



LAO PEOPLE'S DEMOCRATIC REPUBLIC

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS
COMMITTEE

123RD SESSION, 2 - 27 JUL 2018

AMNESTY
INTERNATIONAL



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1. INTRODUCTION

Amnesty International provides this submission to the United Nations (UN) Human Rights Committee (the Committee) in advance of the examination of the second periodic report of the Lao People's Democratic Republic (LAO PDR) at the 123rd session of the Committee in July 2018.

The submission features information in relation to Amnesty International's research on restrictions on the rights to fair trial (art.14), privacy (art. 17), freedom of expression (art. 19), association and peaceful assembly (arts. 21-22) and liberty of person (art. 9)

Shortcomings abide in the Government's failure to implement the rights to reparation and remedy (art. 2), and safeguards in detention (art.7 and 9), despite the State's move to reform legislation and revise the Constitution. Recent legislative decrees also perpetuate and strengthen unwarranted restrictions on the exercise of Covenant rights on expression and association. Individuals continue to be arbitrarily detained solely for peacefully exercising their Covenant Rights.

2. CONSTITUTIONAL FRAMEWORK (ARTS. 2 & 4)

The Lao PDR's Constitution, in force since March 2016, introduced provisions protecting a number of human rights provided in the Covenant – including the rights to life, physical integrity and not to be arbitrarily detained.¹

There is no independent national human rights institution, and the government has not accepted recommendations made at the UN Human Rights Council's two Universal Periodic Reviews (UPR) of Lao PDR for the establishment of one. The Constitution introduced a mechanism for the consideration of "requests for justice" by citizens in the form of National Assembly and Provincial Assembly Standing Committees which would receive and consider requests for justice².

The Lao PDR ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2012. In addition, it has twice undertaken at the 2010 and 2015 UPR to ratify the International Convention on the Protection of All Persons from Enforced Disappearance (ICED), which it signed in 2008.

Amnesty International recommends that Lao authorities:

- Amend the 2016 Constitution in order to fully reflect Lao PDR's Covenant obligations.

3. RIGHT TO LIFE (ART. 6)

While Laos has not carried out any executions since 1989, it continues to hand down death sentences. The death penalty is applicable for a range of non-lethal crimes, including trading in and possession of narcotics³.

Lao PDR has continued to abstain from voting on UN General Assembly resolutions on a moratorium on the use of the death penalty, most recently in December 2014⁴ and December 2016.⁵

Amnesty International recommends that the Lao authorities:

- Enact legislation abolishing the death penalty for all crimes.
- Pending the abolition of the death penalty, commute all death sentences and immediately establish an official moratorium on executions.
- Ratify the Second Optional Protocol to the Covenant.

¹ 2015 Constitution, Article 42: "The right of Lao citizens in their lives, bodies, honour and houses are inviolable. Lao citizens cannot be arrested, detained, or searched without the order of the Public Prosecutor or the people's courts, except if otherwise provided by the laws." The text of the Constitution is available at <http://www.na.gov.la>.

² 2015 Constitution, Articles 56 and 79.

³ <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=laos>

⁴ Resolution adopted by the General Assembly on 18 December 2014, UN Doc. A/RES/69/186.

⁵ Resolution adopted by the General Assembly on 19 December 2016, UN Doc. A/71/PV.65.

4. LIBERTY AND SECURITY OF PERSON, PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; (ARTS. 7 AND 9)

In 2008 the Lao PDR signed the ICED, but has not acted on its undertakings at its 2010 and 2015 UPR reviews to move to ratify the Convention.

Enforced disappearances continue to be reported and there has been no progress in investigations or prosecutions⁶. While the Lao PDR has accepted recommendations to investigate the enforced disappearance of leading civil society member Sombath Somphone, who was not been seen since being stopped by traffic police and taken away in a pick-up truck in Laos in December 2012⁷, they have taken little to no action⁸. No steps have been taken to review new evidence in the form of video footage provided by his family. The Government has also failed to establish the fate or whereabouts of other alleged enforced disappearances, including that of Kha Yang, a Lao ethnic Hmong arrested after his forced return from Thailand in 2011, and of Sompawn Khantissouk, an entrepreneur who was active on conservation issues and abducted in 2007 by men believed to be police⁹.

The practice of holding individuals incommunicado for months and not disclosing the fate and whereabouts of individuals in their custody continues to weaken protection against enforced disappearance and torture. For example, authorities concealed information on the fate and whereabouts of three persons arrested in March 2016 for more than two months, before showing them on 25 May 2016 on state television¹⁰. Their arrest and detention may have amounted to enforced disappearance. Relatives of a group of 14 villagers detained for logging on disputed village land in Sekong Province in July 2017 reported members of the group were held incommunicado for periods in solitary confinement, and that individuals were subjected to torture.¹¹

Amnesty International remains further concerned that despite constitutional guarantees against arbitrary detention and provisions in the 2012 Criminal Procedure Code requiring individuals to be charged or released within 48 hours¹², prolonged detention without charge or trial may be practised under provisions in Criminal Procedure Code. These allow for up to one year's detention during criminal investigation¹³ and for "preventive" detention, arrest or house arrest for potentially extended periods "in order to timely prevent the offence or when there is the basis leading to the belief that the accused person will create difficulties to the investigation-interrogation¹⁴." The Criminal Procedure Code allows for the detention of suspects with "bad history" or "uncertain residence¹⁵" or who authorities maintain pose a flight risk.

While the use of force, including beatings, and other forms of torture or ill-treatment, are prohibited in law under Article 12 of the Criminal Procedure Code and the Constitution incidents of torture continue to be reported. Villagers in Sekong Province detained for extended periods have reportedly faced beatings and application of electric shocks during 2017. One individual – Somsavanh - who was reported to have shown signs of bruising on his body, reportedly died in detention in January 2018.¹⁶

⁶ Amnesty International, Annual Report 2017 Laos, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/laos/report-laos/>

⁷ Amnesty International, Laos: Caught on Camera, The Disappearance of Sombath Somphone" ASA 26/002, 2013 June 2013, available at <https://www.amnesty.org/en/documents/ASA26/002/2013/en/>

⁸ Amnesty International, Laos: Five years on, 122 organizations worldwide demand to know: Where is Sombath" 18 December 2017, Index number: ASA 26/7618/2017 <https://www.amnesty.org/en/documents/asa26/7618/2017/en/>

⁹ <https://www.amnesty.org/en/countries/asia-and-the-pacific/laos/report-laos/>

¹⁰ Amnesty International, Laos: Three Activists Held Incommunicado, September 2016, available at https://ua.amnesty.ch/urgent-actions/2016/08/184-16?ua_language=en

¹¹ Radio Free Asia: Lao Villagers Arrested in 11-Year-Old Land Dispute in Sekong Province, 1 August 2017, available at <https://www.rfa.org/english/news/laos/lao-authorities-arrested-in-11-year-old-land-dispute-in-sekong-province-08012017155944.html>; Lao Police Beat Villagers Arrested in Lengthy Land Dispute in Sekong Province, 27 September 2017, available at <https://www.rfa.org/english/news/laos/lao-police-beat-villagers-arrested-in-lengthy-land-dispute-in-sekong-province-09272017095650.html>; Lao Land Protest Villagers Held in Failing Health, November 2017, available at <https://www.rfa.org/english/news/laos/villagers-11022017150047.html>; Lao Detainee Dies in Custody, 21 February 2017, available at <https://www.rfa.org/english/news/laos/doubt-02212018164255.html>

¹² Criminal Procedure Code, Article 12.

¹³ Article 111.

¹⁴ Article 135, 136.

¹⁵ As above, Article 140.

¹⁶ Radio Free Asia: Lao Villagers Arrested in 11-Year-Old Land Dispute in Sekong Province, 1 August 2017, available at <https://www.rfa.org/english/news/laos/lao-authorities-arrested-in-11-year-old-land-dispute-in-sekong-province-08012017155944.html>; Lao Police Beat Villagers Arrested in Lengthy Land Dispute in Sekong Province, 27 September 2017, available at <https://www.rfa.org/english/news/laos/lao-police-beat-villagers-arrested-in-lengthy-land-dispute-in-sekong-province-09272017095650.html>; Lao Land Protest Villagers Held in Failing Health, November 2017, available at <https://www.rfa.org/english/news/laos/villagers->

While the Criminal Procedure Code provides that individuals carrying out torture may be subject to prosecution, Amnesty International is not aware of anyone having been prosecuted for alleged torture.

Amnesty International recommends that the Lao authorities:

- Conduct full, impartial, independent and efficient investigations into all allegations of enforced disappearance, including by seeking expert technical assistance where relevant to examine new evidence, and immediately provide any information that either exists currently or is unearthed by such investigations to the families. Where sufficient admissible evidence exists, prosecute those responsible in fair trials without recourse to the death penalty.
- Provide full reparations to survivors and families of persons subjected to enforced disappearance, torture or other ill-treatment.
- Ratify the ICED, accept the competence of the UN Committee on Enforced Disappearance to receive individual and inter-state complaints and implement the Convention in law, policy and practice.
- Enshrine in law and ensure in practice that individuals are only detained in official places of detention with prompt access to lawyers, family members and independent courts, and that all questioning takes place in the presence of an independent lawyer.
- Amend legislation allowing for detention without charge or trial in order to protect against arbitrary deprivation of liberty.
- Conduct prompt, impartial, independent and efficient investigations into all allegations of torture.
- Ratify and implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including by establishing an independent, efficient and well-resourced National Preventive Mechanism with powers to conduct unimpeded and unannounced visits to all places of detention and all persons deprived of their liberty, and grant access to places of detention to national and international human rights groups.

6. FAIR TRIAL, PRIVACY, FREEDOM OF EXPRESSION, ASSOCIATION, AND PEACEFUL ASSEMBLY (ARTS. 14, 17, 19, 21 AND 22)

The rights to privacy, freedom of expression, association and peaceful assembly remain heavily circumscribed. At two successive UPRs in 2010 and 2015, the government consistently failed to accept recommendations to lift restrictions to freedom of press, to remove all restrictions in law and practice which infringe upon the work of civil society organisations and to ensure that all legal provisions on the rights to freedom of expression, association and peaceful assembly are in line with international human rights law and standards.

Authorities continue to use and to promulgate laws and decrees, which place sweeping, arbitrary restrictions on the human rights to freedom of expression - including online – and association. Laws with vaguely worded and restrictive provisions have been used to target individuals for prosecution, with not only a chilling effect on the peaceful exercise of rights, but also on individuals' ability to seek redress for human rights violations. Measures introduced by authorities to restrict online expression and the formation of associations have also led to restrictions on the right to privacy.

Decree 327 on Internet Based Information Control/Management (2014)¹⁷ allows for a range of sanctions including fines, "re-education" and criminal prosecution or internet users posting, commenting in support of or sharing material online under provisions that are so imprecisely worded to allow for impermissible restrictions on the exercise of Article 19. This includes information and photographs deemed to be either false, untrue, or intended to "undermine social unity" as well as expose undefined "secrets". It also holds web intermediaries such as website administrators and Internet Service Providers liable for the circulation of material that

11022017150047.html; Lao Detainee Dies in Custody, 21 February 2017, available at <https://www.rfa.org/english/news/laos/doubt-02212018164255.html>

¹⁷ available at

<https://www.directoryofngos.org/ingo2/a/download?id=document2093&field=file¬ype=document&file=RGVjcmVIXzMyN18tX01hbmdhZ2VtZW50X29mX0ludGVybmV0Yy1fMTZfU2VwXzlwMTQucGRm>

contravenes government or Party guidelines, and in violation of the right to privacy, requires registration of all internet users with their full names and addresses.

Article 65 of the Criminal Code ('Propaganda against the Lao People's Democratic Republic'), which allows for between one to five years' imprisonment and a fine from 500,000 kip (US \$60) to 10 million kip (US \$1,194), also contains broad provisions allowing for the prosecution of peaceful exercise of Article 19 of the Covenant. It prohibits "slandering the Lao People's Democratic Republic, or distorting the guidelines of the party and policies of the government, or circulating false rumours causing disorder" detrimental to, or for the purpose of "weakening the state". Bounthanh Thammavang, a Polish national of Lao origin, was sentenced to four years and nine months in September 2015 under Article 65 for posting Facebook messages which authorities have characterised as "campaigning and carrying out activities against the regime of the Lao PDR and criticising policies of the party and government." He was reportedly also denied access to a lawyer during his trial.¹⁸

The Decree on Associations, dated 11 August 2017, came into force on 15 November 2017 and supersedes the Decree on Associations (No. 115 of 2009) dated 29 April 2009 ('2009 Decree'). The 2009 Decree had already included imprecise and overly broad terms that led to arbitrary restrictions on the rights to freedom of association, freedom of opinion and expression and the right to privacy which the new Decree appears to have intensified. It grants government authorities sweeping to unreasonably control and/or prohibit the formation of associations; arbitrarily broad powers to inspect, monitor and curtail the activities and finances of associations; the power to order the dissolution of associations on arbitrary grounds and without right of appeal; and powers to discipline associations and individual members on arbitrary grounds. The Decree also includes measures to criminalize unregistered associations and allow for prosecution of their members¹⁹.

Activists Soukan Chaithad, Somphone Phimmasone and Lodkham Thammavong were convicted in 2017 on charges of "co-operating with foreign entities to undermine the state," "distributing propaganda", and organizing protests to cause "turmoil". They were sentenced to 18, 12 and 20 years in prison respectively: it is not known under which legislation. The three had been arrested the previous year after returning from Thailand to renew their passports. They had previously participated in a protest outside the Lao embassy in the Thai capital, Bangkok, and posted a number of messages on Facebook criticizing the Lao government.

They were tried, convicted and sentenced in a closed trial, in violation of their right to a public trial. Article 214 of the Law on Civil Procedure and Article 15 of the Law on People's Courts allows for the trial in camera of cases concerning "secrets of the State or society". Their fair trial rights were also compromised by having been held in incommunicado detention and having public televised confessions screened prior to their trial violated their right to presumption of innocence.²⁰ The characterisation of their acts which consisted of peacefully assembling and criticising government policy on Facebook as risks to security demonstrates the extensive and unjustifiable latitude taken by authorities in broadly defining offences against national security. The independence of the judiciary in such cases has consistently been questioned.

Amnesty International recommends that the Lao authorities:

- Immediately order all officials to refrain from initiating criminal proceedings against individuals for the peaceful exercise of their human rights, including the rights to freedom of expression, association and assembly.
- Review relevant cases that have already been concluded, drop charges and expunge convictions and ensure the immediate and unconditional release of individuals who have been convicted solely for the peaceful exercise of their human rights.
- Amend or repeal laws and orders including Articles 65 and 66 of the Criminal Code; Decree 237 on Internet Information Management and the Decree on Associations that restrict or provide criminal penalties for the peaceful exercise of human rights or allow for arbitrary detention, in order to ensure that they meet Laos' international human rights obligations.

¹⁸ Radio Free Asia, Lao Court Jails Polish Activist on basis of Online Criticism of Government, 1 October 2015, available at <https://www.rfa.org/english/news/laos/activist-10012015134330.html>

¹⁹ Amnesty International, Laos: Joint Open Letter on Repeal of Decree on Associations, December 2017, available at <https://www.amnesty.org/en/documents/asa26/7608/2017/en/>

²⁰ Amnesty International Urgent Action Three Activists Sentenced to Prison in Secret Trial, 17 May 2017, AI Index: ASA 26/6270/2017, available at <https://www.amnesty.org/en/documents/asa26/6270/2017/en/>

- Refrain from adopting or maintaining vague, overly broad definitions of “security” and similar concepts in decrees and criminal legislation, and adopt definitions of offences that are precisely and sufficiently circumscribed to uphold the principle of legality and that do not give the authorities discretion to restrict or obstruct the exercise of the rights to freedom of expression, association or assembly beyond what is justified under Articles 19, 21 and 22 or to violate the rights of individuals charged with such crimes to a fair and public trial.



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SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

123rd SESSION, 2 - 27 Jul 2018

Amnesty International submits this information to the Human Rights Committee (the Committee) in advance of the examination of the second periodic report of the Lao People's Democratic Republic (hereafter Lao PDR), at the 123rd session of the Committee scheduled to be held in July 2019.

The submission features information in relation to the Committee's List of Issues on Thailand and draws on Amnesty International's recent research on the country.

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