

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL LAO 4/2020

11 December 2020

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of migrants; Special Rapporteur on extreme poverty and human rights and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/6, 42/22, 44/5, 43/4, 43/16, 43/6, 44/13 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **at least four alleged cases of Thai political activists disappearing in the Lao People's Democratic Republic, namely Surachai Danwattananusorn, Chatchan Bubphawan, Kraidej Luelert, and Itthipol Sukpan, as well as the alleged enforced disappearance in Thailand of Lao PDR national and human rights defender Od Sayavong and the lack of progress in the search and investigation of these cases.**

These cases have all previously been raised in communications with your Excellency's Government including:

- The alleged enforced disappearance of Mr. Od Sayavong and its possible connection with Mr. Sayavong's meeting with the Special Rapporteur on extreme poverty and human rights prior to his official visit to Laos in March 2019. The case was raised and transmitted in a communication on 25 September 2019 (LAO 2/2019) and a press release.¹ His case was included in the 2020 report of the Secretary-General on cooperation with the UN, its representatives and mechanisms in the field of human rights (A/HRC/45/36, paras. 83 and 112, Annex I paras. 68-69, 124 and 126). We thank your Excellency's Government for the reply received on 17 January 2020. However, we remain concerned that Mr. Od Sayavong's fate and whereabouts continue to be unknown.

¹ OHCHR, "Thailand/Lao PDR: UN experts concerned by disappearance of Lao human rights defender" (1 October 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25087&LangID=E>

- The alleged enforced disappearance and extrajudicial, summary or arbitrary executions of Mr. Chatchan Bubphawan, Mr. Kraidej Luelert and the disappearance of Mr. Surachai Danwattananusorn and Mr. Itthipol Sukpan, transmitted to your Government in a communication on 8 March 2019 (LAO 1/2019). We regret that no reply has been received to date.

The case of Mr. Od Sayavong has also been treated under the humanitarian mandate of the Working Group on Enforced or Involuntary Disappearances and remains outstanding.

According to the latest information received:

The following cases relating to Thai political activists disappeared in Lao PDR have been filed with the Standing Committee on Legal Affairs, Justice, and Human Rights of the House of Representatives of Thailand.

- Mr. **Surachai Danwattananusorn**, a political activist affiliated with UDD, who was last heard from on 12 December 2018, who disappeared from Lao PDR and whose fate and whereabouts remain unknown,
- Mr. **Chatchan Bubphawan** a political activist affiliated with the UDD who was last heard from on 12 December 2018, and whose remains were found in late December 2018 on the banks of the Mekong River bordering Thailand and Laos,
- Mr. **Kraidej Luelert** a political activist affiliated with the UDD who was last heard from on 12 December 2018, and whose remains were found in late December on the banks of the Mekong River bordering Thailand and Lao PDR, and
- Mr. **Itthipol Sukpan**, also affiliated with the UDD who was last seen on 22 June 2016 in Lao PDR, who it was initially indicated had been arrested by the Thai authorities which was later denied, and whose fate and whereabouts remain unknown.

Regarding the case of Mr. Surachai Danwattananusorn, on 23 June 2020, his family filed the case with the National Interim Mechanism to Manage the Complaint of Torture and Enforced Disappearance, under the Ministry of Justice of Thailand. The mechanism is supporting the DNA collection process as part of the search for him.

It is not clear what steps have been taken by the Lao PDR to search for the disappeared individuals or to investigate the disappearances and killings.

Updates on the case of Mr. Od Sayavong, LPDR national disappeared in Thailand

Mr. **Od Sayavong**, is a Lao PDR national, human rights defender and former member of “Free Lao,” a group advocating for human rights and democracy in Lao PRD, who disappeared in August 2019 in Bangkok after having met with the former Special Rapporteur on extreme poverty and human rights in March 2020, and whose fate and whereabouts remain unknown.

On 22 June 2020, Mr. Sayavong's family were invited by the Thai Department of Special Investigation to discuss the case and DNA of one family member was collected. The case has been transferred to the DSI for investigation as no progress had been made in the case by the local police in Beungkum Police Station.

Pattern of disappearances of political activists

In addition to the cases mentioned above, there are several other alleged cases of Thai opposition members disappearing abroad between 2016 and 2020 in neighboring countries including the Lao PDR. These cases point to a pattern of disappearances.

The pattern of cases appears to point towards countries in the region coordinating, assisting or acquiescing to extraterritorially abduct political activists leading to disappearances.

The Thai Government has reportedly made several requests, since 2016, for the extradition of Thai political activists from the Lao PDR.

In 2018, it was reported that the Governments of the Lao PDR and Thailand released a joint statement signed by their respective foreign ministries indicating that both countries would strengthen their collaboration and "stand firm on the policy to not allow any person or group of people plan for disorder or anti-government activities in another country on their land."

Given the political affiliations of the individuals, there are reports that the Thai authorities were involved in their disappearances. Furthermore, several of the cases have indications that the individuals were being sought or surveilled prior to their disappearance. Including:

- Mr. Bubphawan, Mr. Luelert and Mr. Danwattananusorn had outstanding arrest warrants issued against them in Thailand,
- Mr Sukpan's family had been visited by police in the years before his disappearance and informed that the authorities were investigating allegations of lèse majesté against him,
- Initial information in the case of Mr. Sukpan indicated that he was in the custody of the Thai authorities, although this was later denied.

While the remains of Mr. Chatchan Bubphawan and Mr. Kraidej Luelert have been found, the fate and whereabouts of the other individuals remain unknown. No perpetrators have been identified or prosecuted and there are no indications that actions have been taken by the government of the Lao PDR to investigate these cases with a view to preventing further such instances.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the reported lack of progress in the search and investigations into the disappearances of Mr. Surachai Danwattananusorn, Mr. Itthipol Sukpan, Mr. Od Sayavong and investigations into the killings of Mr. Chatchan Bubphawan

and Mr. Kraidej Luelert especially given that several of the cases occurred more than a year ago. We are also gravely concerned by the pattern of the cases.

In this regard, we underline that the Lao PDR has the legal duty to take any available steps to search for Mr. Itthipol Sukpan, Mr. Surachai Danwattananusorn and Mr. Od Sayavong and investigate their disappearances, and should also investigate the killings of Mr. Chatchan Bubphawan and Mr. Kraidej Luelert, in cooperation with the relevant authorities in Thailand. We further highlight that the Lao PDR should take steps to prevent any further disappearances of Thai political activists in its territory.

Should these allegations be confirmed, they would violate articles 6, 7, 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Lao People's Democratic Republic in 2009 which guarantee the right to life, the right to personal integrity, the right to liberty and security of the person and the right to freedom of expression. We would also like to refer to the Declaration on the Protection of All Persons from Enforced Disappearance.

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. We reiterate our queries on the cases of **Mr. Bubphawan, Mr. Luelert, Mr. Danwattananusorn and Mr. Itthipol Sukpan** raised in LAO 1/2019, namely:
 - a. Please provide the full details of any investigations which may have been undertaken into the killing of Mr. Bubphawan and Mr. Luelert. Have any perpetrators been identified and if so have any criminal prosecution been undertaken? If no investigations have taken place, or if they have been inconclusive, please explain why, and how this is consistent with the Lao PDR's human rights obligations under the treaties it has ratified.
 - b. Please provide information on the fate and whereabouts of Mr. Danwattananusorn and Mr. Itthipol Sukpan. If their fate and whereabouts are still unknown, please provide the details on any investigation or other queries which may have been carried out. If no investigations have taken place, or if they have been inconclusive, please explain why.

3. Please provide information on any extradition requests made by Thailand in the past five years related to political activists.
4. Regarding the case of **Mr. Od Sayavong**, please provide an update on the search and investigation conducted into the case, including any developments since the Governments reply in January 2020. Please include information on whether his extradition was requested by your Excellency's Government prior to his disappearance and any investigations undertaken into possible involvement of any branch of the Lao PDR State or individuals linked to them.
5. Please provide information on the steps being taken to investigate the apparent pattern of disappearances of Thai political activists disappearing in Lao PDR, including the possible involvement of any branch of the Thai State or individuals linked to them and to protect the rights of Thai political activists living in Lao PDR including in cases where the individual entered Lao PDR in an irregular manner.
6. Please provide information on cooperation and extradition agreements with Thailand, and the measures in place to prevent individuals being returned if they may be at risk of enforced disappearance, during or after the extradition.

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.

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.

In light of the allegations of possible reprisals for cooperation with the United Nations on human rights, we reserve the right to share this communication – and any response received from your Excellency's Government - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official designated by the Secretary General to lead the efforts within the United Nations system to address this issue.

We would like to inform your Excellency's Government that a letter raising similar concerns has been transmitted to the Government of Thailand.

We would also like to bring to the attention of your Excellency's Government that should sources submit the allegations of enforced disappearance mentioned in this communication as a case to the Working Group on Enforced or Involuntary Disappearances, they will be considered by the Working Group according to its

methods of work, in which case your Excellency's Government will be informed by a separate correspondence.

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

Tae-Ung Baik
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Felipe González Morales
Special Rapporteur on the human rights of migrants

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to highlight that enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life and that states are required to conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance and introduce prompt and effective procedures to investigate cases of disappearances thoroughly, by independent and impartial bodies (Human Rights Committee, General Comment 36).

We would also like to bring to your Excellency's Government's attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance (the Declaration) which sets out necessary protection by the State, and in particular that no State shall practice, permit or tolerate enforced disappearances, States should take measures **to prevent and terminate acts of enforced disappearance** in any territory under its jurisdiction and should cooperate to prevent an eradicate enforced disappearances (articles 2 and 3 of the Declaration). States should investigate **all** cases of enforced disappearance **promptly and impartially** and, where necessary, undertake **without delay a thorough and impartial investigation** including when there has not been a formal complaint (article 13 of the Declaration). We underline that an enforced disappearance **continues until the fate and whereabouts of the individual concerned are established** irrespective of the time passed, and that the family members have a right to truth which means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator(s) (A/HRC/16/48). We would also like to underline that enforced disappearances constitute a violation of article 9 (liberty and security of persons) of the ICCPR. Furthermore, we recall that the Human Rights Committee, in its General Comment No. 35, paragraph 17, has qualified the enforced disappearance to be a particularly aggravated form of arbitrary detention

We further emphasise that no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance (article 8 of the Declaration). We underline that this applies irrelevant of the immigration status of the individual in question.

We would also like to remind your Excellency's Government that while enforced disappearance is a crime in itself, it may also amount to torture or other cruel, inhuman or degrading treatment or punishment, and is a serious violation of international law. The Committee against Torture² and the Human Rights Committee³ have concluded that enforced disappearances may amount to torture and other forms

² See, for example, conclusions and recommendations on the second periodic report of Algeria (A/52/44, para. 79), on the initial report of Namibia (A/52/44, para. 247) and on the initial report of Sri Lanka (A/53/44, paras. 249 and 251).

³ CCPR/C/50/D/440/1990 (24 March 1994), para. 5.4.

of ill-treatment both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved-ones. The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is an international norm of *jus cogens*, and as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. We further highlight that families of forcibly disappeared persons should be protected from ill-treatment or intimidation if required (article 13 of the Declaration).

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that "everyone shall have the right to hold opinions without interference" as well as that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers..." This right includes not only the exchange of information that is favorable, but also that which may shock or offend. In its General Comment No. 34 on Freedoms of opinion and expression (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedoms of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. Furthermore, Human Rights Committee, in its General Comment No. 35 paragraph 53 has stated that detention purely due to peaceful exercise of right protected by the Covenant may be arbitrary.

Regarding allegations that the disappearance of Mr. Od Sayavong could have possibly be an act of reprisals against for his cooperation with the UN in the field of human rights, we would like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21, and 42/28 reaffirming the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. In these resolutions, the Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies as well as the issuance of appropriate guidance to national authorities in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations. The Council also urges States to ensure accountability for reprisals by providing access to remedies for victims, and preventing any recurrence. It calls on States to combat impunity by conducting prompt, impartial and independent investigations, pursuing accountability, and publicly condemning all such acts.

We would like to refer your Excellency's Government 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 each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedom.

Furthermore, we would like to bring to the attention of your Excellency's 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 provides 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 9, paragraph 4, point a), which provides for the right to unhindered access to and communication with international bodies;
- 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.