



Law Council
OF AUSTRALIA

Office of the President

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Ms Lisa Wright
Assistant Secretary
South-East Asia Mainland Bilateral Branch
Department of Foreign Affairs and Trade
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By email: Lisa.Wright@dfat.gov.au and Isaac.Matia@dfat.gov.au

Dear Ms Wright

5th Australia-Lao PDR 2017 Human Rights Dialogue: Civil Society Consultation

The Law Council of Australia thanks the Department of Foreign Affairs and Trade (**DFAT**) for the opportunity to engage in the Civil Society Consultation on 7 June 2017, and to provide a written submission ahead of the 5th Australia-Lao People's Democratic Republic (**Lao PDR**) Human Rights Dialogue (the **Dialogue**), scheduled to be held in Vientiane in July 2017.

The Law Council considers that such opportunities allow the Government to seek valuable feedback from civil society, and hopes that the concerns of the Law Council and other organisations are raised at the Dialogue and through the Australian Government's ongoing human rights discussions with the Government of the Lao PDR. The Law Council's comments in this submission will focus on the independence of the judiciary and legal profession, death penalty, international law obligations, women's rights, freedom of association, expression and assembly, enforced disappearances, people trafficking, and the rights of minorities and ethnic groups.

Independence of the Judiciary and Legal Profession

An independent legal profession is an essential protector of citizens' legitimate rights. The Law Council's *Policy Statement on Rule of Law Principles*¹ notes that access to competent and independent legal advice and the independence of the legal profession is key to the maintenance and promotion of the rule of law. Further, the United Nations' *Basic Principles on the Role of Lawyers*² protects the freedom of expression and association of lawyers, guarantees the functions of lawyers, and protects the self-governing and independence of professional associations.

The Law Council acknowledges the work undertaken by the Lao PDR Government to improve the transparency and accountability of its government and its public administration. Particularly, the Law Council wishes to commend the commitment to strengthening the rule of law and safeguarding independence of the legal profession through the implementation of the *Legal Sector Master Plan on Development of the Rule of Law by 2020*.³ Further, the

¹ Law Council of Australia, *Policy Statement on Rule of Law Principles* (March 2011) available at: <https://lawcouncil.asn.au/docs/f13561ed-cb39-e711-93fb-005056be13b5/1103-Policy-Statement-Rule-of-Law-Principles.pdf>.

² United Nations, *Basic Principles on the Role of Lawyers* (adopted 27 August 1990) available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

³ *Report of the Working Group on the Universal Periodic Review, Lao People's Democratic Republic, 29th Sess, Agenda item 6, UN Doc A/HRC/29/7* (23 March 2015) para 8.

adoption of the *Law on Lawyers*, which has the substantive goal of ensuring that lawyers carry out their work effectively and in adherence of an enshrined professional code,⁴ can be seen as an achievement for the rule of law.

Lawyers play a critical role in upholding human rights and fundamental freedoms and the existence of independent bar associations is crucial for the independence of the profession. As such, the Law Council also acknowledges the development of the Lao Bar Association, which now has 183 members and has provided legal assistance in more than 1,700 cases, as a further advancement towards protecting the rights of citizens and ensuring independence of the legal profession.⁵ It is important that the Lao PDR continues to implement and adhere to these initiatives.

However, the Law Council is concerned with reports it has received from the Alliance for Democracy in Laos that lawyers are reluctant to engage in civil society activities which protect and promote human rights due to fear of reprisals.

U.S. State Department reports have noted that there is a lack of qualified lawyers to protect the rights of defendants.⁶ Additionally, even where there are lawyers available there is sometimes a reluctance to represent clients in sensitive cases due to fear of retaliation by authorities.⁷ The Law Council is concerned that this limits the capacity for defendants, particularly human rights defenders, to receive a fair trial.

The Law Council is also concerned that impunity and corruption are present within the legal system. While the law provides for an independent judiciary, for example restricting interference in their decision making through the Anti-Corruption Law No. 27 (2012), the U.S. State Department has reported that some judges are accepting bribes.⁸ Laos faces a multitude of governance issues, including challenges in implementing anti-corruption laws.⁹ Judicial officers receiving inducements would be of substantial concern to the Law Council as this conduct is usually criminalised and is inconsistent with the Principle 2 of the *Basic Principles on the Independence of the Judiciary*.¹⁰

The Law Council recommends that in the Dialogue the Australian Government:

- acknowledge reforms to strengthen the rule of law and encourage the Lao PDR Government to continue such efforts;
- urge the Lao PDR Government to comply with *the Basic Principles on the Role of Lawyers* and the *Basic Principles on the Independence of the Judiciary* in the administration of the justice;
- acknowledge the Australian legal profession's strong support for the promotion of an independent legal profession;
- seek advice from the Lao PDR Government regarding reports of bribery of judges and reiterate the Australian legal profession's strong support for the promotion of an independent judiciary;

⁴ *National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Lao People's Democratic Republic, 21st Sess, UN Doc A/HRC/WG.6/21/LAO/1 (5 November 2014) para 39.*

⁵ *Ibid* para 40.

⁶ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Laos Human Right Report 2016-2017* (2016) 6 (available at: <https://www.state.gov/documents/organization/265560.pdf>).

⁷ *Ibid*.

⁸ *Ibid* page 5.

⁹ *Ibid* page 17.

¹⁰ Office of the United Nations High Commissioner for Human Rights, *Basic Principles on the Independence of the Judiciary* (adopted Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 26 August - 6 September 1985) available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx> .

- develop human rights technical cooperation activities through the Australian Human Rights Commission to support the legal profession and judiciary in Lao PDR; and
- seek support from Lao PDR Government for a visit to be undertaken by the Special Rapporteur on the Independence of Judges and Lawyers.

Death Penalty

The *Lao PDR 2015 National Report to the Working Group on the Universal Periodic Review* states that Lao PDR is working to review its Penal Code, and that it intends that the revised Penal Code will be “in full compliance with Article 6 of the *International Covenant on Civil and Political Rights (ICCPR)*.”¹¹ This report also notes that Lao PDR believes that it needs to retain the death penalty as an “exceptional measure” for deterring serious criminal offences.¹²

The Law Council has two concerns with this position. Firstly, there is no evidence that the death penalty deters would-be offenders more effectively than other forms of punishment.¹³ Secondly, although Article 6 of the ICCPR does not require States to abolish the death penalty, Article 6(6) is explicit in that “Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.”

Beyond the restrictions in Article 6, the UN Human Rights Committee has also stated that the mandatory imposition of the death penalty for certain crimes is in breach of the ICCPR because it represents an arbitrary deprivation of life. According to the *Amnesty International Report 2016/17 on the State of the World’s Human Rights*, the death penalty is mandatory for serious drug offences in Lao PDR.¹⁴ While there is currently a moratorium on the death penalty, Amnesty International notes in its *Death Sentences and Executions 2016 Report* that three death sentences were handed down in 2016.¹⁵ Additionally, Amnesty International notes that there was only limited information available for Lao PDR on the death penalty, including statistics on numbers of prisoners sentenced to death and executions carried out.¹⁶

The Law Council’s opposition to the death penalty is absolute.¹⁷ Internationally, the Law Council is committed to the abolition of the death penalty and, in the interim, to a moratorium on executions and the commutation of death sentences.

On 3 February 2017, the Law Council convened a national symposium to discuss how the Government, the legal profession and others can effectively contribute to the abolition of the death penalty overseas. Building on the Joint Standing Committee on Foreign Affairs, Defence and Trade Report *A World Without The Death Penalty: Australia’s Advocacy for the Abolition of the Death Penalty* (the **Joint Standing Committee Report**),¹⁸ participants

¹¹ *National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Lao People’s Democratic Republic*, above n 4, para 36.

¹² *Ibid.*

¹³ Law Council of Australia, *Policy Statement: The Death Penalty* (September 2007) available at: <https://lawcouncil.asn.au/docs/c07d9246-cd39-e711-93fb-005056be13b5/0709-Policy-Statement-Death-Penalty.pdf>.

¹⁴ Amnesty International, *Amnesty International Report 2016/17 on The State of the World’s Human Rights*, 227 – 228 (available at https://static.amnesty.org.au/wp-content/uploads/2017/02/air201617-english_2016-17.pdf?x85233).

¹⁵ Amnesty International, *Death Sentences and Executions 2016* (2017) 5 (available at: <https://www.amnesty.org/en/documents/act50/5740/2017/en/>).

¹⁶ *Ibid.*

¹⁷ *Policy Statement: The Death Penalty*, above n12.

¹⁸ Joint Standing Committee on Foreign Affairs, Defence and Trade, *A world without the death Penalty- Australia’s Advocacy for the Abolition of the Death Penalty*, (May 2016) available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Death_Penalty/Report ; Law Council of Australia, *Australia’s Advocacy for Abolition of the Death Penalty Submission*

committed to work collaboratively in advocating against the death penalty abroad.¹⁹ The Law Council is willing to work with the Australian Government, particularly in terms of local and regional advocacy, to assist in the abolition of the death penalty in the Lao PDR.

The Law Council recommends that in the Dialogue the Australian Government:

- express support for the maintenance of a moratorium on the death penalty;
- express support for greater transparency in reporting the numbers of prisoners sentenced to death and executions carried out, consistent with recommendation 9 of the Joint Standing Committee Report;
- advocate for the abolition of the death penalty consistent with recommendation 6 of the Joint Standing Committee Report, referencing human rights arguments;
- recommend that the Lao PDR Government take the opportunity presented by its Penal Code review process to abolish the death penalty for all offences; and
- offer to support training and networking opportunities for Lao PDR abolitionist civil society groups, consistent with Recommendation 11 and 12 of the Joint Standing Committee Report.

International Law Obligations

While the Law Council acknowledges the importance given by the Lao PDR to the implementation of 2010 Universal Periodic Review recommendations related to the accession, implementation and reporting under international conventions, it is concerned that several significant international instruments have not been ratified by the Lao PDR.

In addition, the Law Council notes that the Lao PDR has not met its reporting obligations to several treaty bodies. These include: the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the United Nations Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities.

The Law Council shares concerns raised by the Working Group on the Universal Periodic Review that dissemination of laws, legal instruments and human rights conventions have not been widely covered across the country. Communication of the obligations arising from these commitments is key to ensuring that officials and the public are aware and understand their rights and responsibilities under these instruments.

The Law Council recommends that in the Dialogue the Australian Government:

- express support for the ratification of Second Optional Protocol of the International Covenant on Civil and Political Rights, in conjunction with above recommendations above on the death penalty, and Australia's recommendation 121.86 to the Lao PDR Second Cycle Universal Periodic Review;
- express support for the ratification of the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
- request that the Lao PDR Government submit their outstanding reports to the relevant treaty bodies; and
- offer support to increase awareness of Lao PDR Government's international human rights obligations through training and development opportunities for public servants.

(9 October 2015) available at: <https://www.lawcouncil.asn.au/resources/submissions/australia-s-advocacy-for-abolition-of-the-death-penalty>.

¹⁹ Law Council of Australia, 'Australia's contribution to the Abolition of the Death Penalty Symposium: Communique', 8 February 2017, available at: <https://www.lawcouncil.asn.au/media/media-releases/australia-s-contribution-to-the-abolition-of-the-death-penalty-symposium--communique>.

Women's Rights

Lao PDR has taken positive steps to recognise and implement human rights for women. These include the Women's Development Plan (2011-2015), the Lao National Commission for the Advancement of Women National Strategy for the Advancement of Women (2011-2015) and work to implement domestic legal frameworks to give effect to women's rights. Increased rates of female participation in education and in national public affairs are commendable.

However, increased focus on human rights issues for women in Lao PDR, including through a high level of engagement with international partners on this issue, is undermined by the actions of the Lao PDR Government in other areas of human rights. For example, better protection of freedom of expression and from arbitrary detention (enforced disappearances) would increase the capacity of civil society groups to positively influence the "constraints and challenges" preventing implementation of policies on gender equality and promotion of the advancement of women in society.²⁰

The Law Council recommends that in the Dialogue the Australian Government:

- recommend that the Lao PDR Government immediately remove impediments that prevent civil society groups working constructively to address human rights issues in Lao, including in relation to human rights for women.

Freedom of Association, Expression and Assembly

The Law Council notes with concern that human rights relating to freedom of expression, association and peaceful assembly remain severely restricted in Lao PDR. Reports from Amnesty International and the U.S. State Department note that civil society organisations remain under stringent state control and even where they operate, generally exercise self-censorship.²¹

Lao PDR has ratified the ICCPR and its domestic law provides for freedom of speech, press and assembly under Article 44 of the Constitution. In practice, some groups do not receive the full benefit of this protection. The Lao PDR Government restricts political speech and writing, prohibiting most public criticism which it deems harmful to its reputation.²² The Law Council is concerned with Decree 327 of 16 September 2014, which requires netizens to use their real names online and is used to track dissent. Additionally, the Law Council is concerned that the broad language used for offences under Article 13 in the Law on Prevention and Combatting Cyber Crime of 15 July 2015, which has stifled opinions online, have been used to detain citizens exposing corruption.²³

The Law Council recommends that in the Dialogue the Australian Government:

- call upon the Lao PDR Government to abide by its international law obligations to protect and promote freedom of association, expression and assembly, building upon Australia's recommendation 121.153 to the Lao PDR Second Cycle Universal Periodic Review;
- urge the Lao PDR Government to withdraw decree 327 and reform the Law on Prevention and Combatting Cyber Crime so that it complies with international human rights law, strengthening Australia's recommendation 121.140 to the Lao PDR Second Cycle Universal Periodic Review; and

²⁰ Ibid para 67.

²¹ Amnesty International, *Annual Report 2016-17*, 22 February 2017, available at: <https://www.amnesty.org.au/annual-report-2016-17/>.

²² Ibid n4, p9.

²³ Ibid n4, p11. Article 13 refers to causing damages via social media covering off on the use of "impolite words" and information which destroys "order in society, national culture and the fine tradition of the nation".

- seek support from the Laos PDR Government for a visit to be undertaken by the Special Rapporteur on Rights to Freedom of Peaceful Assembly and of Association.

Enforced Disappearances

Under Article 3 of the *International Convention for the Protection of All Persons from Enforced Disappearance*, each State Party is to take appropriate measures to investigate acts of disappearance and bring those responsible to justice. The Law Council notes that Lao PDR has signed but yet to ratify the *International Convention for the Protection of All Persons from Enforced Disappearance*. Nonetheless Lao PDR is still required to refrain from acts which would defeat the object and purpose of the treaty. This is in accordance with Article 18 of the *Vienna Convention on the Law of Treaties*.

The Law Council is concerned that there has still been no progress in accounting for the prominent civil society leader Sombath Somphone, who was forcibly disappeared on 15 December 2012. More than four years after he was stopped at a police checkpoint in Vientiane, the Lao PDR Government has yet to engage in a detailed investigation into his disappearance.²⁴ The Law Council is also concerned by reports it has received from the Alliance for Democracy in Laos regarding the disappearance of Sengkeo Silichack, a human rights activist and lawyer.

In this context, the Law Council notes Australia's recommendation to the Lao PDR Second Cycle Universal Periodic Review that the Lao PDR Government engage in a thorough and transparent investigation of the circumstances surrounding Sombath Somphone's disappearance. It appears that this investigation has either not been conducted or the findings are yet been made public. Similar investigations into the disappearances of other human rights activists, including Sengkeo Silichack, are also warranted.

The Law Council recommends that in the Dialogue the Australian Government:

- urge the Lao PDR Government to engage in a thorough and transparent investigation of the circumstances surrounding Sombath Somphone's disappearance, noting Australia's recommendation 121.100 to the Lao PDR Second Cycle Universal Periodic Review, as well as Sengkeo Silichack's disappearance; and
- urge the Lao PDR Government to ratify the *International Convention for the Protection of All Persons from Enforced Disappearance*.

People Trafficking

According to the U.S. State Department, Lao PDR is a source country for women, children, and men subjected to sex trafficking and forced labour.²⁵ The Law Council acknowledges the Lao PDR Government's progress towards meeting the minimum standards for the elimination of trafficking, noting the U.S. State Department's view that these standards have not yet been met.²⁶ The promulgation of the Law on Anti-Trafficking in Persons in February 2016 is particularly welcomed. Despite this, reports indicate that law enforcement efforts appear to have decreased.²⁷

The Law Council recommends that in the Dialogue the Australian Government:

²⁴ Human Rights Watch, 'Joint Statement on Sombath Somphone', 15 December 2016. Available at: <https://www.hrw.org/news/2016/12/15/joint-statement-sombath-somphone>; Liam Cochrane, ABC News, 'Family of missing Laos activist Sombath Somphone reveal new evidence three years after disappearance', 15 December 2015. Available at: <http://www.abc.net.au/news/2015-12-14/family-of-missing-laos-activist-reveal-new-evidence/7027760>.

²⁵ U.S. Department of State, Trafficking in Persons Report, 2016, available at <https://www.state.gov/j/tip/rls/tiprpt/2016/index.htm>.

²⁶ Ibid.

²⁷ Ibid.

- seek an update from the Lao PDR Government on its response to the U.S. State Department recommendations for Laos from the *Trafficking in Persons Report*.²⁸

Rights of Minorities and Ethnic Groups

The right to be free from racial discrimination is a fundamental pillar of the *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights*. Further, the right to freedom of movement and residence within the border of the State and the right to public health, medical care, social security and social services are enshrined in the *International Convention on the Elimination of All Forms of Racial Discrimination*.

The Hmong are one of the largest and most prominent of the 49 official ethnic groups in Lao PDR.²⁹ While the Law Council notes that the Lao PDR Government is carrying out policies aimed at the increasing harmony, solidarity and equality between ethnic groups,³⁰ it is concerned at a number of reports that there has been a limited focus on assistance projects to address regional and ethnic disparities impacting on the Hmong.³¹

The Law Council is further concerned at reports of the Unrepresented Nations and People Organizations (**UNPO**) that the Hmong have been persistently harassed, intimidated and persecuted by the Lao PDR Government³² and that the Lao military, with the assistance of Vietnam, has been intruding into the Hmong ChaoFa Indigenous community's territory.³³ The Law Council shares the concern of the Committee on the Elimination of Racial Discrimination that these allegations of acts of violence against Hmong people have not been properly investigated.³⁴

The Law Council recommends that in the Dialogue the Australian Government:

- call upon the Lao PDR Government to continue efforts to promote and protect the cultural rights minorities and ethnic groups;
- express support for the protection and promotion of minority and ethnic groups, such that they are treated equally and fairly, and have equal access to social services, including health and education; and
- note particular concern with reports of the mistreatment of the Hmong people.

I trust that this information is of assistance. Please contact Christopher Dyer, Senior Policy Lawyer, at christopher.dyer@lawcouncil.asn.au or (02) 6246 3716 with any questions.

Kind regards



Fiona McLeod SC
President

²⁸ Ibid.

²⁹ *Laos Human Right Report 2016-2017* (2016), above n 6, 25.

³⁰ *National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Lao People's Democratic Republic*, above n4, para 54.

³¹ *Laos Human Right Report 2016-2017* (2016), above n6, 25.

³² Unrepresented Nations and People Organizations, *Update: Alarming Developments For Hmong Community In Lao* (15 December 2015) available at <http://unpo.org/article/18798>.

³³ Unrepresented Nations and People Organizations, *Hmong: Laos Military Incursion into Indigenous Territory*, (8 April 2016) available at <http://unpo.org/article/19074>.

³⁴ *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, Lao People's Democratic Republic*, above n4, para 67.