVID-19 prevention and control, the Research Team has arrived at some conclusions including:

- It is necessary to promulgate a separate law on SoE since Constitution of 2013 only addresses the authority to declare SoE and some conditions of principle nature that the State may limit human rights. The Ordinance on SoE and Law on PCID of 2007, which were promulgated before Constitution of 2013, still comprise some provisions that are not in line with regulations of Constitution of 2013, as well as the practical context. International experience has showed that following the COVID-19 pandemic outbreak, several nations, including Viet Nam, have revealed gaps, deficiencies, or irrelevancies in their legal system to respond to the pandemic situation. Legislative bodies in several countries have had to promptly promulgate a law on SoE to respond to the COVID-19 pandemic and also set forth certain conditions to restrict the emergency rights under the constitution of each country.
- The introduction of an overall definition on SoE and the concrete characteristics of SoE in a legal document depends on the national political and legal system. International experience shows that when the objectives of SoE application affect the enjoyment of human rights, many countries have stipulated specific and clear conditions in the legal documents promulgated by legislative bodies to avoid overuse and ensure social

¹²⁹ VOV, *When will COVID-19 end in the world and become an endemic disease?*, November 4, 2021, <https://vov.vn/the-gioi/quan-sat/khi-nao-COVID-19-se-cham-dut-tren-the-gioi-va-tro-thanh-benh-dac-huu-902743.vov>; McKinsey&Company, *When will the COVID-19 pandemic end?*, August 23, 2021, <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/when-will-the-COVID-19-pandemic-end>.

stability. The legal documents on SoE could create *the legality and necessity* of any order on SoE and also set out the principle of *proportionality* and *non-discrimination* in application of SoE. The scope of SoE has been further expanded in several countries to go beyond a previous focus on wars and natural disasters. Some countries also supplement the regulations on the state of severe economic crisis or the risk of a securities market crash.

- Although several countries have declared SoE in response to the COVID-19 pandemic, most nations and territories are very careful in declaring SoE. Some countries and territories that do not declare SoE have chosen to respond to the COVID-19 impacts in accordance with their applicable laws or selected to amend and supplement medical laws to implement disease prevention and control tasks on this basis instead of issuing SoE for the pandemic. Some other countries distinguish types of SoE including state of exception, states of siege, state of alarm, etc. In the recent period of COVID-19 prevention and control, Viet Nam also mentions “state of urgency” but does not provide specific concepts or characteristics of this state. Therefore, it is noteworthy that the developed legal documents on SoE should address the levels of abnormal states of the country and attach the response with specific authorities in the state apparatus.
- A common point has been found in the policies and laws of the countries declaring SoE in the recent period, namely the authorization permitting the Government to: (i) temporarily limit or suspend some (not all) constituted human rights; (ii) concentrate power to the executive bodies and focus on the central government; (iii) possibly postpone election in some specific circumstances. In the case of COVID-19 pandemic prevention and post-pandemic economic recovery, the central government of countries still plays a key role during the application of SoE. If the armed forces are relied on to support the fight against pandemic, the armed forces are placed under the Government’s management to operate under civilian laws, rules and regulations. The COVID-19 pandemic has also revealed the difficulties of multi-level state governance structure, such as the coordination between the central government and local government. In this regard, it requires harmonious solutions for this relationship. Viet Nam has also faced similar difficulties. However, the policies and laws of Viet Nam have proven appropriate and largely correspond to the response measures of other countries. Viet Nam was determined to organize the election of the People’s

Council delegates at all levels and the National Assembly delegates in the time designated. The Government of Viet Nam has been assuming the main responsibility in the prevention and control against the pandemic.

- Our study of international experiences also shows that even when some countries do not declare SoE in the prevention and control against COVID-19 pandemic, once they apply the measures for fighting the pandemic that may affect human rights, they still need to ensure the principle of *legality, necessity, proportionality, and non-discrimination*. Whether they declare SoE or not, if they apply some measures that affect human rights, the countries usually set a limit for the application duration and provide for a mechanism to check the authority and conditions for issuance of such measures through legislative bodies or courts. They also have a mechanism for supervising the implementation to ensure they are not against the international legal provisions on human rights (ICCPR and ICESCR).
- The COVID-19 pandemic in the era of information technology has led several countries to apply necessary measures to handle the dissemination of incorrect information about COVID-19. However, these measures should be designed and introduced diligently to ensure that they do not result in undesired or unnecessary restrictions on the right to free speech and the right to information. It is recommended by international organizations that countries should avoid criminal penalties for acts of information infringement and give priority to the use of less severe sanctions against the dissemination of incorrect information, including education and dissemination on the mass media.
- Another experience worth noticing is that, in situations where a SoE has been declared or where strong preventive measures (isolating or distancing) have been put in place, the courts of most countries still work normally to exercise judicial supervision and ensure the right to fair trial.

From the conclusions drawn above, the Research Team hereby proposes some recommendations as follows:

First, develop and issue a law on SoE

The recent practice of prevention and control against the COVID-19 pandemic shows the urgent need to develop a law on SoE to ensure that the disease fighting measures that may limit human rights or citizen rights must be prescribed by laws, which is accordance with the Constitution of 2013. The revision and development

of the Ordinance on SoE into a law on SoE also aims to ensure the synchronicity and consistency of the legal system and to create a more complete legal background to exercise necessary state measures in emergency situations.

The Law on SoE will be a general law on SoE and on basis of the general principles established by this law, separate laws can govern specific areas or circumstances that require specific regulations on SoE. For instance, SoE due to diseases could be governed in the Law on PCID, SoE due to natural disasters could be governed in the Law on Natural Disaster Prevention and Control; SoE relative to matters of security and national defense in the Law on National Defense, Law on National Security.

Drawing on international experience and practice in Viet Nam in disease prevention and control, in the event that Viet Nam promulgates the Law on SoE, the following contents should be well addressed:

- *The situations in which SoE may be declared:* Natural disasters, risk of war, war, disease. An urgency due to technological risks (leakage of nuclear power, etc.), economic or financial factors (economic crisis, crash of securities market, etc.) are exceptional situations that need to be considered in the economic development context.
- *Characteristics, criteria (quantitative and qualitative criteria) of circumstance to classify “situation” or “level” of exceptional situations,* such as: “Urgent case”, “pre-emergent situation”, “State of Emergency” and other situations, so as to provide appropriate responses by the state for each specific situation.
- *The scope and level of restrictions on human rights, the mechanism to protect legitimate rights and interests of the people, organizations/businesses for each “situation” or “level” of SoE.* It is suggested to put in place mechanisms to protect human rights and citizen rights, while ensuring *proportionality, non-discrimination* in application of state measures in declaring SoE or in the decision to apply state measures to other levels. For instance, the supporting policies applied in SoE should give priority to vulnerable groups or the geographic areas, business areas that suffer the most damage from the circumstance causing SoE, by application of SoE, or from the decision to apply state measures.
- *Clear determination of the authority to declare a SoE and to determine each “situation” or “level” of SoE and the authority to permit the*

application of each measure, the competence to check and supervise the suitability and conformity of decisions and measures with the Constitutions and Laws. This Law should specify the authority and role in declaring SoE or each “situation” or “level” of SoE (the National Assembly, the President, the Government, Prime Minister, leaders of professional agencies at the central level, leaders of local authorities, etc.). Special attention should be given to the authority of the central agencies in the implementation of measures attached to the order to declare SoE or the decisions for each “situation” or “level” of SoE (the National Assembly, the President, the Government, the Prime Minister, Minister of Health, Minister of National Defense, etc.). This would ensure that the central agencies can give consistent direction. If a Steering Committee to manage the SoE is established, the sequence, procedure, and competence to establish the Steering Committee must be noticed, as must the relation between the Steering Committee at the central level and local level. The role of the armed forces, the role of the specialized agencies for the types of situations should be noted, etc.

- *Determination of internal relation between the legal documents enacted by competent state agencies after the country has declared SoE or decisions have been taken for each “situation” or “level” of SoE.* This includes regulations on priority when applying the legal regulation on SoE in relation to other laws, in the event of a SoE or application of a “situation” or “level” of SoE.
- *Identification of the time to apply SoE or a “situation” or “level” of SoE and procedures to annul or declare invalid an order to declare SoE or the decisions to apply a “situation” or “level” of SoE.*
- *Stipulation on special procedures related to the application of measures on human rights derogation after the country declares SoE or the decisions on a “situation” or “level” of SoE.*
- *Identification of the statute of limitations and time under other legal provisions.* It would be necessary to have specific guidelines and regulations on the time and statute of limitations in other laws when SoE is applied to protect legitimate rights and interests of the people, organizations, and businesses.
- *Stipulation on the development of strategies, planning, plans, and forecasts of different scenarios including the master scenario to mobilize and*

distribute resources, proactively meet sudden and urgent requirements for prevention, control, and recovery following natural calamities, disasters, fires, diseases and to serve national defense and security. The human resources and financial resources should be strong, large, and proactive enough to serve efficient implementation of emergency measures.

- *Development of a monitoring mechanism by the National Assembly, the Supreme People's Court, the Vietnam Fatherland Front and its member organizations on the implementation of measures that restrict human rights, and temporarily suspend the implementation of obligations under the ICCPR.* In addition, it is necessary to have specific regulations on the inspection and oversight of the role of the Government Inspectorate, the State Audit, etc. for the implementation of necessary measures when applying the order to declare SoE or the decisions on a “situation” or “level” of SoE.
- *Stipulation on the procedures to notify international organizations upon the declaration of SoE orders* in accordance with provisions of international human right laws and other international commitments of Viet Nam. Viet Nam is obliged under the ICCPR to inform other States Parties as well as formally notify the Secretary-General of the United Nations of decisions to derogate from its obligations under the Covenant.

Second, improve the legal system on prevention and control of infectious diseases

The Law on PCID of 2007 is currently the document with highest legal effectiveness in disease prevention and control, including dangerous diseases subject to the possibility for application of SoE due to diseases. However, the COVID-19 pandemic has proved that several regulations of Law on PCID of 2007 no longer meet today’s requirements, especially as regards the recent work on prevention and control against the COVID-19 pandemic. To realize the new objectives set forth by the Party and the State on prevention and control of COVID-19 and commence the “new normal” situation, the following priorities should be given attention before Viet Nam promulgates the Law on SoE as proposed herein:

- *Protect human rights during the application of measures for disease prevention and control:* The regulations on the prevention and control of the COVID-19 pandemic should continue to protect and support the people (including vulnerable groups), organizations, businesses (including

small/medium-size/large enterprises, etc.) when a situation of infectious disease may result in severe measures that may limit the realization of human rights. It is necessary to improve and promote the mechanism to handle problems and complaints by people and businesses during the application of disease prevention and control measures to assure their legitimate rights and interests. Besides, state agencies need to promote the protection of people's privacy in health declaration, certified infected persons (F0), persons of close contact (F1) in tracing, health declaration.

- *Improve the organization and operation of the Steering Committee for disease prevention and control:* It is necessary to develop the provision on the work relation between steering committees of all levels and the types of documents that the Steering Committees for disease prevention and control are entitled to issue. This includes plans to strengthen the Steering Committee in the case of declaring SoE on pandemics (if any).
- *Improve the regulations on competence and responsibilities of state agencies in the case of declaring SoE on pandemics, specifically on the COVID-19 pandemic.*
- *Improve the regulations on statute of limitations and time in accordance with provisions of the law in the case of declaring SoE due to COVID-19 pandemic or the application of measures preventing and controlling a pandemic in exceptional situations without applying the order to declare the COVID-19 pandemic.*
- *Specify the relation and legal effectiveness of documents issued by state agencies for disease prevention and control:* It is necessary to specify the relationship and legal effectiveness on documents on disease prevention and control.
- *Supplement regulations on implementation of some urgent tasks for disease prevention and control in special circumstances, for example: bidding, procuring medical equipment; purchasing, importing medicines, vaccines, medical products, etc.*

Third, improve legal documents in other areas to respond to SoE in general and SoE in case of pandemics

The recent practice of applying measures for prevention and control of the COVID-19 pandemic has proved the necessity to consider amending related legal documents including:

- *Adjustment of the manner in which work and procedures are managed moving from conventional, direct ways to more unconventional and indirect ways.* This includes studying, working, manufacturing, doing business, handling administrative procedures and public services (in which some tasks required to be done directly under applicable regulations, such as marriage registration, contract/transaction public notary, etc.), sanctioning administrative violations, case settlement at courts which promotes application of information technology.
- *Construction and promulgation of LNDs in SoE due to COVID-19 pandemic:* It is recommended that procedures are developed for developing and promulgating LNDs relevant to SoE and urgent situations. This would apply in case of diseases, national disasters, enemy-inflicted destruction, force majeure as well as in the time of prevention and control over the COVID-19 pandemic.
- *The regulations on criminal law response to acts of spreading dangerous infectious diseases to people need to be defined more clearly and specifically.* These regulations may inherit the guidelines by the Judge Council of the SPC in Official Dispatch 45/TANDTC-PC on adjudication of criminals relative to COVID-19 pandemic prevention and control and Directive 03/CT-VKSNDTC of the Supreme People's Procuracy dated April 3, 2020 on strengthening the exercise of prosecution rights and monitoring of judicial activities in handing criminals relative to the COVID-19 pandemic prevention and control.
- *Improvement of legal documents stipulating the mobilization and participation of socio-political organizations, socio-professional organizations, charity funds, social funds in disease prevention and control in support of COVID-19 pandemic prevention and control, as well as in natural disasters, fires, severe incidents, etc.*
- *Supplementation and improvement of relevant regulations pertaining to disease prevention and control in some Laws and guiding documents, such as: Law on Pharmaceutical, Law on Bidding, Law on Pricing, Law on Entry, Exit, Transit and Residence of Foreigners in Viet Nam (see Annex II)*

As the COVID-19 pandemic continues to spread, Viet Nam and the international community are striving to develop their policies with the “dual goal” of putting in place suitable measures for pandemic prevention and control, while at the same

time entering a “new normal” as soon as possible. In this context, it is urgently requested that Vietnamese Government consider preparing a Law on SoE, as well as consolidating and improving the current legal documents to respond to the COVID-19 pandemic./.

ANNEX I – PRACTICES ON RESPONSE AND THE STATE OF EMERGENCY DECLARATION TO RESPOND TO COVID-19 PANDEMIC IN SOME COUNTRIES/TERRITORIES

1. Finland

The Communicable Diseases Act establishes the obligations of the competent authorities and the cooperation principles between the competent authorities for the prevention of infectious diseases. The Government's Decree on infectious diseases has been revised by adding infectious diseases caused by the new Corona virus to the list of dangerous infectious diseases in general, effective on February 14, 2020.

However, on 16 March 2020, the Finnish government declared a state of emergency and decided to resort to the 1991 Emergency Powers Act to control the situation. In the four weeks following this decision several emergency decrees were issued and subsequently upheld by Parliament. The provisions of the Emergency Powers Act that were used relate to health care and social services (Sections 86-88), to educational institutions (Section 109), derogations from employees' rights concerning annual holidays, working hours and resignation (Sections 93-94), introducing compulsory work for health care professionals (Section 95 et seq.), and restrictions upon freedom of movement¹³⁰ (Section 118). The state of emergency was in force in Finland for three months. In addition to the emergency Decrees issued under the auspices of the Emergency Powers Act, a separate Act of Parliament (Act 153/2020) was enacted to close restaurants, save for take-out orders. This measure was introduced directly under the emergency clause (Article 23) of the Constitution, as an exception to the fundamental rights of property and free conduct of business. In response to the evolving situation, on 1 March 2021, the Government declared again that the country was in a state of emergency.

The Ministry of Social Affairs and Health is responsible for the general planning, guidance and monitoring of the prevention of infectious diseases. The Ministry has appointed a coordination group that plans, manages and coordinates measures in healthcare and social welfare to prevent the spread of the novel coronavirus. Under the Emergency Powers Act, the state authorities and agencies of municipalities must ensure that their duties are performed with the least amount of disruption also in emergency conditions. The principles of preparedness and

¹³⁰ Under Section 118 of the Emergency Powers Act, the Government has locked down the capital Helsinki and the vicinity of Uusimaa for three weeks

contingency planning in healthcare and social welfare are further elaborated on in a guidance document published in the spring of 2019.

The Finnish Government has not notified the Council of Europe under ECHR Article 15 or the United Nations under ICCPR Article 4 about derogating from those treaties. The prevailing view in Government has been that the emergency measures qualify as permissible limitations under human rights treaties and as such do not require notifications of derogation.

Good practices and lessons learned from the Finnish experience:

1. *Parliamentary oversight:* Throughout the pandemic, Parliament has remained in session and involved in day-to-day management of the emergency, even if this has not always been in the form of full legislative procedure. The Finnish Parliament has been able to remain operative by moving much of its work online.

2. *Focus on non-emergency measures:* The Finnish Government has largely made use of legal measures, including e.g. recommendations on social distancing and directives on e.g., distance learning, rather than the exercise of explicit emergency powers.

3. *Sunset clause:* Any emergency measures introduced are required to be of a temporary nature. The maximum duration is 6 months, but in practice the measures have remained in force for a shorter time. The measures are also to lapse automatically if they are not renewed by the Cabinet and reviewed again by Parliament.

4. *Constitutionality and human rights compliance of emergency measures:* In Finland, the Chancellor of Justice screens the legality of every decree before it is adopted by the Cabinet. Also, as part of normal parliamentary review, the standing Committee of Constitutional Law must review the constitutionality and human rights conformity of all emergency decrees. In this process, the Committee hears external constitutional experts whose legal opinions are made public. The decrees are also subjected to public scrutiny in a public constitutional law blog. Both the emergency clause in the Constitution and the Emergency Powers Act provide explicit clauses that require compliance with international human rights obligations.

2. Germany

In Europe, Germany is considered to be one of the countries which, thanks to its strong healthcare system, was relatively well-prepared for dealing with the pandemic and managed to put in place a swift response. The German Government has not considered a derogation from Human Rights treaties necessary and has opted to contain the pandemic within the limits of permissible and justified restrictions of international human rights obligations.

Germany is a federal republic and the COVID-19-related restrictions on human rights and everyday life have been promulgated as statutory instruments by the governments of the 16 German *Länder* or states that make up the federation. The states base their statutory instruments on section 32 of the 2001 Federal Act to Prevent and Fight Human Infectious Diseases. This provision empowers *Länder* governments to promulgate statutory instruments authorizing measures that, under certain conditions, restrict freedom of movement and freedom of assembly. While the *Länder* coronavirus statutory instruments differ, they also share common features, as the *Länder* act in close coordination with each other and the federal government and have put in place on common guidelines on how to manage the pandemic at the state level.

As a first step to address the unfolding COVID-19 pandemic, on 30 January 2020 the Federal Health Ministry of Germany issued a decree requiring local authorities to submit reports of any COVID-19 infections within their respective territories. In accordance with the principles of German federalism, the Federal Act to Prevent and Fight Human Infectious Diseases is primarily implemented at the state level by the *Länder*, which initially relied on it to impose measures by executive decrees designed to prevent the transmission of the Corona virus between humans, detect infections at an early stage, prevent their further spread and avoid overburdening of the health system. The measures introduced in February and March 2020 included physical distancing, contact restrictions, curfews, travel restrictions, bans or restrictions on meetings, closure of schools and universities, businesses, shops and restaurants, museums and theatres as well as sports and cultural facilities. Restrictions were further put in place on visits to hospitals, retirement homes and other social institutions. It was also made mandatory to wear a face mask indoors and outdoors in public. These measures were most often taken without the involvement of the federal and state parliaments.

There were considerable variations in the Länder decrees that allowed for exceptions or further restrictions. This diverse range of restrictions was eventually harmonized into a catalogue of standard measures. However, it is worth noting that all these measures were based on a general provision in paragraph 28 of the Federal Act to Prevent and Fight Human Infectious Diseases, which is intended to allow for individual measures in relation to infectious or possibly infectious people, rather than more far-reaching and broad-based measures that would concern the population at large, in the event of a pandemic. This legal situation complicated a comprehensive and systemic response to the crisis.

In 2020, Germany adopted three “Acts on the Protection of the Population in the Event of an Epidemic Situation of National Significance” that amended the Federal Act to Prevent and Fight Human Infectious Diseases and granted the Federal Health Ministry new powers to put in place COVID-19 measures by decree. Under the law, these powers were to be launched by a declaration by the Federal Parliament (Bundestag) of an “epidemic situation of national significance”. The temporary powers were further to be rescinded once Parliament declared the end of the epidemic situation. The acts also introduced a clearer legislative basis for the COVID-19 measures and provided an extensive catalogue of permissible measures to be implemented by the Länder.

On 23 April 2021, a fourth Act on the Protection of the Population in the Event of an Epidemic Situation of National Significance was adopted introducing a federal “emergency brake” under the Federal Act to Prevent and Fight Human Infectious Diseases that provides for uniform restrictions in all German states when the seven-day COVID-19 incidence in a county or independent city exceeds 100 for three consecutive days. The Fourth Act was adopted in an expedited procedure to curb the third wave of the COVID-19 pandemic. The Act expired on 30 June 2021.

In an effort to coordinate their COVID-19 response, the federal and Länder governments started to hold biweekly or monthly meetings of the heads of government under the leadership of Chancellor Angela Merkel. The decisions taken in these meetings were communicated in decrees by the Länder governments. The parliamentary role in this process remained modest and the involvement by the Federal Parliament has been limited to legislating some of the measures put in place by the executive.

The judiciary has continued to have an active role in scrutinizing the measures taken by the executive. For example, during the first lockdown governments

banned most religious services and all assemblies, including political demonstrations, even though they are constitutionally protected fundamental freedoms. The Federal Constitutional Court (FCC) ruled that these were excessively broad prohibitions, and that a less intrusive measure should be introduced instead. However, the FCC did allow that some demonstrations, where the participants clearly defied all hygiene regulations, could be prohibited.

Disinformation about the pandemic has been spread primarily via social media. The Network Enforcement Act requires providers of social networks with at least two million registered users in Germany to have the mechanism to receive complaints about violating content and to remove it if it constitutes a criminal offence. The German media authorities have not reported a significant increase in discrimination and stigmatization of marginalized groups in connection with COVID-19, that would have triggered regulatory intervention.

Good practice and lessons learned from the German experience:

1. *A coordinated approach:* from an initially somewhat fragmented set of responses, the federal and state authorities put in place legislation and implementation structures that helped Germany deal with the pandemic in a coherent and uniform manner.
2. *Judicial oversight:* the German judiciary, including the Federal Constitutional Court, remain active in ensuring that any measures proposed were in compliance with the Constitution, as well as national and international human rights commitments.
3. *Modest parliamentary role:* throughout this period the parliaments (federal and state-level) have maintained a relatively low profile in the country's response to the pandemic, leaving ample leeway for the executive agencies to introduce measures to limit certain rights and freedoms. While this may in some instances have allowed for a more dynamic and swift response, it also weakened the oversight and accountability function of the legislature.

3. Republic of Korea (South Korea)

The Republic of Korea (South Korea) has been recognized for having effectively curbed the spread of COVID-19, without resorting to strict and disproportionate border control and lockdowns. The strategies and measures introduced by the South Korean Government have been studied by other countries as a potential model for successful response to the COVID-19 pandemic. Throughout its COVID-19 response, South Korea has maintained a high level of transparency

and openness and applied advanced science and ICT to maximize the efficiency of its interventions.

South Korea was among the first countries to be affected by the COVID-19 pandemic in early 2020, and by March 2020 it faced the second highest infection rate after China. However, after an initial spike in cases South Korea managed to control the spread of the disease and keep case numbers relatively low. This has been done without ordering national or regional lockdowns, thus avoiding much of the economic and social consequences that more drastic restrictions would have entailed. This is generally credited to the Government's ability to take swift action to contain and control the disease, including effective track and trace strategies, as well as a nationwide free public testing programme. This has included innovative drive-through testing centres, that have since been emulated in many countries across the world.

South Korea has so far not made use of emergency laws or imposed a state of emergency to manage the COVID-19 pandemic. Under the Constitution (art. 76), there are two types of measures that the President can make use of in an emergency situation, namely an "emergency financial order" (art. 76 (1)) and an "emergency order" (art 76(2)). The last resort provided for under the Constitution is a martial law clause that grants direct military control of civilian functions. Already in March 2020, the Executive Office of the President announced that it was not considering imposing an emergency order, as the situation at hand did not meet the requirements under the Constitution for issuing such an order.

Drawing lessons from the 2015 MERS outbreak, the South Korean National Assembly (parliament) revised several key provisions of the Infectious Disease Control and Prevention Act (IDCPA), which helped the country put in place preventative measures in the event of a new epidemic. The revision of the IDCPA authorized the Ministry of Health, in an infectious disease emergency, to collect personal data to track the movements and travel history of confirmed patients without a court order and use this information for public health purposes. While this track and trace strategy was generally deemed effective it also gave rise to some concerns as regards its impact on the right to privacy and the protection of personal information. These concerns have been largely addressed through the revision of related laws and regulations, to ensure that data that is not relevant to fighting the pandemic is not collected or used. A petition questioning the constitutionality of article 76-2 of the IDCPA authorizing local governments to

request a wide range of information from government and non-government institutions is also currently under review by the Constitutional Court.

Article 49 of the IDCPA gives authority to the Government to limit the number of people in private gatherings and restrict gatherings at specific locations in order to counter the spread of the Corona virus. While there are concerns that such measures may infringe on certain constitutionally protected rights and freedoms (right to freedom of assembly, freedom of movement), it would appear that these measures have largely been accepted and adhered to by the general public, at least in the initial phase of the pandemic, as evidenced by the relatively few laws suits, and petitions filed against the Government. However, as the Government has introduced more restrictive measures in response to a deteriorating situation, complaints and legal challenges against these policies have increased. Many of these cases relate to the ban or restriction of private and public gatherings. In most of such instances the courts have ruled to uphold the restrictions introduced by the authorities, especially with regard to large gatherings, although some manifestations have been allowed to go ahead on human rights grounds. However, the need to control the spread of the disease, while at the same time uphold fundamental rights and freedoms, has placed the courts in delicate predicament. For instance, in August 2020 the Seoul Administrative Court issued an injunction that prevented the banning of a large demonstration planned for mid-August in the centre of the capital. A considerable number of cases were later traced to this event.

The Korea Disease Control and Prevention Agency (KDCA) is an independent administrative agency within the central government, that is in charge of controlling the prevention of epidemics. is headed by the Prime Minister and responsible for supporting the Central Disease Control Headquarters (CDCH). Local governments are responsible for infection monitoring, epidemiological investigation, and community management.

To maintain effective tracking and tracing capabilities, the Government introduced a three-tiered (later five-tiered) system of social distancing, under which more restrictive measures can be mandated based on the daily number of newly confirmed cases. While there have been no lockdowns, stores, restaurants and gyms have been subjected to strict measures of social distancing for long periods, which has made it difficult for business owners and their employees to support themselves. The government has announced plans to provide

compensation measures and put in place financial bailout laws to ensure support for high-risk businesses.

There is concern that persons infected by the Corona virus have been subjected to social discrimination and stigmatization, including persons with disabilities and members of the LGBTQ community. The Korean Human Rights Commission has urged the authorities to take steps to counter “corona phobia” and protect the people concerned from discrimination.

Good practice and lessons learned from the South Korean experience:

1. *Early response and effective preventive strategies:* The Government took swift action to contain and control the disease, including a nationwide free public testing programme.
2. *Effective track and trace programme:* To maintain effective tracking and tracing capabilities, the Government introduced a three-tiered (later five-tiered) system of social distancing, under which more restrictive measures can be mandated based on the daily number of newly confirmed cases.
3. *Adapted and effective legal framework:* Drawing lessons from the 2015 MERS outbreak, the South Korean National Assembly (parliament) revised several key provisions of the IDCPA, which helped the country to put in place preventative measures in the event of a new epidemic. This was an important asset for the Government in its efforts to control the COVID-19 pandemic.
4. *Judicial oversight:* The courts have been petitioned and processed complaints of human rights infringements due to COVID-19 restrictions. The need to control the spread of the disease, while at the same time uphold fundamental rights and freedoms, has required the courts to perform a delicate balancing act.
5. *Transparency:* The South Korean government published health data and provided daily briefings to promote public confidence and awareness.
6. *Stigmatization and discrimination:* instances of discrimination of persons infected by the Corona virus have occurred requiring prompt action from the relevant authorities to protect the rights of the people concerned.

4. Sweden

In its response to the COVID-19 pandemic Sweden has followed an approach that differs substantially from its Nordic neighbours and most other European countries. It has chosen to keep restrictions and prohibitions to a minimum,

favouring an approach that has relied on individuals making responsible choices based on guidance from the national and local authorities. While this has allowed businesses to remain open and operational and everyday life to continue with few limitations, the health impact has been much more serious than in most comparable countries. The COVID-19 related death rate has far exceeded those of its Scandinavian neighbours¹³¹ and mortality has been particularly high among the older population. However, Sweden has been successful in vaccinating the majority of its population and the case incidence is presently low and on par with its neighbours. Sweden lifted all COVID-19-related restrictions on 29 September 2021.

In Sweden no state of emergency, whether local or national, has been declared in response to the COVID-19 pandemic, nor has there been any express derogation from any provision of the international human rights instruments the country has ratified. The Swedish Constitution does not allow for the declaration of state of emergency in the case of civil emergencies and human rights and fundamental freedoms can only be suspended in the case of war (or risk of war). This being so, public health emergencies are regulated entirely by ordinary law, which in some instances include special provisions to be activated in crisis situations. For instance, the Public Order Act (POA) allows the Government to restrict the number of participants in public meetings or organized public events. In situations where these powers are considered insufficient, the legislative procedure is supposed to provide sufficient flexibility to allow new powers to be added relatively quickly.

Sweden has not been in an official lockdown since the outbreak of Covid-19, and most restrictions introduced do not carry penalties. Instead, the main measures adopted against the spread of Covid-19 have been mild restrictions and recommendations from the Public Health Agency. Limitations on individual rights and freedoms have been kept to a minimum, in accordance with the principles of necessity, proportionality and the rule of law. The measures introduced have entailed very few restrictions to fundamental rights and are mostly based on soft law recommendations. This is largely a product of the country's national constitutional and legal framework and based on an assumption

¹³¹ Deaths/100.000 – Sweden 143.65; Denmark: 45.23; Finland 19.15; Norway 15.73, Johns Hopkins University, Coronavirus Resource Center. For more details, please visit: <https://coronavirus.jhu.edu/data/mortality>

of personal responsibility to follow national and regional recommendations in response to the COVID-19 situation.

As already noted, in the early stages of the pandemic, the authorities chose to use recommendations rather than passing new legislation in order to limit the spread of the Corona virus. While the existing powers under the POA and the Contagious Diseases Act (CDA) allowed the Government to restrict public meetings and church services, these powers did not extend to shopping malls, gyms and public transport. Private businesses could not by law be obliged to order employees to work remotely, nor could spontaneous private meetings be banned or restricted. Importantly, while infectious individuals could be quarantined under the CDA as last resort, the law did not grant explicit powers for a general and total lock-down.

The rapidly evolving and deteriorating pandemic did eventually push the government to introduce some adjustments to this approach. An amendment of the CDA in the Spring of 2020 provided for certain temporary executive powers to close or regulate malls, venues and transportation. As the situation worsened, a new COVID-19 Act was adopted on 8 January 2021, which applied until the end of September 2021. It gave the Government authority to restrict or ban spontaneous private assemblies in specified areas, and to block access to parks and similar public spaces. Any such measures must be proportional and can only be used when there are objective grounds for fearing that social distancing guidelines cannot or will not be upheld. The law also allows the shutting of businesses either generally, or specific shops which are not following social distancing norms. The responsibility for supervising the restrictions lies at the regional level. The County Administrative Boards (*Länsstyrelserna*) are given supervisory responsibility for the implementation of the rules.

Limitations have also been placed on the constitutional rights of freedom of assembly and demonstration. Upon the recommendation of the Public Health Authority the Government decided under the Public Order Act, to restrict public gatherings to 500 people, and then later to 50 people. Universities and high schools (ages 16-19) were also ordered to transition into distance learning. However, it was decided that nurseries and primary/lower secondary schools (ages 6-15) remain open, on the basis that the risks the Corona virus posed to children were relatively small, and on account of the significant disruption that such a measure would entail, especially for families with small children. While many EU countries have made phone applications to track contagion mandatory, no such measures have been introduced in Sweden. Instead, under the CDA it is

the responsibility of any person who becomes infected to inform others with whom s/he has been in contact.

A serious shortcoming in Sweden at the beginning of the crisis was that almost all regions and municipalities had an insufficient contingency stock of protective personal equipment (PPE), despite having a legal duty to maintain adequate supplies. However, the law provides for no central supervisory powers to check that the municipalities and regions are fulfilling their duties in this regard and does not impose any sanctions.

An important feature of the Swedish constitutional system is that administrative agencies are quasi-autonomous in relation to the government. Under this model, all administrative agencies are organised outside governmental ministries as free-standing public bodies, albeit under the general leadership of the government. In the context of the COVID-19 pandemic, the most important administrative agency in the field is *Folkhälsomyndigheten* (the Public Health Agency), which has national responsibility for coordinating measures against communicable diseases and taking necessary initiatives.

Throughout the pandemic, the Swedish Parliament has been operating with 294 MPs. Meetings of committees and other parliamentary work have been held online. As most of the initial government measures were recommendations, there was no provision for parliamentary scrutiny or confirmation. The new, binding, executive powers provided for by amendment of the Contagious Diseases Act, and the adoption of the COVID-19 Act in January 2021, were made subject to parliamentary confirmation. The ministers are under legal supervision by the parliamentary Committee on the Constitution. This body may inquire into alleged deviations from legal requirements and criticise the responsible minister. The ministers are furthermore under the political control of the *Riksdag* through the parliamentary power of a vote of no-confidence. The legality of the actions of administrative agencies and their civil servants is scrutinised by the *Justitieombudsman* (Parliamentary Ombudsman) and the *Justitiekansler* (Chancellor of Justice).

Good practice and lessons learned from the Swedish experience:

1. *Parliamentary scrutiny:* the Swedish parliament has maintained a central role in ensuring the legality of the COVID-19 measures put in place by the executive.
2. *Judicial oversight:* the courts have remained open throughout the pandemic. No specific legislation was enacted with regards to the ongoing

operation of courts during this time. Swedish courts have followed the recommendations from the Public Health Agency and have maintained court procedures without exceptions.

3. *Reliance of scientific evidence and expertise:* Sweden has a strong tradition of relying on expertise provided by politically independent institutions. This has been particularly visible during the COVID-19 pandemic, during which the Government has relied on the recommendations provided by the Public Health Agency.

4. *Devolved responsibility and authority:* Although Sweden is a unitary State, there is a high degree of regional and local autonomy. This division of power makes health protection complex, as the rule-making power lies with the national State, which sets healthcare policy through legislation. The regions are responsible for funding and providing healthcare services to their populations. The municipalities are also responsible for providing social services as well as education. In this institutional setup, the central government has at times experienced difficulties in steering local authorities, and in particular, the regions during the crisis.

5. *Minimum restrictions and reliance on individual responsibility:* While this approach has allowed businesses to remain open and operational and everyday life to continue, it has brought a health impact that is far more serious than in most comparable countries.

5. Taiwan

Taiwan has been internationally recognized for its effective response to the COVID-19 pandemic, which to a large extent has been credited to a good public health legal preparedness. The solution chosen by Taiwan aimed to centralize public health authority at the executive branch, in order to enable rapid coordination across different ministries and agencies. Due to its political status, Taiwan is a party to a limited number of international treaties and organizations. Exclusion from the international community has prevented Taiwan from fully participating in information-sharing and collective efforts underpinned by the WHO multilateral framework. Despite this situation, the country has adopted public health standards that are in line with WHO recommendations.

Taiwan conducted a comprehensive review of its public health laws, following the 2003 Severe Acute Respiratory Syndrome epidemic (SARS), during which the country experienced problems with regard to epidemiological contact tracing and wide public non-compliance. The legal review included a total revision of the

Communicable Disease Control Act (CDC Act) in 2004, which was most recently amended in June 2019. The emergency response mechanism for contagious diseases is governed by the CDC Act, including the improvement of the disease classification models, the establishment of a centralized disease control system for recognition, the announcement and removal of epidemic conditions and affected areas of communicable diseases. This includes the enhancement of disease control measures, the requirement of informed consent to record, videotape or photograph patients under isolation care, home-based quarantine, camp quarantine, etc.

Under article 2 (3) of Additional Articles of the Constitution of the Republic of China (Taiwan) the President may, by resolution of the Executive Yuan Council, issue emergency decrees to avert an imminent danger affecting the security of the State or of the people. However, no state of emergency has been declared in response to the COVID-19 pandemic. The fact that Taiwan has been able to rely on pre-existing public health legislation has meant that the Government has so far managed the health crisis without having to declare a public health emergency. The ordinary constitutional framework has remained in place thus ensuring that public health measures remain subject to judicial review.

On January 20, 2020, the Ministry of Health and Welfare (MOHW), acting under the CDC Act, set up a “Central Epidemics Command Centre” (CECC) to fight COVID-19. At its inception, the CECC was positioned at the third level within the hierarchy of the central government. On 23 January 2020, after the first case of COVID-19 in Taiwan was confirmed on 21 January 2020, the CECC was upgraded from level 2 within the central government structure. Moreover, on 27 February 2020, in response to the increasing number of confirmed cases, the Prime Minister finally upgraded the CECC to the first level within the central establishment, thus elevating this function to the level of the Premier.

On 25 February 2020, Taiwan’s legislature passed the COVID-19 Special Act, authorizing an initial special budget of NT\$60 billion (US\$2 billion). As the pandemic worsened around the world, the Act was amended, increasing the special budget by NT\$150 billion. Article 9 of the Act provides appropriate compensation for those industries, people, and medical staff severely affected by COVID-19. The implementation period extended from 15 January 2020 to 30 June 2021.

Article 7 of the COVID-19 Special Act states that ‘[t]he Commander of the Central Epidemic Command Center may, for disease prevention and control

requirements, implement necessary response actions or measures.’ The same article further grants the Ministry of Health and Welfare the power to ‘implement necessary response actions or measures’ in response to urgent need. Under this authority, the Ministry of Health and Welfare has issued executive orders such as banning medical staff from going abroad, and temporarily closing nightclubs and ballrooms. The exercise of executive powers under the Act has raised some concerns as regard the infringements of human rights and freedoms. Many of these concerns have been in relation to an executive order that forbade students from going abroad, as well as limitations without adequate legal authorization of the freedom to change residence protected by the Constitution. Also, Article 8 of the of the COVID-19 Special Act states that ‘[w]here an individual subject to isolation or quarantine during the disease prevention period violates isolation or quarantine orders or intends to violate such orders, the Commander of the CECC may instruct personnel to record videos or photographs of the individual’s violation, publish their personal data, or conduct other necessary disease prevention measures or actions.’ This Article has been criticized for violating the principle of proportionality as well as the right to privacy. Guidelines for large-scale public gatherings in the wake of the COVID-19 outbreak were announced by the CECC on 4 March 2020. The guidelines apply to assemblies such as meetings, speeches, or other mass activities held in public spaces or publicly accessible places.

To ensure that government measures do not undermine people’s rights, the CDC established a legal group to examine the legitimacy of orders and policies from the CECC. Anyone whose rights or interests were compromised by a central or local government agency’s administrative action, is entitled to file an administrative appeal, and subsequently an administrative litigation. The Legislative Yuan plays a key role in overseeing government actions. If the Legislative Yuan does not agree with an important policy of the Executive Yuan, it may, by resolution, request that the Executive Yuan alter the policy. Furthermore, the Control Yuan may under the Constitution propose corrective measures against a civil servant guilty of neglect of duty or violation of law.

During the COVID-19 pandemic, no state organs have been shut down. The Congress and courts have remained fully functional despite the health crisis and online meetings are only held when necessary. Importantly, since the sessions of the Legislative Yuan were not interrupted by the pandemic, legislators have been able to scrutinize the orders issued by the CECC. Despite the pandemic, all elections in Taiwan were carried out on schedule in 2020. After the CECC was

set up in response to the pandemic on 20 January 2020, there have been more than 10 elections or by-elections.

Since the outbreak of the pandemic, the Ministry of Health and Welfare has issued several advisory guidelines to the general public on the conduct of everyday life. The Taiwanese Government has established both formal and informal channels to communicate with the public on the status of the pandemic and on measures introduced to control the situation. National press conferences have been held at least once a day and messages have been disseminated through communication smartphone apps to the public.

On January 15, 2020, the MOHW announced that “Severe Special Infectious Pneumonia” would be included among statutory contagious diseases under the CDC Act, which in turn enabled the CECC to adopt comprehensive anti-epidemic measures. Some of the most important measures include restrictions of physical freedom of a person, freedom of movement, social distancing and medical supplies control. In its management of the pandemic, the Government has also taken a number of steps to limit freedom of information or speech. Under Article 14 of the Covid-19 Special Act, “individuals who disseminate rumours or false information regarding the epidemic conditions of severe pneumonia with novel pathogens, causing damage to the public or others, shall be sentenced to imprisonment for not more than three years or criminal detention, or in lieu thereof or in addition thereto, a fine of no more than NT\$ 3 million”. Further, article 63 of the CDC Act also stipulates that “persons who disseminate rumours or incorrect information concerning epidemic conditions of communicable diseases, resulting in damages to the public or others, shall be fined up to NT\$3,000,000.” Another law, the Social Order Maintenance Act, also punishes people who ‘spread rumours in a way that is sufficient to undermine public order and peace.’”

Good practice and lessons learned from the Taiwanese experience:

1. *Strong legal framework:* Taiwan conducted a comprehensive review of its public health laws, following the 2003 Severe Acute Respiratory Syndrome epidemic (SARS), including a total revision of the Communicable Disease Control Act (CDC Act) in 2004. Having an up-to-date and functional legal framework has served Taiwan well in its fight against the pandemic.
2. *Institutional preparedness:* By elevating the status the public health authority at the executive level, Taiwan has been able to ensure rapid coordination across different ministries and agencies.

3. *Legislative and judicial oversight:* The Congress and courts have remained well-functioning despite the health crisis. To ensure human rights compliance in the implementation of policies, the CDC established a legal group to examine the legitimacy of orders and policies from the CECC.

4. *Transparency and open communication:* Taiwan took early action to combat the Corona virus, including promptly making health information publicly available. The Government also provided daily press briefings to counter misinformation, promote public awareness and public confidence in the measures taken to counter the pandemic.

**ANNEX II – LIST OF SOME LEGAL NORMATIVE DOCUMENTS
PROPOSED FOR AMENDMENT, SUPPLEMENTATION AND
REPLACEMENT**

No.	Documents	Issues for amendment, supplementation
1	The Law on PCID	<ul style="list-style-type: none"> - Amending and supplementing regulations on principles of measure application, authority to decide on application; responsibilities of each agency and organization in applying anti-epidemic measures. - Clearly defining emergency measures on pandemics to be applied (including measures of finance, social order and safety, social security, etc.) and have provisions specifying in the emergency/urgent cases, the measures/ anti pandemic form can be applied. - Studying and supplementing a number of measures in SoE in case of pandemic <u>that have not been regulated</u>, such as: measures to ensure security, social order and safety in epidemic-affected areas; place checkpoints in the blockade area; mobilize human resources, supplies and means to serve the pandemic prevention and control, requisition of properties of agencies, organizations and individuals if necessary; organizing disseminating teams, disseminating force task teams; entry restrictions, stop entry for all people from abroad entering Viet Nam; concentrated quarantine of all people returning from abroad; contact tracing on a large scale, etc.; for medical measures, it is proposed to supplement regulations on the performance of a number of urgent tasks for epidemic prevention and control according to special cases, such as bidding and procurement of medical equipment; buying and importing medicines, vaccines, medical biological products, etc. - Supplementing regulations on the work relationship between the lower-level Steering committee and the higher-level Steering Committee and the types of documents issued by the Steering Committee of pandemic prevention and control; order, procedures, and competence to

		<p>establish a Steering Committee for pandemic prevention and control corresponding to the levels of infectious diseases of groups A, B, C and the Steering Committee for cases of SoE on pandemics (if any).</p> <ul style="list-style-type: none"> - Supplementing regulations on the application of a statute of limitations and time of application of other legal provisions in the case of SoE declaration of an infectious disease or application of pandemic prevention measures at different levels of SoE, as analyzed above. - Supplementing regulations on the performance of a number of urgent tasks for pandemic prevention and control under special and specific circumstances, such as: bidding, procuring medical equipment; purchasing, importing medicines, vaccines, medical products.
2	Law on SoE	<p>Promulgation of a new law on SoE. This new law should contain the following contents:</p> <ul style="list-style-type: none"> - Principles, scope, conditions, authority, order, and procedures for declaring SoE; - Characteristics, criteria (quantitative and qualitative criteria) of circumstance to classify the level of exceptional situations, such as: “Urgent case”, “pre-emergent situation”, “SoE” and other situations; - Measures that competent state agencies can organize to implement, including measures to handle situations according to levels of SoE); - Regulations on the relationship and legal effect of documents issued by competent state agencies when promulgating administrative procedures or decisions for each level of SoE in accordance with the Constitution of 2013 and LNDs; - Determination on the time limit for application of exceptional situations (levels of SoE) and procedures for annulling and declaring invalid the

		<p>order to issue the SoE or decisions applying state measures for each exceptional situation;</p> <ul style="list-style-type: none"> - Regulations on the statute of limitations, time that needs to be adjusted in other legal provisions when applying the SoE or the levels of SoE to protect the legitimate rights and interests of people, organizations and businesses; - Regulations on special procedures related to the application of measures restricting human rights or affecting property rights. Regulations on a mechanism of remedy and compensation for damage in the case of making wrong decisions, causing serious consequences or at fault due to the application of a number of administrative measures in SoE, such as expropriation, requisition. - Measures to support and protect affected people, organizations and businesses, especially vulnerable groups. - Regulations on the priority when applying the law on SoE with other laws when applying SoE or exceptional situations at all levels of SoE, such as bidding and public procurement. Stipulations on the development of strategies, planning, plans, and forecasts of different scenarios including the master scenario to mobilize and distribute resources, proactively meet sudden and urgent requirements for prevention, control, and recovery following natural calamities, disasters, fires, diseases and to serve national defense and security. The human resources and financial resources should be strong, large, and proactive enough to serve efficient implementation of emergency measures; - Development of the monitoring mechanism by the National Assembly, the Supreme People's Court, the Vietnam Fatherland Front and its member
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		<p>organizations on the implementation of measures that limit human rights and temporarily suspend the implementation of obligations under the ICCPR. In addition, it is necessary to have specific regulations on the inspection and oversight of the Government Inspectorate, the State Audit, etc. for the implementation of necessary measures when applying the order to declare SoE or the decisions on each exceptional “situation” on each “level” of SoE;</p> <ul style="list-style-type: none"> - Stipulations on the procedures to notify international organizations upon declaration of SoE orders in accordance with provisions of international human right laws and other international commitments of Viet Nam. Viet Nam is obliged under the ICCPR to inform other States Parties as well as formally notify the Secretary-General of the United Nations on decisions to derogate from its obligations under the Covenant. <p>The promulgation of this Law will create a more complete legal basis for competent authorities to proactively respond and promptly and effectively remedy the effects of SoE and state of pre-emergency, contributing to protect the legitimate rights and interests of organizations and individuals.</p>
3	Criminal Code	<p>Researching and further defining aggravating circumstances related to the spread of dangerous infectious diseases for some legal violations committed when applying measures on pandemic prevention and control or applying SoE on pandemics or other SoE.</p>
4	The Criminal Procedure Code	<p>Researching on supplementing regulations on electronic proceedings, electronic evidence and online adjudication model.</p>

	The Civil Procedure Code Law on Administrative Procedure	
5	Law on Administrative Sanctions	Researching to supplement a number of violations related to the implementation and application of epidemic prevention and control measures that have been decided by competent authorities; increase the fine levels for a number of administrative violations; some regulations on violations need to prescribe fine levels, additional sanctions and remedial measures according to the level of dangerous infectious diseases in order to meet the requirements of the prevention and control of communicable diseases.
6	Law on Promulgation of LND	<ul style="list-style-type: none"> - Researching and supplementing a legal mechanism to authorize the Government to promulgate LNDs in a SoE with strong solutions to ensure disease control. - Clearly defining responsibilities and procedures for promulgating documents serving pandemic prevention and control, consistent with the Constitution of 2013 and LNDs. - Regulations on the legal validity of legal documents promulgated by the Steering Committee of Pandemic Prevention and Control or the Steering Committee of SoE.
7	Law on Bidding	<ul style="list-style-type: none"> - Clearly defining the content of the urgent case in Article 22 of the Law on Bidding.
8	Law on Pharmacy	<ul style="list-style-type: none"> - Amendment of regulations related to import of medicinal ingredients without circulation registration to serve the pandemic prevention and control.

		<ul style="list-style-type: none"> - Regulations on the process and procedures for granting circulation registration of new medicines for the prevention and treatment of COVID-19 and other diseases. - Permission on the continued use of circulation registration of medicines and medicinal ingredients to serve the prevention and treatment of COVID-19 and other diseases. - Amending and supplementing regulations allowing the use of domestically produced medicines to serve the issuance of circulation registration numbers in the prevention and treatment of COVID-19.
9	Law on Prices	<ul style="list-style-type: none"> - Supplementing regulations a commodity, including medical that shall be considered as price stabilization goods, in the case of preventing pandemics or during SoE.
10	Law on Medical Examination and Treatment	<ul style="list-style-type: none"> - Researching and amending Article 6 of the Law on Medical Examination and Treatment in the direction of allowing competent state agencies to mobilize human resources to participate in medical activities to pandemic prevention and control. - Researching regulations related to remote medical examination and treatment when people cannot access medical examination and treatment establishments due to the requirements of pandemic prevention and control measures or SoE.
11	The Law on Budget	<ul style="list-style-type: none"> - Researching to allow public vaccination and testing establishments using supplies, biological products, medicines and chemicals to use their financial sources to pay for the regimes, policies and expenses for the assigned pandemic prevention tasks.

12	Law on entry, exit, transit and residence of foreigners in Viet Nam	<ul style="list-style-type: none"> - Supplementing regulations on "automatic extension of temporary residence" for foreign citizens affected by the pandemic unable to leave the country. - Supplementing regulations related to foreign citizens entering in the level of SoE, or when applying measures to prevent and control infectious diseases.
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ANNEX III – LIST OF REFERENCES

I. VIETNAMESE LEGISLATIVE DOCUMENTS

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2. The Constitution 2013;
3. The Ordinance on the State of Emergency in case of great disasters or dangerous epidemics 2000;
4. The Law on Dikes 2006, amended and supplemented in 2020;
5. The Law on Prevention and Control of Infectious Diseases 2007;
6. The Law on Handling of Administrative Violations 2012;
7. The Law on Natural Disaster Prevention and Control 2013;
8. The Law on Bidding 2013;
9. The Law on Organization of the National Assembly 2014;
10. The Civil Code 2015;
11. The Criminal Code 2015, amended and supplemented in 2017;
12. The Criminal Procedure Code 2015;
13. The Civil Procedure Code 2015;
14. The Law on Administrative Procedures 2015;
15. The Law on Veterinary Medicine 2015;
16. The Law on Promulgation of legislative normative documents 2015;
17. The Law on Organization of Government 2015;
18. The Law on Organizing the local government 2015;
19. The Law on National Defense 2018;
20. Resolution 129/NQ-CP dated September 11, 2020 on Government's regular meeting of August 2020;
21. Resolution 21/NQ-CP dated February 26, 2021 promulgated by the Government on purchase and use of COVID-19 vaccines;
22. Resolution 30/2021/QH15 of the 1st session of the 15th National Assembly dated July 28, 2021;

23. Resolution 86/NQ-CP dated August 06, 2021 promulgated by the Government on urgent solutions for COVID-19 prevention and control to implement Resolution 30/2021/QH15 dated July 28, 2021 promulgated by the 15th National Assembly;
24. Resolution 128/NQ-CP dated October 11, 2021 promulgated by the Government on adopting provisional guidelines on safe adaptation to the COVID-19 pandemic;
25. Directive 02/2020/CT-CA dated March 10, 2020 promulgated by the SPC on the prevention of the COVID-19 outbreak within the People's Court system;
26. Directive 15/CT-TTg dated March 27, 2020 promulgated by the Prime Minister on climax stage of COVID-19 control effort;
27. Directive 02/CT-NHNN dated March 31, 2020 promulgated by the State Bank of Viet Nam on urgent measure of banking industry for contribution to COVID-19 control effort and overcoming difficulties caused by COVID-19;
28. Directive 16/CT-TTg dated March 31, 2020 promulgated by the Prime Minister on the implementation of urgent measures for COVID-19 prevention and control;
29. Directive 19/CT-TTg dated April 24, 2020 promulgated by the Prime Minister on a new stage of COVID-19 prevention and control,
30. Directive 05/CT-TTg dated January 28, 2021 promulgated by the Prime Minister on prevention and control acute respiratory disease caused by a novel coronavirus;
31. Directive 17/CT-UBND dated July 23, 2021 promulgated by Hanoi People's Committee on social distancing implementation in Ha Noi for COVID-19 prevention and control;
32. Directive 11/CT-UBND dated August 22, 2021 promulgated by Ho Chi Minh People's Committee on strengthening social distancing and measures to prevent and control COVID-19 pandemic in Ho Chi Minh City;
33. Decree 71/2002/ND-CP dated July 23, 2002 promulgated by the Government detailing the implementation of a number of articles of the

Ordinance on the State of Emergency in case of great disasters or dangerous epidemics;

34. Decree No. 64/2008/ND-CP dated May 14, 2008 promulgated by the Government on mobilization, receipt, distribution and use of sources of voluntary donations for people to overcome difficulties caused by natural disasters, fires or serious incidents and for terminally ill patients;
35. Decree 101/2010/ND-CP dated September 30, 2010 promulgated by the Government on guidelines for the Law on Prevention, control of infectious diseases in terms of implementation of isolation measures, enforced isolation measures and specific anti-epidemic measures during the epidemic period;
36. Decree 174/2013/ND-CP dated November 13, 2013 promulgated by the Government on penalties for administrative violations in the fields of post and telecommunications, information technology and radio frequency;
37. Decree 176/2013/ND-CP dated November 14, 2013 promulgated by the Government on penalties for administrative violations against Medical Laws;
38. Decree 117/2020/ND-CP dated September 28, 2020 promulgated by the Government on penalties for administrative violations in healthcare sector;
39. Circular 01/2020/TT-NHNN dated March 13, 2020 promulgated by the State Bank of Viet Nam on directing foreign credit institutions and bank branches to reschedule debt payments, waive and reduce borrowing interest and fees, and maintain the groups to support customers affected by COVID-19 pandemic;
40. Circular 05/2020/TT-NHNN dated May 07, 2020 promulgated by the State Bank of Viet Nam stipulating the refinancing applicable for the Viet Nam Bank for Social Policies, regarding the Decision 15/2020/QD-TTg promulgated by the Prime Minister on the implementation of support policies for people affected by the COVID-19 pandemic;
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42. Decision 170/QD-TTg dated October 30, 2020 promulgated by the Prime Minister on establishing the National Steering Committee for prevention and control of acute respiratory infections caused by a new variant of Corona virus;
43. Decision 56/2010/QD-TTg dated September 16, 2010 promulgated by the Prime Minister on regulating the authority of establishment, organization and operation of the Steering Committee for COVID-19 Prevention and Control at all levels;
44. Decision 343/QD-BYT dated February 07, 2020 of the Minister of Health on promulgating “Interim guidelines for monitoring, prevention and control of COVID-19”;
45. Decision 447/QD-TTg dated April 01, 2020 promulgated by the Prime Minister on declaration of COVID-19 epidemic;
46. Decision 15/2020/QD-TTg dated April 24, 2021 promulgated by Prime Minister on the implementation of policies on assistance for people affected by COVID-19 pandemic;
47. Decision 2686/QD-BCDQG dated May 21, 2021 on regulating risk level assessment and corresponding administrative measures in COVID-19 prevention and control;
48. Decision 1438/QD-TTg dated August 25, 2021 promulgated by the Prime Minister on the consolidation of the National Steering Committee for COVID-19 Prevention and Control;
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50. Official Letter 2601/VPCP-KGVX dated April 03, 2020 on the implementation of the Directive 16/CT-TTg;
51. Official Letter 45/TANDTC-PC dated March 30, 2020 on the trial of crimes related to COVID-19 prevention and control;
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53. Notice 228/TB-VPCP dated August 31, 2021 on Prime Minister’s conclusion in the meeting of the Standing Government members with the

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2. International Covenant on Economic, Social and Cultural Rights (ICESCR) 199;
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4. The Constitution of South Korea;
5. The Constitution of Sweden;
6. The Constitution of the Republic of China (Taiwan);
7. The Emergencies Act 1985 of Canada;
8. The Emergency Powers Act 1991 of Finland;
9. The Law on the State of Emergency 2001 of Russian Federation;
10. The Law on Emergency 2020 of the French Parliament;
11. The Act on the Protection of the Population in the Event of an Epidemic Situation of national Importance 2020-2021 of Germany;
12. The Special Act 2020 of Taiwan;
13. The Public Order Act of Sweden;
14. The Infectious Diseases Act of Sweden;
15. The Communicable Disease Control Act of Taiwan.

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