

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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(Please use this reference in your reply)

3 August 2023

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 52/4, 51/8, 45/3, 44/8 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention of human rights defender and lawyer Mr. Lu Siwei and the related imminent risk of deportation to China, where there are substantial grounds to believe that he would be in danger of being subjected to human rights violations, including enforced disappearance.

Mr. Lu Siwei is a well-known human rights defender and lawyer from Chengdu, in Sichuan province. His work has focused on issues such as freedom of expression, enforced disappearances, and torture. Mr. Lu Siwei has defended fellow human rights lawyers facing criminal prosecution, or who have already been convicted. He also represented one of 12 Hong Kong human rights activists who were detained at sea by mainland Chinese authorities while trying to flee to Taiwan in August 2020.

According to the information received:

On 15 January 2021, the Sichuan Judicial department formally revoked Mr. Lu Siwei's lawyer's license on the grounds of "inappropriate" and "malicious" online expressions, which are said to have "harmed national security".

Subsequently, in May 2021, Mr. Lu Siwei was informed that an exit ban had been imposed against him on "national security" grounds. Since then, the human rights defender continued to face regular surveillance and harassment, reason why his wife and daughter left China in 2022 and are now based in the United States of America.

On 28 July 2023, Mr. Lu Siwei was detained and questioned by the Lao police while preparing to board a train for Thailand at Thanaleng railway station, in the Dongphosy village, Vientiane Prefecture, Lao People's Democratic Republic, where he arrived with the aim of flying from Thailand to the United States to reunite with his family.

The same day at 11:20am, Mr. Lu Siwei was taken by police car to Thanaleng police station. According to Mr. Lu Siwei's final message to a friend who he had been travelling with, the Lao police intended to take him to the airport and deport him back to China.

As of 31 of July 2023, Mr. Lu Siwei is being held at the Lao national immigration department detention center, where he has reportedly not been permitted access to a lawyer.

While we do not wish to prejudge the accuracy of these allegations, we are gravely concerned at the current detention of Mr. Lu Siwei, which may be related to his legitimate work as a human rights defender and lawyer.

We further note with grave concern the related risk of imminent deportation to China he is reportedly facing, where there are substantial grounds to believe that Mr. Lu Siwei would be in danger of being subjected to irreparable harm upon return to China on account of torture, cruel, inhuman, degrading or ill-treatment or punishment, and other serious human rights violations, including arbitrary detention or enforced disappearance.

We recall that, under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment, and other irreparable harm, without discrimination of any kind. Should the deportation take place, we remind Your Excellency's Government that his deportation would be in contraction with the core principle of non-refoulement as enshrined, among others, in Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Lao People's Democratic Republic is Party since 26 September 2012, and is considered to be part of customary international law.

Furthermore, Mr. Lu Siwei has a right to be provided with access to a lawyer of his choosing.

In such circumstances, should Mr. Lu Siwei be returned to China, his deportation could result in a violation of his right to be free from torture and other cruel, inhuman or degrading treatment or punishment, as well as his right to, liberty and security as set out in articles 3, 5 9 and 10 of the Universal Declaration of Human Rights (UDHR) and in articles 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Lao People's Democratic Republic is Party since 2009.

In addition, we wish to recall that the prohibition of enforced disappearance has also attained the status of *jus cogens*, and article 8 of the Declaration on the

Protection of All Persons from Enforced Disappearance, which enshrines customary international law, establishes that no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that this person would be in danger of enforced disappearance.

We respectfully call upon your Excellency's Government, based on humanitarian grounds and according to Lao People's Democratic Republic international human rights obligations, to take all necessary measures to prevent any irreparable harm to the life and personal integrity of Mr. Lu Siwei and, in particular, to refrain from returning him to the People's Republic of China and to ensure his release and allow him to reunite with his family in the United States of America.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Lu Siwei in compliance with international instruments.

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 information concerning the protections against refoulement to torture or other cruel, inhuman or degrading treatment or punishment, or other irreparable harm, as required by international human rights law, and how they are being applied in the case of Mr. Lu Siwei.
3. Please provide detailed information on the authority that ordered Mr. Lu Siwei's deprivation of liberty and the grounds thereof, as well as the place of deprivation of liberty, elements relating to his state of health as well as his physical and mental well-being and measures adopted to guarantee that he can be visited by his counsel or any other person of his choice and to take proceedings before a court, so that the latter can decide without delay on the lawfulness of his deprivation of liberty and order his release.

4. Please provide information on the measures undertaken to abide by the *non-refoulement* principle and any assessment carried out by the authorities to ascertain the risk of Mr. Lu Siwei being subjected to torture and ill-treatment or enforced disappearance in China, and how this decision would be compatible with the applicable international law standards.

While awaiting a reply, we ask that prompt steps be taken to stop the imminent deportation of Mr. Lu Siwei and prevent any irreparable harm to his life and personal integrity.

We would appreciate receiving a response within 60 days. Past 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 wish to inform your Excellency's Government, that we may continue to publicly express our concerns in the near future about this case and other cases of human rights defenders and lawyers at risk in Lao People's Democratic Republic, since these cases in our view merit prompt and undivided attention. We also believe that this is a matter of public concern and that the public should be informed about its human rights implications. Any public expression of concern from our part would indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Please accept, Excellency, the assurances of our highest consideration

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Matthew Gillett
Vice-Chair of the Working Group on Arbitrary Detention

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment