

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls**

REFERENCE:  
AL LAO 2/2020

13 July 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 34/5, 42/22, 35/7, 34/18, 35/19, 41/17 and 41/6.

In this connection we would like to bring to the attention of your Excellency's Government information have received regarding the five year prison sentence handed down to woman human rights defender Ms. **Houayheuang Xayabouly** for sharing her views on corruption and environmental rights in Lao People's Democratic Republic (PDR).

Ms. Houayheuang Xayabouly is a woman human rights defender who campaigned against alleged Government corruption in political, commercial and educational life in the country. In particular, she sought to raise awareness and address the detrimental effect that corruption, bribery and mismanagement have on the economically and socially vulnerable of Lao PDR.

According to the information received:

On 1 October 2017, Ms. Houayheuang Xayabouly recorded a video highlighting the financial burden that she and other local villagers face for paying a heavy fee for crossing a local toll bridge. The bridge, which crosses the Mekong River along a busy road to Laos' border with Thailand was constructed by a Duangdee Company with the help of Government funding. It connects the district of Phonthong, where Ms. Xayabouly lives, with Pakse in the province of Champassak, where she works. The video was shared widely on Facebook, uploaded to other social media platforms and eventually picked up by local news agencies. After the video went viral, police officers from the local Pakse district visited Ms. Xayabouly and warned her against criticising the Government and public authorities of Laos.

From May 2018, Ms. Xayabouly began raising awareness about alleged government corruption, particularly how many Government and public sector jobs were reportedly being appointed on the condition of bribes, rather than appropriate hiring procedures. She posted to social media where she shared her views on the subject. One such video, posted by a third party to YouTube, has received over 320,000 views at the time of writing.

In September 2018, Ms. Xayabouly and a number of her friends produced a line of t-shirts printed with the slogan “I don’t want to buy government positions”. The t-shirts were produced to raise money for a new school spearheaded by Ms. Xayabouly. The school was to be designed to address inequalities in access to education, caused by reported widespread corruption. The school was to give good quality education without the need for parents to pay a fee, which some consider to be a bribe, to secure a spot for their children. On 15 October 2018, she held a fundraising concert in Savannakhet, which featured performances by a number of popular local performers. The concert was shut down by the police shortly after it started. The police also put a stop to the sale of the t-shirts, allegedly claiming that selling them was against the law.

In June 2018, Ms. Xayabouly was dismissed from her job at the tour guide company where she worked. Her employer allegedly gave no reason for the dismissal except that he was receiving pressure to do so. Once she lost her job, she began raising awareness about alleged corruption in the tourism sector of Lao PDR.

On 23 July 2018, the auxiliary dam ‘Saddle D’ of the Xe Pian-Xe Namnoy Hydropower Dam in Attapeu province collapsed. (The collapse of the auxiliary dam was the subject of a previous communication sent to your Excellency’s Government by Special Procedures mandate holders: ref. no AL LAO 1/2020). Official figures were widely reported to underestimate the impact of the collapse. Independent investigations estimate it caused at least 71 deaths, over 100 disappearances and the displacement of 7,000 villagers. Ms. Xayabouly posted videos to Facebook highlighting the impact that the collapse had on local people. She discussed the effectiveness of the Government’s response, who allegedly restricted access of media and independent aid organisations to the affected areas. After posting the video, she was called into the police station in Pakse district where she was again warned against making public comments against Government officials.

On 25 and 26 July 2018, Ms. Xayabouly collected money, food and clothes for displaced families that were staying in camps near the city of Attapeu. Ms. Xayabouly independently donated to the affected families after she and a friend reportedly discovered that some police officers were selling the supplies donated to the communities, or recovered from their homes, for personal gain. She documented these events and shared her concerns on social media.

On 28 July 2018, the Government issued a press statement in the state-run media outlet “Vientiane Times” warning the public against reading unofficial news

sources about the Saddle D dam disaster. The statement has since been removed from the news outlet's webpage.

In August and September 2019, the villagers living close to the dam were heavily impacted by tropical storm Podul and tropical depression Kajiki, which caused the Xe-Pian Xe-Namnoy dam to overflow, causing major flooding and the displacement of over 100,000 people. On 5 September 2019, Ms. Xayabouly posted another video to Facebook criticising the Government's slow response in providing relief to the affected population, calling on the Government to prevent similar incidents from happening in the future. The video has been viewed over 173,000 times.

On 12 September 2019, Ms. Xayabouly was arrested without a warrant while dining at a restaurant near her home. She was taken to Phonthong police station in Champassak province where officers allegedly forced her to remove a post she had just made on Facebook appealing for help in light of her arrest. She was later informed that she was accused of spreading false information. When she arrived at the police station, Ms. Xayabouly was held in pre-trial detention until her hearing over a month later. Her requests for family and lawyer visits were denied and she was not given the opportunity to challenge the legality of her detention.

Her family submitted a bail application to the Phonthong police station, which was signed, and bail was set at 100 million kip (approx. 11,000 USD). The bail application was revoked by the provincial police station upon its final stage of approval. Reportedly, no justification was given for the rejection.

Ms. Xayabouly underwent repeated and long interrogations reportedly without the presence of a lawyer. On 17 September 2019, she was reportedly coerced into confessing that she spread "propaganda against Lao PDR".

On 22 November 2019, Ms. Xayabouly was sentenced to five years in prison for "propaganda against Lao PDR" under Article 117 of the Criminal Code<sup>1</sup>. She was not allowed to choose her own lawyer, but was assigned one just before the trial. The lawyer allegedly never discussed the details of the case with her. At the time of writing, she continues to be held at Champassak provincial jail and all of her prison visits are closely monitored.

Without prejudging the accuracy of the allegations, we wish to express our concern regarding the sentencing of woman human rights defender Ms. Xayabouly for the legitimate exercise of her right to freedom of opinion and expression. We are particularly concerned that the arbitrary detention and lengthy prison sentence handed

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<sup>1</sup> Article 117 of the Lao People's Democratic Republic: "propaganda activities against and slandering the Lao People's Democratic Republic, [...] or circulating false rumours causing disorder by words, in writing, through print, newspapers, motion pictures, videos, photographs, documents or other media which are detrimental to the Lao People's Democratic Republic or are for the purpose of undermining or weakening State authority."

down to her may have a chilling effect on civil society in the Lao PDR, discouraging human rights defenders and other members of civil society from sharing opinions on the observance of human rights in the country. The charge of “propaganda against Lao PDR” does not appear to meet the principles of legality, necessity and proportionality for restrictions to freedom of expression to achieve an intended legitimate purpose as set forth in Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR). We are furthermore deeply concerned that Ms. Xayabouly may have been denied the right to a fair trial in not having the freedom to select her own lawyer and for allegedly being pressured into admission of guilt.

We express these concerns at a time in which detainees around the world find themselves particularly vulnerable to the COVID-19 pandemic. On 25 March 2020, the UN High Commissioner for Human Rights called on states to “release every person detained without sufficient legal basis... and others detained for expressing their dissenting views.” We are deeply concerned that, in addition to being deprived of her liberty, Ms. Xayabouly’s health may have been put at unnecessary risk.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide details on allegations that Ms. Xayabouly was told by members of the police to discontinue her human rights work.
3. Please provide detailed information on the factual and legal basis for the arrests and detention of Ms. Xayabouly. Please also provide information on how these are compatible with the obligations of your Excellency Government under international human rights norms and standards.
4. Please provide information on how Article 117 of the Criminal Code of the Lao People’s Democratic Republic is consistent with the limited provisions set forth in Article 19(3) of the ICCPR, which allow for restrictions to freedom of expression.
5. Please explain why Ms. Xayabouly’s bail application was rejected upon the final stage of approval.
6. Please provide details as to whether Ms. Xayabouly was free to select the legal counsel of her choosing during questioning and the subsequent trial.



We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Githu Muigai  
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Olivier De Schutter  
Special Rapporteur on extreme poverty and human rights

Dubravka Šimonovic  
Special Rapporteur on violence against women, its causes and consequences

Elizabeth Broderick  
Chair-Rapporteur of the Working Group on discrimination against women and girls

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 9, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Lao PDR on 25 September 2009, which guarantee the right to liberty and security of person, the right to a fair hearing before a competent, independent and impartial tribunal established by law, which includes the right to have access to counsel and to be presumed innocent until proven guilty; the right to freedom of opinion and expression and the right to peaceful assembly and to freedom of association. The right to have access to a lawyer is also enshrined in the UN Basic Principles on the Role of Lawyers (see in particular Principles 1, 2, 5, 7 and 8).

We would also like to bring to your attention the principle enunciated in Human Rights Council resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19.3 of ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Under international human rights law, the right to freedom of expression may only be restricted in accordance with article 19 (3) of the ICCPR. Any limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. In its General Comment No. 34 (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism'. Further, the Human Rights Committee made clear that "It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information". In this context, the legal definition of "propaganda against Lao PDR" seems to appear in violation of the requirements prescribed by article 19 (3) of the ICCPR.

We would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of all detained persons not to be deprived arbitrarily of their liberty, to the presumption of innocence and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 11 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the ICCPR.

Article 14 stipulates that, in the determination of any criminal charge, everyone shall be entitled to adequate time to communicate with counsel of choice. Article 14 also guarantees the right to be tried without undue delay. The right to have access to a lawyer

without delay and in full confidentiality is also enshrined in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), and the Basic Principles on the Role of Lawyers (Principles 7 and 8). In addition, article 14(3)(g) guarantees the right not to be compelled to testify against himself or to confess guilt.

We recall that article 9 of the ICCPR requires that arrests be carried out in accordance with the law and the procedure prescribed by it. Paragraph 3 stipulates that anyone who is deprived of his liberty by arrest or detention is entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the individual's detention and order their release if the detention is not lawful. Paragraph 4 requires that detention in custody of persons awaiting trial shall be the exception rather than the rule. It should not be the general practice to subject defendants to pre-trial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances (Human Rights Committee, General Comment No. 35, para. 38).

We also wish to refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that States have a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provide for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to recall your Excellency's Government of the report of the Working Group on Discrimination against Women and Girls on eliminating discrimination against women in political and public life with a focus on political transition in its paragraph 65 that Women defenders are often the target of gender-specific violence, such as verbal abuse on their sex, sexual abuse or rape; they may experience intimidation, attacks, death threats and even murder by community members; and has recommended States to accelerate efforts to eliminate all forms of violence against women, including through a comprehensive legal framework to combat impunity, in order to fulfil women's human rights and to improve the enabling conditions for women's participation in political and public life.

We would finally bring your attention to the United Nations "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011, which note that States must protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. They also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 affirms the essential role of civil society and human rights defenders as parties to be consulted to help identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.