



LAO PEOPLE'S DEMOCRATIC REPUBLIC
PEACE INDEPENDENCE DEMOCRACY UNITY PROSPERITY

Permanent Mission of the Lao PDR
to the United Nations Office and
other International Organizations
Geneva

No 140 /Lao.PM.GE.20

The Permanent Mission of the Lao People's Democratic Republic (Lao PDR) to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights of the United Nations (Special Procedures Branch) in Geneva, and with reference to the joint communication from special procedures No: AL LAO 2/2020, dated 13 July 2020, has honor to inform that the Lao PDR finds that many information and allegations included in the said joint communication are inaccurate and twisted, and some are blatantly fabricated. After coordinating with relevant authorities of the Lao PDR, the Permanent Mission of the Lao PDR would like to provide information, clarifications and comments regarding the criminal case of Ms. Houayheuang Xayabouly as follows:

1. The term "human rights defenders" is very broad and vague, 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" (a.k.a the Declaration on human rights defenders) itself is very open and all-encompassing. Ms. Houayheuang Xayabouly is not and has not claimed to be a "human rights defender". Regardless, the criminal acts that she has been accused of, prosecuted, and found guilty in a competent Court of Law are not related to human rights nor "human rights defenders", and most certainly she was not prosecuted for being a woman. Above all, the Lao PDR reiterates that all individuals and groups are equal and accountable before the Law.
2. While it is debatable whether Ms. Houayheuang Xayabouly's work can be defined as "human rights work", it is not the reason for her invitation to a police station in 2018 and not for her eventual criminal prosecution and conviction in 2019. The reason for the police to invite her in 2018, was to inform her that some of her actions can be considered as criminal, and asked her to refrain from committing further criminal acts. At a time while the people across the country were joining hands to provide rescue and relief to the affected people, the posts she made were creating misunderstandings, division, disharmony and disorder. She was also advised that if she is compelled that her grievances are legitimate and credible, they should be made through proper complaints receiving mechanisms, an advice which she ignored.

3. According to the Champasak Provincial People's Court Decision number [REDACTED] dated [REDACTED], it was found in her own statement that Ms. Houayheung Xayabouly was approached by an unnamed individual at a bar on the night of 03 September 2019, and urged her to make some contents about the saddle dam D collapse. The morning after that night, while self-declared "still intoxicated", she began making the first video post that incriminates herself on 04 September 2019, followed by two daily (05-06 September 2020) videos of similar contents, based on information which she admitted in her statement as "hearsays" about the flood.
4. During the investigation phase of the proceedings, the police officers abided by their rights and duty as officers of the law and conducted themselves accordingly. They rightfully informed Ms. Houayheung Xayabouly of the accused's rights and obligations. The investigation was conducted without any coercion or use of force. Through the investigation, the accused confessed in her own statement and plead guilty to the acts of crime as charged.
5. On the "bail application", the Criminal Procedure Law provides that the criminal suspect/accused have the right to file for temporary release while awaiting trial. According to Article 143 of the same law, temporary release application shall be considered only if the criminal charge is a "Minor Crime" with a maximum sentence of 3 years imprisonment or below, except for repeat offenders or habitual offenders. In this case, Ms. Houayheung Xayabouly was charged with violation of Article 117 of the Penal Code of the Lao PDR, which carries a sentence of up to 5 years imprisonment, and thus, the temporary release or "bail" application was denied.
6. Ms. Houayheung Xayabouly has enjoyed the right to select her own lawyer. The police officers have informed Ms. Houayheung Xayabouly on her rights to argue the case and other rights stipulated in articles 14, 64, and 65 of the Law on Criminal Procedure. However, Ms. Houayheung Xayabouly chose to exercise her right to self-representation during the investigation phase, as neither she nor her family has ever officially appointed a lawyer at that time. In accordance with Article 19 of the Law on Lawyers and Article 71 of the Law on Criminal Procedure which stipulates that a lawyer or other protectors can participate in a criminal proceeding upon the date of official appointment or written appointment by the client or his/her family or organization, onwards.
7. Evidently, on 18 September 2019, Mr. [REDACTED] (father of Ms. Houayheung Xayabouly) has signed a Power of Attorney number [REDACTED] which officially appointed and engaged 3 lawyers to represent Ms. Houayheung Xayabouly and her interests in the court of law, namely [REDACTED]
[REDACTED]
[REDACTED]. The 3 individuals were then allowed to represent and gain access to their client, as well as access to the case files, evidence and relevant documents as provided in the Laws and regulations. Mr. [REDACTED] along with Mr. [REDACTED] also addressed the Court during

the hearing as Lawyer and Protector of the Defendant, in accordance with their rights and obligations as provided by the Law.

8. Upon close examination of the statements and video evidence made by the defendant on 4-6 September 2019, the Court finds that the means, format and contents of the said videos are not in line with what the defendant claimed. The Court deemed that it is rather making use of the flood situation as an excuse to falsely condemn and make false accusations against the State and its officials, with an intent to undermine or weaken the State authority as reflected in her false allegations against the State and Government officials. The video posts were also deemed to be attempts to create misunderstandings, misleading, distracting and disrupting the then ongoing rescue and relief efforts to the flood victims by the Government, and inciting social disorder and chaos. Whereas in reality, as seen by the public through various media outlets, the Government, along with all relevant sectors, considered the 2019 flooding disaster to be a national emergency and has done its utmost in providing rescue efforts, short-term and mid-term relief measures, and planning for long term solutions for the people affected by the flood.
9. The Court found another compelling fact that Ms. Houayheuang Xayabouly has never tried to initiate her complaints through the judicial or quasi-judicial proceedings. Also, the fact that the defendant acknowledged that the information she cited were merely “hearsays”, adding to the fact that the ranting contents did not stop at stating the grievances, but the defendant went on to make self-incriminating false accusations that lead to public misunderstanding, anger, and disorder. The Court conclusively established those acts to be damaging to the reputation of the State and Government of the Lao PDR, as well as disrupting public order and morals.
10. Ultimately, the Court found Ms. Houayheuang Xayabouly to be guilty of violating Article 117 of the Penal Code of the Lao PDR and sentenced to 5 years imprisonment, with a fine of 20,000,000 Lao Kips, and confiscation of 2 mobile telephones that were used to commit the crime.
11. Article 19 of the ICCPR, especially paragraph number 3 and its subsections (a) and (b) provides the right to freedom of expression, which carries with it special duties and responsibilities, and therefore be subject to certain restrictions that are by law and necessary: (a) for respect rights and reputations of others; (b) for the protection of national security or of public order, or of public health or morals. Article 117 of the Penal Code of the Lao PDR is a provision of the nation’s first ever Penal Code, and it is necessary for respect of the rights and reputation of the State, more importantly to protect public order, morals and State authority, all of which are considered as national security matters.

The Lao PDR, therefore, denies all false allegations indicated in the abovementioned joint communication No. AL LAO 2/2020, dated 13 July 2020, and sincerely hope that the clarifications and information provided above would help the international community and various organs of the United Nations to reach the correct understanding that the Lao PDR provides the rights to lawful freedom of expression, but will not tolerate criminal offence by any individuals or groups.

In this connection, the Permanent Mission of the Lao PDR would highly appreciate if the above-mentioned information could be kindly transmitted to parties concerned in due course.

The Permanent Mission of the Lao PDR to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights of the United Nations (Special Procedures Branch) the assurances of its highest consideration.

Geneva, 20 October 2020



The Office of the High Commissioner for Human Rights
of the United Nations (Special Procedures Branch)
Geneva

CC: - 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 Promotion and Protection of the Freedom of Expression
- Oliver De Schutter, Special Rapporteur on the Situation of Human Rights Defenders
- Dubravka Simonovic, Special Rapporteur on violence against women, its causes and consequences
- Elizabeth Broderick, Chair-Rapporteur of the Working Group on discrimination against women and girls