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**INDIVIDUAL COMPLAINT
CONCERNING THE CASE OF
HOUAYHEUNG (“MUAY”) XAYABOULY**

**TO THE ATTENTION OF:
UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION**

New York, December 15, 2020

Individual Complaint brief prepared and submitted by:
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Human Rights Foundation's Center for Law and Democracy (HRF-CLD) promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law. HRF is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies.

Manushya Foundation is a women-led and innovative non-profit organization, promoting community empowerment to advance the human rights of marginalized communities and fight for social justice and peace. Founded in 2017, we connect and empower local communities across Asia to be at the center of decisions and policies that affect them. Communities become Agents of Change fighting for their rights and providing solutions to improve their lives and livelihoods.

Humanity Beyond Borders is a student-run organization supporting political refugees in Thailand, by building knowledge on the human rights violations faced by these individuals and the communities they belong to. Raising awareness on the challenges faced by the Uyghur Muslims in China and political dissidents in Lao PDR, this movement hopes to build a society in Thailand where democracy and human rights of all individuals are respected.

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TABLE OF CONTENTS

I. PROCEDURAL ELEMENTS	5
a. Mandate of the U.N. Working Group on Arbitrary Detention	5
b. Standing of the Human Rights Foundation to Submit an Individual Complaint	6
c. Grounds for the Initiation of the Procedure Involving Investigation of Individual Cases	6
d. Confidentiality for the victim and confidentiality waiver for Co-submitters.....	7
e. Consent given by the victim.....	7
II. PERTINENT BACKGROUND INFORMATION	8
III. QUESTIONNAIRE	10
a. Identity	11
b. Arrest.....	11
c. Detention	12
8. Describe the circumstances of the arrest and/or detention and indicate precise reasons why you consider the arrest or detention arbitrary.....	14
a. Background Information on Muay	14
b. Arrest and detention of Activists	14
c. Indicate reasons why you consider the arrest and/or detention to be arbitrary: Legal Analysis	15
i. <i>Deprivation of Liberty Under Category I: Violation of Article 9 of the UDHR, and Article 9 and 14 of the ICCPR.....</i>	<i>16</i>
ii. <i>Deprivation of Liberty Under Category II: Violation of Article 19 and 20 of the UDHR, Article 19 and 22 of the ICCPR, and Article 44 of the Lao People's Democratic Republic's Constitution.....</i>	<i>16</i>

iii. <i>Deprivation of Liberty Under Category III: Violation of Articles 5, 8, and 11 of the UDHR and Articles 7, 9, and 14 of the ICCPR</i>	18
iv. <i>Deprivation of liberty was arbitrary under Category V: Violation of Article 7 of the UDHR and Article 26 of the ICCPR</i>	21
9. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention, and, as appropriate, their results or the reasons why such steps or remedies were ineffective.....	22
10. Government Response from Lao PDR	24
11. Urgent Appeal	25
IV. IDENTITY OF THE PERSONS SUBMITTING THE CASE.....	25
V. PETITION.....	26

I. PROCEDURAL ELEMENTS

a. Mandate of the U.N. Working Group on Arbitrary Detention

In accordance with the most recent mandate of the U.N. Working Group on Arbitrary Detention (WGAD), clarified and extended by resolution 1997/50 and 24/7 of 26 September 2013, the tasks of the WGAD are:¹

- (a) To investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned;
- (b) To seek and receive information from Governments and intergovernmental and nongovernmental organizations, and receive information from the individuals concerned, their families or their representatives;
- (c) To act on information submitted to its attention regarding alleged cases of arbitrary detention by sending urgent appeals and communications to concerned Governments to clarify and to bring to their attention these cases;
- (d) To conduct field missions upon the invitation of Government, in order to understand better the situations prevailing in countries, as well as the underlying reasons for instances of arbitrary deprivation of liberty;
- (e) To formulate deliberations on issues of a general nature in order to assist States to prevent and guard against the practice of arbitrary deprivation of liberty and to facilitate consideration of future cases;
- (f) To present an annual report to the Human Rights Council presenting its activities, findings, conclusions and recommendations.

b. Standing of the Human Rights Foundation, Manushya Foundation, and Humanity Beyond Borders to Submit an Individual Complaint

Pursuant to the mandate of the WGAD, the “Manual of Operations of the Special Procedures of the Human Rights Council” (Manual of Operations),² and the publication “Working with the

¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the U.N. Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to U.N. General Assembly Resolution 60/251, G.A. Res. 60/251, ¶ 6 (15 Mar. 2006), has further extended the mandate through Resolution 6/4, 15/18, and 20/16.

² See Manual of Operations of the Special Procedures of the Human Rights Council (Aug. 2008) ¶ 23, 38 and 133, https://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf.

United Nations Humans Rights Programme, a Handbook for Civil Society” (Handbook for Civil Society),³ the Human Rights Foundation (HRF), Manushya Foundation, and Humanity Beyond Borders (hereinafter “co-submitters”), nongovernmental human rights organizations, are permitted to provide information on a specific human rights case or situation in a particular country, or on a country’s laws and practice with human rights implications.

c. Grounds for the Initiation of the Procedure Involving Investigation of Individual Cases

i. The WGAD working methods

According to the methods of work of the WGAD, deprivation of liberty is arbitrary if a case falls into one of the following categories:

- a) When it is clearly impossible to invoke any legal basis justifying⁴ the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (Category I);
- b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by Articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights⁵ and, insofar as States parties are concerned, by Articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights⁶ (Category II);
- c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III);

³ See Working with the United Nations Humans Rights Programme, a Handbook for Civil Society (2008), available at http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf.

⁴ See Methods of work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/33/66 (July 12, 2016), available at <http://www.ohchr.org/EN/Issues/Detention/Pages/MethodsOfWork.aspx>.

⁵ Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 2, 1948). While declarations adopted by the U.N.’s General Assembly are not always binding (this term is often used to deliberately state that the parties do not intend to create binding obligations but merely disclose certain aspirations), some instruments called “declarations,” which initially had no binding force, acquired this characteristic as a result of State practice and became customary international law. See Mary Robinson, U.N. High Commissioner for Human Rights, Statement by the High Commissioner for Human Rights at the European Colloquy, Organised by the Council of Europe (2 Sept. 1998) (“Many of the provisions of the Declaration have become part of customary international law, which is binding on all states whether or not they are signatories to one or more multilateral conventions concerning human rights. Thus, what started its existence as a solemn but non-binding proclamation of rights and freedoms has, at least in some respects, acquired through state practice the status of universal law.”).

⁶ International Covenant on Civil and Political Rights, 16 Dec. 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

- d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV);
- e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (Category V).

ii. The WGAD working methods as applied in the present case

The case of Houayheung Xayabouly (hereinafter referred to as Muay) falls under categories I, II, III and V of the working methods of the WGAD. Muay's detention, articulated in detail below, should be considered arbitrary under these categories because: (1) no legal basis can justify Muay's detention; (2) Lao PDR deprived Muay of her liberty as a result of her exercise of the rights guaranteed by Article 19 of the Universal Declaration of Human Rights (hereinafter UDHR) and Article 19 of the International Covenant on Civil and Political Rights (hereinafter ICCPR); (3) Lao PDR's non-observance of international norms governing the rights to freedom from arbitrary arrest and detention, as well as the due process and fair trial rights, pursuant to Articles 5, 8, 9, and 11 of the UDHR and Articles 7, 9, and 15 of the ICCPR, was sufficiently grave so as to give the deprivation of liberty an arbitrary character; and (4) the deprivation of liberty constituted a violation of international human rights law that prohibits discrimination based on political opinion, as enshrined in Article 7 of the UDHR and Article 26 of the ICCPR. Therefore, co-submitters believe that the case of Muay adequately satisfies the requirements necessary to submit an individual complaint to the WGAD.

Co-submitters will pursue the regular communications procedure before the WGAD in order to have the ability to provide comments on any State response. In addition, co-submitters wishes to continue the process until the WGAD can render an opinion on the arbitrary nature of Muay's detention.

d. Confidentiality for the victim and confidentiality waiver for Co-submitters

In accordance with the Manual of Operations, in communications sent to governments, the source is normally kept confidential. The Manual of Operations also states that any information source may request that its identity be revealed. Accordingly, co-submitters waives their right to confidentiality and authorizes that its identity be revealed in the event that, as part of the procedure involving investigation of individual cases, an allegation letter is sent to the government of Lao People's Democratic Republic (hereinafter Lao PDR) in connection with the information supplied herein.

e. Consent given by the victim

Muay has given consent to co-submitters to submit this individual complaint on her behalf to the U.N. Working Group of Arbitrary Detention.

II. PERTINENT BACKGROUND INFORMATION

Muay is facing a 5-year prison sentence and a fine of 20 million Kip after being charged under Article 117 of the Criminal Code on charges of criminal defamation and propaganda against Lao People's Democratic Republic.⁷ Muay, who is an environmental activist and human rights defender, is being made an example by the government of Lao PDR to deter individuals not to speak out about human rights violations by the Laos government.

Her fight to raise awareness began in 2017, when she, along with the people of Lao PDR, were subjected to pay an excessive toll to cross a bridge on the border between Lao PDR and Thailand. The toll was set forth by the international business Duangdee, which received a concession from the government for construction of the bridge. Muay used the bridge to travel from her home to her place of work and was constantly subjected to this toll. In response, she created a video to raise awareness on the financial burden this was causing on common tradespeople who had to use the bridge, and pay the toll, on a daily basis.⁸ The Lao people agreed that there was a clear beneficial relationship between the government and these international investors, at the expense of common Lao citizens. However, despite Muay's efforts to voice the Lao people's concerns, the government changed nothing.

In May 2018, Muay began to address corruption in Laos by bringing attention to the buying and selling of government positions, using her brother as an example as he was a victim.⁹ Muay's brother, who has always dreamed to become a policeman, paid in an attempt to join the police force, but was cheated of his money without being able to obtain the position. Muay also wanted to raise awareness of the poor education system in Lao PDR that encouraged the buying and selling of degrees as well. She began a fundraiser to raise money to build a school by selling T-shirts that said "I don't want to buy government positions."¹⁰ In addition, she organized a concert with famous internet personalities on October 15, 2018 in Savannakhet as part of the fundraiser.¹¹ The concert was shut down by inebriated police officers who arrested those who wore T-shirts supporting the anti-corruption efforts.¹²

⁷ *Woman detained for criticizing the government online*, INTERNATIONAL FEDERATION FOR HUMAN RIGHTS (FIDH) (Sept. 16, 2019), <https://www.fidh.org/en/region/asia/laos/woman-detained-for-criticizing-the-government-online>

⁸ Moui Mounoy, FACEBOOK (Oct. 1, 2017), <https://www.facebook.com/moui.mounoy/videos/140579349893938/> (explaining in a public post on the heavy toll being charged by Duangdee Company).

⁹ Houayheuang Xayabouly, FACEBOOK (Aug. 10, 2018), <https://www.facebook.com/muay.littlepig.3/videos/239122533599267/> (Public post on the buying and selling of government positions).

¹⁰ Houayheuang Xayabouly, FACEBOOK (Sept. 18, 2018), <https://www.facebook.com/muay.littlepig.3/videos/269836743861179/> (Public post on t-shirts made to raise funds to address corruption by building a school).

¹¹ *Id.*

¹² *Supra* note 10; Joseph Akaravong, FACEBOOK (Oct. 15, 2018) https://www.facebook.com/permalink.php?story_fbid=2221504058128515&id=100008068268130 (Public post on police intervention at the concert organized in Savannakhet); Houayheuang Xayabouly, FACEBOOK (Oct. 15, 2018), <https://www.facebook.com/muay.littlepig.3/videos/283785655799621/> (Public post denouncing the police intervention at the concert to stop the sale of T-shirts 'I don't want to buy government positions' at the concert, claiming the t-shirts were against the law).

Due to Muay's constant activism and criticism of rampant government corruption in Lao PDR, her employer was pressured by the government to fire her as a tour guide. After losing her job, Muay began highlighting problems that resulted from international businesses and investments in the country which she witnessed while working in the tourism industry. This included the competition from Chinese companies and businesses that caused many Lao businesses to shut down or to be sold to Chinese investors.¹³ In addition, Chinese companies, including Chinese state-owned enterprises, have invested in mines, dams, railways, other infrastructure projects, special economic zones, and even banana plantations in Lao PDR.¹⁴ These projects were initiated following forced land concessions, which harmed 72% of the population of Lao PDR that depended on agriculture for their livelihood, and the rest of the population that depended on the crops grown as a food source. As a result, agricultural produce now has to be imported from neighboring countries at higher cost to the Lao people.¹⁵

The final aspect that she highlighted was the unfair practices in the Chinese-owned and operated banana plantations. The indigenous groups Khmu and Hmong, who lost their land to the plantations, were forced to work there and suffered negative health impacts due to the use of chemicals that contaminated their land, rivers, and groundwater. The result was that the water was not potable, the land was not arable, and the crops were contaminated crops along with fish, depriving them of food, water, and any other means of income.¹⁶ These indigenous workers were also employed only for 3 years in the plantations because if they were to die from the negative health or environmental impacts, their plantation employers did not want this to happen while they were still employed at the plantation.¹⁷

On July 23, 2018, following the collapse of a saddle dam that was part of the South Korean, Thai, and Lao owned Xe-Pian Xe-Namnoy hydropower project, Muay began speaking up about the consequence of the collapse and how it affected the communities in the South of Lao PDR.¹⁸ This collapse in a hydropower project with investments from two South Korean companies, a Thai state-owned enterprise and a Lao state-owned enterprise led to severe flooding, destruction of villages, displacement of over 5,000 people, and the disappearance and death of several villagers.¹⁹ The government discredited the coverage of the incident on all forms of media, except state-run media. Access to the affected villages and provinces was restricted by the

¹³ MANUSHYA FOUNDATION AND HUMANITY BEYOND BORDERS, SUBMISSION REGARDING HUMAN RIGHTS VIOLATIONS FACED BY WOMAN HUMAN RIGHTS DEFENDER MS. **HOUAYHEUANG XAYABOULY** IMPRISONED IN CHAMPASAK PROVINCIAL JAIL, LAO PDR CALLING FOR URGENT ACTION FOR HER PROTECTION (March 30, 2020), https://a9e7bfc1-cab8-4cb9-9c9edc0cee58a9bd.filesusr.com/ugd/a0db76_c14e83ad4402416b840accbce03b8ebe.pdf.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ MANUSHYA FOUNDATION, *News release: Laos must undertake transparent and independent investigation to ensure effective remedies for the victims of the dam collapse – and Thailand should also bear responsibility* (Aug. 20, 2018), <https://www.manushyafoundation.org/news-release-dam-collapse-laos>.

¹⁹ INCLUSIVE DEVELOPMENT INTERNATIONAL AND INTERNATIONAL RIVERS, *Reckless Endangerment: Assessing Responsibility for the Xe Pian-Xe Namnoy Dam Collapse*, (July 2019), https://www.internationalrivers.org/wp-content/uploads/sites/86/2020/06/reckless_endangerment_final_for_web-compressed.pdf.

government, so Muay created Facebook videos while visiting camps that housed displaced villagers. She brought them money, food and clothes, and her videos were one of the few sources of information that shed light on the reality of the situation and the actual aftermath of the collapse of the saddle dam. She highlighted the poor assistance provided by the government authorities and their inaction in supporting communities, including the selling of relief supplies by these authorities and their failure to use the vast amounts of aid money to deliver the relief supplies to the affected villagers. She also insisted that government officials should be properly trained should such a situation arise again.

A year after these events, the same villages and provinces were once again impacted by flooding and displacement in August and September 2019 as a result of the tropical storm Podul and the tropical depression Kajiki.²⁰ Seeing the harm that people suffered once again, through a Facebook video posted on September 5, 2019, Muay criticized the slow response of the government in providing assistance, bringing attention to the failure of the government to learn from its shortcomings.²¹ This video that was viewed more than 173,000 times was the last time the government allowed Muay to freely voice her opinion on government policies and practice.

When Muay shared information about the harm that foreign and multinational business enterprises and investments were causing to the environment and the Lao people, the government did not directly approach and reprimand her. Instead, they issued a press release through state run media outlets warning all those who shared information on social media that if they were found guilty of spreading false information, they would be criminally charged and sentenced to prison. The government went through with this threat, by arresting Muay on September 12, 2019 when she pointed out government inaction following a tropical storm that led to flooding in the South of Lao PDR, through a Facebook video of September 5, 2019.

The Lao government viewed Muay as an enemy of the State — a threat to the stability of the Lao People’s Democratic Republic and the continuity of the Lao People’s Revolutionary Party in power, because of her criticism of government actions and the support these opinions received from civil society in Lao PDR. As a result of the efforts made by Muay to make sure that people at the grassroot level are able to enjoy the human rights that they are entitled to, she herself became a victim of rights violations.

III. QUESTIONNAIRE

The following questionnaire was retrieved from Fact Sheet No. 26 of the WGAD (Annex V), available on the website of the United Nations High Commissioner for Human Rights, in accordance with the Manual of Operations.²² The focus of this individual complaint is the arbitrary detention of Muay, which began on September 12, 2019, in retaliation for her exercise

²⁰ RADIO FREE ASIA (RFA), *Flooding in Laos’ Southern Provinces Displaces 100,000, Kills at least 28*, (19 Sept. 19, 2019), <https://www.rfa.org/english/news/laos/laos-flood-death-toll-28-09192019165401.html>.

²¹ Houayheuang Xayabouly, FACEBOOK (Sept. 5, 2018), https://www.facebook.com/muay.littlepig_3/videos/473365436841641/ (Public post on the government inaction in response to flooding in the South of Lao PDR).

²² See “Model Questionnaire to be Completed by Persons Alleging Arbitrary Arrest or Detention,” U.N. Working Group on Arbitrary Detention, available at <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

of her right to freedom of peaceful assembly, right to freedom of expression, and right to fair trial as guaranteed by the UDHR and ICCPR.

a. Identity

1. Family Name: Xayabouly
2. Middle Name: N/A
3. First Name: Houayheuang (also known as “Muay”)
4. Sex: Female
5. Birth Date: November 4, 1988
6. Nationality/Nationalities: Lao PDR
7. Profession: Tour Guide/Shop Owner
8. Address of Usual Residence: Ban Salao village, Phonthong district, Champassak province in Southeastern Lao PDR ²³

b. Arrest

1. *Date of Arrest*

Muay was arrested on September 12th, 2019.²⁴

2. *Place of Arrest/Circumstances of Arrest*

Muay was arrested while eating at a restaurant. During her arrest, Muay posted on Facebook in order to inform her family and reach out to those who could help her indicating that she had been arrested. After arriving at the police station, she was forced by authorities to delete the Facebook post.²⁵

3. *Forces who carried out the arrest or are believed to have carried it out*

Phonthong Police in Champassak Province.

4. *Did they show a warrant or other decision by a public authority?*

No, an arrest warrant was not presented at the time of Muay’s arrest.

5. *Authority who issued the warrant or decision:*

Not applicable (explanation in Section 4 above).

6. *Legal basis for the arrest including relevant legislation applied (if known):*

²³ *Supra* note 7.

²⁴ *Supra* note 7.

²⁵ RADIO FREE ASIA (RFA), *Woman held for ‘defaming’ Laos is refused family visits*, (Sept. 26, 2019), <https://www.rfa.org/english/news/laos/refused-09262019131452.html>.

No reason was given to Muay at the time of her arrest. During her detention, authorities forced her to confess that she was guilty of criminal defamation and was subsequently charged with Article 117 of the Criminal Code.

c. Detention

Upon her detention on September 12, 2019, Muay was not allowed any visitors and was denied bail.²⁶ Her family submitted an application request for bail to the Phonthong police station. After it was signed and a bail amount was set to 100 million kip, it was sent to the provincial police station for a final decision. The bail application was rejected without any reasoning as to why.²⁷ Due process and minimum fair trial standards were not complied with following Muay's arrest, making her detention arbitrary under Categories I, II, III, and V.

Due to Muay being detained on politically motivated charges, she is likely to face harsher treatment in prison as the government is trying to send a warning to the public that criticizing the government will not be tolerated. Her detention and interactions within the prison and with visitors is strictly monitored by government authorities, and she cannot speak about how she is being treated. She has lost significant weight and is suffering from depression. Her detention has been difficult for her family, including her young daughter; they have only been able to visit her a few times. Muay's friends, who are themselves human rights defenders and critical voices against rights violations have been visiting her regularly, although without mentioning that they are friends and without discussing their work with her at all. Non-governmental organizations have been specifically barred from visiting Muay in prison.²⁸ Independent monitoring of prison and detention conditions by external parties has not been allowed in her case.

Throughout her detention, Muay has been interrogated by regime officials. According to a September 17, 2019 press release by the Lao PDR regime, Muay had "confessed" that she was guilty of criminal defamation by undertaking a "campaign against [the country]," through illegal activities and by having a connection with "bad elements" both in Lao PDR and abroad.²⁹ The confession was taken without a lawyer or judge present, and was either coerced or fabricated by the government.

1. Date of Detention

September 12, 2019.

2. Duration of Detention

Muay has been imprisoned since September 2019. To date, she has spent one year and one month in prison.

²⁶ *Id.*

²⁷ Netiwit Chotiphathaisal & Suppakrit, *Muay, the conscience of Laotian society*, (Feb. 3, 2020), New Bloom, <https://newbloomag.net/2020/02/03/muay-profile-eng/>.

²⁸ MANUSHYA FOUNDATION AND HUMANITY BEYOND BORDERS, *supra* note 13.

²⁹ RADIO FREE ASIA (RFA), *Laos State Media: Woman arrested for criticizing government on Facebook confesses* (Sept. 17, 2019), <https://www.rfa.org/english/news/laos/laos-mouay-confession-bail-09172019164231.html>.

3. *Forces holding the detainee under custody*

Authorities and police officials at Champassak provincial prison.

4. *Places of detention (indicate any transfer and present place of detention)*

During her pre-trial detention, Muay was detained at Phonthong police station in Champassak. Following her trial and sentencing, she was moved to Champassak provincial prison to serve her 5-year prison sentence.³⁰

5. *Authorities that ordered the detention*

There is no specific department, ministry, or authority that ordered it. However, it is clear that most actions against Muay have been taken collectively by the government at the national, provincial and local levels. The prison authorities, judicial officers, and the Court all have been complicit with the violations, including the denial of rights through due process.

6. *Reasons for the detention imputed by the authorities*

As part of Muay's criminal process, she was forced to confess before a judge that she was guilty of criminal defamation by undertaking a "campaign against the Lao PDR" through illegal activities by having a connection with "bad elements" both in Lao PDR and abroad.³¹ She had been charged with violating Article 117 of the Criminal Code on propaganda against the Lao People's Democratic Republic.³²

The sole basis for bringing charges against Muay was to make an example out of her so that it deterred individuals from speaking out against the government.

7. *Legal basis for the detention including relevant legislation applied (if known)*

On November 22, 2019, Muay was wrongfully convicted and sentenced to 5 years of imprisonment and a fine of 20 million Kip under Article 117 (previously Article 65; amended as of November 1, 2018) of the Lao PDR penal code. The article, which carries to up to 5 years imprisonment and a fine of 5 to 20 million Kip, states:

. . . propaganda activities against and slandering the Lao People's Democratic Republic, or distorting the guidelines of the party and policies of the government, or circulating false rumors causing disorder by words, in writing, through print, newspapers, motion pictures, videos, photographs, documents or electronic which are detrimental to the Lao

³⁰ MANUSHYA FOUNDATION AND HUMANITY BEYOND BORDERS, *supra* note 13, at 13.

³¹ RADIO FREE ASIA (RFA), *supra* note 29.

³² *Supra* note 7.

People's Democratic Republic or are for the purpose of undermining or weakening State authority.³³

Co-submitters believe that the underlying reasons for the ongoing and continuous detention and the wrongful conviction of Muay solely because she tried to raise awareness for the harm caused against the Lao people as a result of development projects, business activities and corruption. She is being made an example by the government of the Lao PDR to ensure that Lao citizens cannot express any dissenting opinion that brings attention to the shortcomings of Lao PDR or that threatens the existence of the ruling Lao People's Revolutionary Party that enjoys special protection.

8. Describe the circumstances of the arrest and/or detention and indicate precise reasons why you consider the arrest or detention to be arbitrary

a. Background Information on Muay

As explained in Section III above, Muay is a human rights defender and environmental activist dedicated to support the rights of the grassroots communities in Lao PDR. She has been actively involved in raising awareness on how communities are affected by the government actions with international businesses as well as their inaction when it comes to basic human rights that all citizens are entitled to.

Muay is the sole breadwinner of her family financially supporting her retired parents, two of her brothers, and is a single mother to a 4-year old daughter. Her income was vital for the sustenance of her family; however, her employer was forced by the government to dismiss her from her position.³⁴ This resulted in her becoming unemployed for a year prior to her detention, causing severe financial strain on her family. She is currently serving a 5-year prison sentence for her human rights work, and her family is once again denied an adequate standard of living throughout the duration of her detention.

b. Arrest and detention of Activists

The Lao government has recently heightened their actions to prevent any individuals from dissenting or criticizing the government.

Article 117 of the Criminal Code is one of the several laws used to convict activists for their human rights work in order to restrict freedom of expression. This provision utilizes vague, broad language so that the government can arbitrarily restrict what citizens can say about the government. For example, in October 2015 Mr. Bounthanh Thammavong, a Lao-born Polish citizen, was convicted under Article 65 (now Article 117) of the Criminal Code because he created a Facebook post criticizing the government's policies and actions. He was convicted for

³³ See "Lao PDR Penal Code" <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/107516/132381/F-794985995/LAO107516%20Lao.pdf>.

³⁴ MANUSHYA FOUNDATION AND HUMANITY BEYOND BORDERS, *supra* note 13, at 1.

“propaganda against the state.”³⁵ In March 2017, three activists—Soukan Chaithhad, Somphone Phimmason and Lodkham Thammavong—were sentenced at a closed trial to 18, 20, and 12 years in prison respectively.³⁶ They were detained and convicted under Article 65 (now Article 117) of the Criminal Code for publishing a Facebook post criticizing the lack of democracy in Lao PDR.³⁷ In September 2017, the UN Working Group on Arbitrary Detention found their detention to be arbitrary.³⁸

The government of Lao PDR continues to use Article 117 of the Criminal Code as a way to silence activists and human rights defenders who are critical of the government. By having been wrongfully charged, convicted and sentenced under Article 117 for raising awareness on the government’s wrongful policies and actions, Muay’s fundamental right to freedom of expression has been repeatedly violated, and continues to be violated.

c. Indicate reasons why you consider the arrest and/or detention to be arbitrary: Legal Analysis

The detention and conviction of Muay constitutes an arbitrary deprivation of her liberty falling within Categories I, II, III, and V as established by WGAD.³⁹ Muay’s detention, articulated in detail below, should be considered arbitrary under these categories because (1) no legal basis can justify Muay’s detention; (2) Lao PDR deprived Muay of her liberty as a result of her exercise of the rights guaranteed by Article 19 of the Universal Declaration of Human Rights (hereinafter UDHR) and Article 19 of the International Covenant on Civil and Political Rights (hereinafter ICCPR); (3) Lao PDR’s non-observance of international norms governing the rights to freedom arbitrary arrest and detention, as well as the due process and fair trial rights, pursuant to Articles 5, 8, 9, and 11 of the UDHR and Articles 7, 9, and 15 of the ICCPR, was sufficiently grave so as to give the deprivation of liberty an arbitrary character; and (4) the deprivation of liberty constituted a violation of international human rights law that prohibits discrimination based on political opinion, as enshrined in Article 7 of the UDHR and Article 26 of the ICCPR. On these bases, Co-submitters believe that the case of Muay adequately satisfies the requirements necessary to submit an individual complaint to the WGAD.

As a member state of the United Nations, Lao PDR has committed to protect, promote, and respect the individual rights and fundamental freedoms laid out in the UDHR. Lao PDR is

³⁵ RADIO FREE ASIA (RFA), *Lao Prisoner Pardons Leave Political Detainees Behind Bars* (Dec. 7, 2018), <https://www.rfa.org/english/news/laos/pardons-12072018153003.html>; RADIO FREE ASIA (RFA), *Lao Court Jails Polish Activist Following Online Criticism of Government*, (Oct. 1, 2015), <https://www.rfa.org/english/news/laos/activist-10012015134330.html>.

³⁶ AMNESTY INTERNATIONAL, *Urgent Action: Three activists sentenced to prison in secret trial* (May 17, 2017), <https://www.amnesty.org/download/Documents/ASA2662702017ENGLISH.pdf>.

³⁷ UN Working Group on Arbitrary Detention, *Opinion No. 61/2017 concerning Lodkham Thammavong, Somphone Phimmason and Soukan Chaithhad*, (Sept. 15, 2017), https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session79/A_HRC_WGAD_2017_61.pdf

³⁸ *Id.*

³⁹ The UN Commission on Human Rights considers “arbitrary” those deprivations of liberty which for one reason or another are contrary to relevant international provisions laid down in the Universal Declaration of Human Rights or in the relevant international instruments ratified by the States (Resolution 1991/42, as clarified by resolution 1997/50); Office of the High Commissioner for Human Rights, Revised Methods of Work of the Working Group, paras. 8(b) & (c).

therefore bound to uphold its commitment to respect and ensure the protection of the rights and freedoms recognized under the ICCPR. The arrest and detention of Muay was clearly without justification and was therefore arbitrary under Category I, Category II, Category III, and Category V of the WGAD's working methods.⁴⁰

i. Deprivation of Liberty Under Category I: Violation of Article 9 of the UDHR and Article 9 and 14 of the ICCPR

Arrest is arbitrary under Category I when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. Article 9 of the UDHR prohibits arbitrary arrest, providing that “no one shall be subjected to arbitrary arrest [or] detention [...]” Articles (9)2 and 14(3) of the ICCPR require a person to be informed about the reason for arrest and charges laid against the arrested person. The WGAD has previously held that deprivation of liberty will be arbitrary where there is a lack of legal justification for arrest and detention, and there is vagueness of the charges subsequently laid.⁴¹

There is no legal basis that the Lao PDR government can invoke for Muay's detention. Muay was raising awareness of the harm caused to villages and provinces after a tropical storm and a tropical depression. Through a Facebook video, Muay expressed her opinion on the slow response of the government in providing assistance to the affected villages, bringing attention to the failure of the government to learn from its shortcomings. Muay's dissent and exercise of her right to freedom of speech led to her detention. Her arrest and detention aimed to punish her for her known political activism and to silence her.

As indicated in detail in Section 9 below, Muay's actions were violated under Article's 5, 6, 7, 17, and 62 of the Lao People's Democratic Republic's Law on Criminal Procedure. Under the Criminal Procedure, citizens cannot be detained without an order from a prosecutor, they should not be arrested due to beliefs, they should be able to obtain their own attorney, they should not be threatened to produce testimony, and the evidence must be reliable. These guarantees in the Criminal Procedure were violated in Muay's case. Furthermore, consistent with previous WGAD decisions, the circumstances of Muay's arrest and detention clearly violate international and domestic law, namely Article 9 of the UDHR and Articles 9(2) and 14(3) of the ICCPR, thus rendering Muay's detention legally baseless and arbitrary under Category I.

ii. Deprivation of Liberty Under Category II: Violation of Article 19 and 20 of the UDHR, Article 19 and 22 of the ICCPR, and Article 44 of the Lao People's Democratic Republic's Constitution

⁴⁰ The U.N. Commission on Human Rights considers “arbitrary” those deprivations of liberty which for one reason or another are contrary to relevant international provisions laid down in the Universal Declaration of Human Rights or in the relevant international instruments ratified by the States (Resolution 1991/42, as clarified by resolution 1997/50).

⁴¹ *61 Individuals v. United Arab Emirates*, Working Grp. On Arbitrary Detention, Commc'n No. 60/2013, ¶ 22 (Nov. 22, 2013), <http://hrlibrary.umn.edu/wgad/60-2013.html>.

Given Lao PDR's accession to the ICCPR on September 25, 2009⁴², the deprivation of liberty under Category II will be analyzed in light of the provisions of both the UDHR and the ICCPR. Lao PDR as a member of the United Nations and a state party to the UN Charter is bound to uphold its commitment to promote and encourage respect for human rights and fundamental freedoms.

Deprivation of liberty is arbitrary under Category II when it results from a violation of the exercise of fundamental rights guaranteed under Article 19 of the UDHR and Article 19 of the ICCPR. Specifically, Article 19(2) of the ICCPR provides 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, either orally, in writing or in print, in the form of art, or through any other media of his choice."⁴³ Domestically, this right is enshrined in Article 44 of the Lao People's Democratic Republic's Constitution of 1991. ⁴⁴ Article 44 states: "Lao citizens have the right and freedom of speech, press and assembly; and have the right to set up associations and to stage demonstrations which are not contrary to the laws."⁴⁵

Muay's actions bringing awareness to the human rights violations resulting from government corruption in Lao PDR led to her becoming a public figure and lending her voice to the Lao people. As a result, the Lao government started to pressure her to stop criticizing the government. In order to give basis to their arrest, the government issued a press release prior to Muay's arrest through state run media outlets warning that all those who share false information on social media would be criminally charged and sentenced to prison. As described above, Muay was arrested after her attempt to raise awareness of the government's incompetency in assisting affected villages after a tropical storm and depression. Before her arrest, Muay was merely expressing her opinion on a public platform, which she had been doing for several years on Facebook. The detention of Muay based on her vocal criticism of the government policies therefore violated her right to freedom of expression.

While Articles 19 and 20 of the ICCPR provide for limited exceptions to free speech principles based on national security, public safety, and public order, this case does not fall under these exceptions. In order to qualify for the recognized exceptions, any restriction on the freedom of expression or association of an individual must be (1) provided by law, (2) for the protection and respect for the rights or reputations of others, national security, public order, or public health and morals, and (3) necessary to achieve one of these enumerated purposes. While Muay's detention could prima facie fall within the exception of public safety or public order under Article 19(3) of the ICCPR, "[p]aragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights."⁴⁶ Given the recent rise in arbitrary arrests and detention of human rights activists through that past several years, it is evident that the reason behind the Lao PDR's arrest of Muay was to make an example out of her

⁴² See United Nations Treaty Collection, *Chapter IV: International Covenant on Civil and Political Rights* (Dec. 16, 1966), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en.

⁴³ *Supra* note 6.

⁴⁴ LAO PEOPLE'S DEMOCRATIC REPUBLIC'S CONSTITUTION OF 1991 WITH AMENDMENTS THROUGH 2003, Ch. IV art. 44, https://www.constituteproject.org/constitution/Laos_2003.pdf?lang=en.

⁴⁵ *Id.*

⁴⁶ General Comment No. 34, Article 19: Freedoms of Opinion and Expression, U.N. Human Rights Committee, CCPR/C/GC/34 (Sep. 12, 2011), para 23.

in order to silence activists rather than for public safety concerns. She was forced to confess that she had engaged in criminal defamation by undertaking a campaign against the country. As explained below, a coerced confession is a violation of the ICCPR and cannot be used to convict an individual. Posting on Facebook and being critical of the government is not a “campaign against the country.” She did not engage with anyone physically, nor did she do anything that would constitute an imminent threat to public safety or the country. Her arrest was therefore neither necessary nor proportionate to Lao PDR’s aim of achieving public safety, as required by Article 19(3) of the ICCPR.

As the Lao PDR’s actions do not fall under the recognized exceptions to the right to freedom of expression, similar to the WGAD’s decision in the case of 61 Individuals v. United Arab Emirates, Muay’s “detention...resulted from the exercise of [her right] to freedom of opinion and expression and to freedom of peaceful assembly and association, guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights.”⁴⁷ By depriving her of the right to freedom of expression, the Lao PDR government violated both Article 19 of the UDHR and Article 19 of the ICCPR, as well as Article 44 of the Lao People Democratic Republic’s Constitution, giving Muay’s deprivation of liberty an arbitrary character under Category II.

iii. Deprivation of Liberty Under Category III: Violation of Articles 5, 8, and 11 of the UDHR and Articles 7, 9, and 14 of the ICCPR

Detention is arbitrary under Category III where the “total or partial non-observance of the international norms relating to the right to a fair trial including those spelled out in the UDHR and other relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”⁴⁸

1. Arbitrary Arrest and Lack of Arrest Warrant

Article 9(1) of the ICCPR states that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Articles 9(2) and 14(3)(a) of the ICCPR enshrine a detainee’s right to be informed of the charges against him. Article 9(2) states: “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.” General Comment No. 35 additionally lays out two requirements for the benefit of a person being detained: first, the detainee “shall be informed, at the time of arrest, of the reasons for the arrest,” and second, the detainee must be promptly informed of any charges against him.⁴⁹ Furthermore, Article 14(3)(a) states that “everyone shall be entitled to...be informed promptly and in detail...[of] the nature and cause of the charge against him.” Finally, Principles 10 to 13 of the Body of Principles state that those arrested must be informed of the reason for arrest.⁵⁰

⁴⁷ See *supra* note 41.

⁴⁸ *Individual Complaints and Urgent Appeals*, OHCHR, <https://www.ohchr.org/en/issues/detention/pages/complaints.aspx>.

⁴⁹ General Comment No. 35, Article 9: Liberty and Security of Person, U.N. Human Right Committee, CCPR/C/GC/35 (16 Dec. 2014).

⁵⁰ *E.g.*, BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT, Principle 10, (“Anyone who is arrested shall be informed at the time of his arrest of the reason for

Muay was not arrested in accordance with the law. As noted earlier, Article 44 of the Lao People's Democratic Constitution provides all Lao PDR residents with the right to freedom of expression and assembly. As outlined previously, there was no legal basis that the Lao PDR government can invoke for Muay's, nor can they use her forced confession as a rightful legal basis. During Muay's arrest, she was not provided with a warrant and instead was taken to the police station without being given notice of the reason for arrest or informed of the charges against her.

2. *Lack of Prompt Access to, and Assistance of Legal Counsel*

Article 14(3)(d) of the ICCPR states that anyone facing criminal charges has the minimum guarantee "to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require..." According to Basic Principle 11 of the Body of Principles, a "detained person and his counsel...shall receive prompt and full communication of any order of detention together with the reasons therefore." Additionally, the Principles and Guidelines affirm the procedural right of a detainee to access legal counsel. Under Principle 3, "States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offense punishable by a term of imprisonment or the death penalty, is entitled to legal aid at all stages of the criminal justice process."⁵¹

During Muay's trial before the Court, she was not given the option to choose her own counsel. A lawyer was appointed to her by the state with no explanation as to how the lawyer was appointed. Her state-appointed legal counsel did not speak with Muay regarding her case, and she was subsequently brought to the judge to confess. Her legal counsel did not advocate on her behalf but rather assisted the government in obtaining a forced confession.

3. *Compelled to Confess Guilt*

Under Article 14(g) of the ICCPR, "[i]n the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: Not to be compelled to testify against himself or to confess guilt." Furthermore, Principle 21 states that "[i]t shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person."⁵²

Muay's confession was taken at Phonthong police station without a lawyer or judge present. The police claimed that the confession was a result of their investigation and interrogation based on Muay's actions.⁵³ However, Muay was extensively interrogated and forced to confess that she was guilty of criminal defamation by undertaking a "campaign against [the country]," through illegal activities and by having a connection with "bad elements" both in Lao PDR and abroad.

his arrest and shall be promptly informed of any charges against him."), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁵¹ PRINCIPLES AND GUIDELINES, *supra* note 50, at Principle 3.

⁵² PRINCIPLES AND GUIDELINES, *supra* note 50, at Principle 21.

⁵³ RADIO FREE ASIA (RFA), *supra* note 29.

Not only was her confession coerced, but it did not accurately reflect Muay's actions. Creating a Facebook post criticizing the Lao government's response to floods that hit the country's southern provinces is in no way a campaign against the country, nor is it illegal.

4. *The Non-Observance of the International Norms Relating to the Right to a Fair Trial*

The arbitrariness of Muay's deprivation of liberty by the Court of Champassak province is established by the nature of her arrest, wrongful conviction, and continuous detention.

Articles 10 and 11 of the UDHR and Article 14 of the ICCPR enshrine the right to a fair trial and the right to be presumed innocent until proven guilty. Article 10 of the UDHR provides that everyone is entitled to "a fair and public hearing by an independent and impartial tribunal," while Article 11 states that "no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence." Under Article 14(2) of the ICCPR, "[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to the law." And Article 14(3)(d) states that anyone facing criminal charges has the minimum guarantee "[t]o be tried in his presence."

Despite established international law outlining these requirements, criminal trials and the observance of norms relating to trials in Lao PDR repeatedly fail to meet minimum international standards. Lao PDR is not a democratic country in which the fundamental rights of citizens are respected, or where there is independence of the judicial branch and separation of powers. Rather, it is a country ruled by an authoritarian regime.⁵⁴ The government has increasingly cracked down on freedom of association, expression, and civil society activism. This full-fledged authoritarian regime or dictatorship has denied detained individuals the right to a fair trial, as well as access to their own legal counsel.

In the midst of Muay's arrest, she posted on Facebook reaching out to those who could help her. Once at the police station, she was forced to delete the Facebook post. Muay was also detained until her trial, not allowed any visitors during her detention, and denied bail. On inquiry, the police informed her friends and family that she could not have any visitors as she was being investigated and interrogated.⁵⁵ There was no explanation provided on why she could not be granted bail, even after her family submitted a request for bail. This was particularly questionable since after the bail application was submitted to the Phonthong police station, it was already signed and a bail amount was set at 100 million kip. This bail amount was excessive at it was more than four times the country's GDP per capita.⁵⁶ A police officer at the Champassak police station stated that her application might have a chance because it had already been signed and a bail amount had been set.⁵⁷ Ultimately, it was denied after being sent to the provincial police station to make a final decision.

⁵⁴ THE ECONOMIC INTELLIGENCE UNIT, DEMOCRACY INDEX 2019 14 (2019), <http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=Democracy-Index-2019.pdf&mode=wp&campaignid=democracyindex2019>

⁵⁵ RADIO FREE ASIA (RFA), *supra* note 25.

⁵⁶ RADIO FREE ASIA (RFA), *supra* note 29.

⁵⁷ RADIO FREE ASIA (RFA), *supra* note 29.

During her detention, Muay was forced to confess that she was guilty of criminal defamation by undertaking a “campaign against Lao PDR” through illegal activities and by having a connection with “bad elements” both in Lao PDR and abroad.⁵⁸ She was also forced to confess that she violated Article 117 of the Criminal Code on propaganda against the Lao People’s Democratic Republic (formerly Article 65).⁵⁹ During her trial before a court in Champassak, Muay was not given the option to choose the lawyer who would represent her, and was made to confess in front of a judge receiving the maximum sentence of five years in prison and a fine of 20 million Kip.⁶⁰ The court documents, such as the order of the court pronouncing the sentence, were not given to her. Her parents specifically asked the lawyer for the court order, but the Court refused to provide it to them as well. Muay has also not been allowed to appeal against the decision of the court.

As is evident from Muay’s prosecution, trial and conviction, her case from arrest to sentencing are not in accordance with the minimum standards for a fair trial under international law, thereby rendering her detention arbitrary under Category III.

iv. Deprivation of liberty was arbitrary under Category V: Violation of Article 7 of the UDHR and Article 26 of the ICCPR

Equality before the law and non-discrimination are vital principles of international human rights law. Detention is arbitrary under Category V when “the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinions; gender; sexual orientation; or disability or another status, and which aims towards or can result in ignoring the equality of human rights.”⁶¹

Article 7 of the UDHR provides that “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law.” Article 26 of the ICCPR provides that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law [...] and the law shall prohibit any discrimination [...] such as race, color, sex, language, religion, political or other opinion....”

Discrimination based on divergent political opinions is therefore a violation of international law. Muay was arrested after officers monitored her and declared her as a threat to the state because she is a human rights activist, and was vocal in criticizing government policies. This fact suggests that Muay was only arrested and detained based on her political opinion on the

⁵⁸ RADIO FREE ASIA (RFA), *supra* note 29.

⁵⁹ International Federation for Human Rights (FIDH), *Woman detained for criticizing the government online*, (16 September 2019), available at: <https://www.fidh.org/en/region/asia/laos/woman-detained-for-criticizing-the-government-online>

⁶⁰ Radio Free Asia (RFA), *Lao woman gets five years for criticizing government on Facebook*, (25 November 2019), available at: <https://www.rfa.org/english/news/laos/mouay-sentence-11252019151738.html>; International Federation for Human Rights (FIDH), *Woman jailed for five years for criticizing the government online*, (22 November 2019), available at: https://www.fidh.org/en/region/asia/laos/woman-jailed-for-five-years-for-criticizing-the-government-online?fbclid=IwAR0nSBrOvU-iXr5XIYCVGtm2e_wOvJnUKpMF34cl4CpooDkD0-mKDk-a5oI

⁶¹ *Individual Complaints and Urgent Appeals*, *supra* note 49.

government. Therefore, the Lao PDR government violated Article 7 of the UDHR and Article 26 of the ICCPR, Muay's deprivation of liberty an arbitrary character under Category V.

9. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention, and, as appropriate, their results or the reasons why such steps or remedies were ineffective

There is no viable domestic remedy for Muay to receive justice in her arrest and imprisonment. In fact, the Lao PDR violates its own laws in cases such as Muay's, in which environmental activists and human rights defenders are detained. The manner in which the arrest, detention, and trial of Muay was conducted was in violation of Article 5, 6, 7, 17, and 62 of the Lao People's Democratic Republic's Law on Criminal Procedure:

Article 5.⁶² Prohibition on Breaching Citizens' Rights and Freedoms

“It is prohibited to arrest, detain or conduct any building search without an order from a public prosecutor or from a people's court, except in the case of an on-the-spot arrest or in the case of urgency. In the case when an arrest or detention contradicts the laws, or is a detention [or] deprivation of liberty beyond the period provided for in the laws or in a court decision, the public prosecutor shall issue an order to release [the arrested or jailed person] immediately. Any individual who arrests, detains or conducts any search of buildings or persons in contravention of the laws shall be subject to criminal proceedings and shall be criminally liable.”

Article 6.⁶³ Equality of Citizens before the Laws and the Court

“Criminal proceedings must be conducted on the basis that all citizens are equal before the laws and the people's courts without discrimination on the basis... beliefs.....”

Article 7.⁶⁴ Guarantee of Right of Defence to Accused Person

“[T]he accused person may defend himself or have a lawyer to provide him legal assistance. The people's courts, public prosecutors, interrogators and investigators shall guarantee the right of defence in the proceedings to an accused person in order to protect his legitimate rights and interests...”

Article 17.⁶⁵ Comprehensive, Thorough, and Objective Case Proceedings

⁶² LAO PEOPLE'S DEMOCRATIC REPUBLIC PEACE INDEPENDENCE DEMOCRACY UNITY PROSPERITY LAW ON CRIMINAL PROCEDURE [CRIMINAL PROCEDURE] art. 5 (May 15, 2004), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81033/87906/F482004097/LAO81033.pdf>

⁶³ *Id.* at art. 6.

⁶⁴ *Id.* at art. 7.

⁶⁵ *Id.* at art. 17.

“ [I]n the taking of testimony from the accused person or defendant, or from individuals who participate in the proceedings, it is prohibited to use violence, force, threats, beating, or other unlawful measures.”

Article 62.⁶⁶ Arrest

“The arrest of any individual shall be accompanied by an order in writing from the public prosecutor or the people’s court, except in the case of an on-the-spot arrest or in an urgent case.

Before the issuance of an order to arrest, the public prosecutor or the people’s court shall consider the following conditions:

1. The act must be an offence for which the law prescribes the penalty of deprivation of liberty;
2. The evidence in the case must be reliable.

In all cases, after the arrest of an accused person, the investigator shall report in writing to the public prosecutor within twenty-four hours and the taking of testimony from the arrested person shall be conducted within forty-eight hours, together with the forming of an opinion whether to release [pending sentencing] or to remand [such person].

...

If an opinion is formed to release [pending sentencing] or to remand an arrested person, the head of the investigation organisation or the interrogator shall ask the public prosecutor for an order to release [pending sentencing] or to remand.

...

Arrests shall be conducted by using [such] methods and in a manner that are appropriate to the characteristics of the offence and the person to be arrested.

...

Arrest shall, in every case, be notified to the [person’s] family, [and to the] office, organisation, or enterprise to which the concerned individual is attached within twenty-four hours, [they shall also be notified of] his place of detention if it will not hinder the case proceedings.”

The procedure in which Muay’s arrest, trial, and detention were carried out was not in line with the relevant articles of Lao People’s Democratic Republic’s Law on Criminal Procedure above, evidently showing that the domestic remedies available in Lao PDR are ineffective in addressing the case of Muay. Her case should be analyzed within the context of a full-fledged dictatorship or authoritarian regime in which there is no independence of the judiciary.

⁶⁶ *Id.* at art. 62.

Lao PDR arrested Muay without a written order due to her beliefs without the opportunity for bail. She was not given the opportunity to retain her own legal counsel and she was forced to confess through the use of threat and unlawful measures. Moreover, she was denied an opportunity to appeal. This is in clear violation of Articles 5, 6, 7, 17, and 62 guaranteed in the Lao PDR's Law on Criminal Procedure.

Under ICCPR Article 9(3), “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial.” The U.N. Human Rights Committee has ruled that pre-trial detention should only be employed to the extent that it is lawful, reasonable, and necessary, the latter requirement which is narrowly defined as: “to prevent flight, interference with evidence or the recurrence of crime” or “where the person concerned constitutes a clear and serious threat to society which cannot be contained in any other manner.” Here, Muay posed no such risks, as there was no sufficient evidence against her. Rather, her coerced confession was the only basis for her conviction. Therefore, there was no proper reason for Muay's continued detention if the evidence is not reliable.

Due to these reasons, co-submitters conclude that Muay exhausted all available effective legal options available to her in Lao PDR.

10. Government Response from Lao PDR

On October 20, 2020 the Lao PDR government responded to the UN allegation letter of July 12, 2020 regarding the case of Muay.⁶⁷ The government's case against Muay has brought upon several false accusations against her. Furthermore, Lao PDR's commitment to deterring future activists is evident in their response as they are adamant claiming that Muay was not a human rights defender, and that they did not arrest her due to her human rights work. Rather, they allege to have arrested her to “refrain from committing further criminal acts” by “creating misunderstandings, division, disharmony and disorder.”⁶⁸

The Lao PDR government attempts to deny Muay the designation of a Human Rights Defender in order to show that she was not prosecuted as a result of her activism, because such a prosecution would be against the Lao constitution as well as the UNDHR and ICCPR.⁶⁹ A “human rights defender” is defined as a person who, individually or with others, act to promote or protect human rights. In this context, Muay was promoting and protecting the rights the government should have been providing to Lao citizens. Her criminal prosecution and conviction were not due to misunderstandings and division, but the Lao PDR's efforts to silence Muay for bringing attention to the ineptitude of the government.

The Lao PDR contends that Muay was “urged” to make content about the dam collapse and was intoxicated when she posted a Facebook video about the dam collapse and floods.⁷⁰ This

⁶⁷ Letter from the Permanent Mission of the Lao PDR to the U.N. Office and other International Organizations Geneva (Oct. 20, 2020), <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=35631>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

accusation intends to discredit Muay's character. We believe this accusation was false and that Muay was likely sober when she recorded the Facebook video. However, whether Muay was sober or intoxicated at the time of the recording is of no relevance to her arrest and detention. Muay is an adult who enjoys the freedom to consume alcohol if she chooses. The claims that she was intoxicated, even if they were taken as true, would not negate that her arrest and detention were arbitrary.

In regard to the investigation of her case, the government claims that Muay was rightfully informed, the police officers followed their duties, and there was no coercion.⁷¹ As indicated above in Section 9, she was not given any information when she was arrested. Her "confession" was neither on her own terms nor did it accurately reflect her actions. Muay's "confession" was due to coercion and intimidation during the investigation.

Again, the government provides false information when stating that Muay had the right to select her own lawyer.⁷² Muay's family submitted the names of lawyers they chose but the court refused to allow them to appoint these lawyers. Instead, the court chose lawyers for them and had her parents sign a document appointing the court selected lawyer.

It is clear that the government is falsely accusing Muay in order to silence her and deter future activists from voicing their opinions criticizing the government.

11. Urgent Appeal

The imprisonment of Muay is not an isolated incident, but a growing trend of the persecution of environmental activists and human rights defenders in Lao PDR. Her imprisonment is part of an ongoing systematic crackdown on freedom of expression and peaceful assembly in Laos. The actions taken by the government against Muay were meant to be warnings for other Lao citizens, in order to achieve a chilling effect on the expression of dissent in the country. At present, the government of Lao PDR seems to have achieved this goal.

On November 22, 2019 Muay was convicted and sentenced to 5 years in prison and a fine of 20 million Kip for criminal defamation under Article 117 of the Criminal Code. Further, she was found guilty of criminal defamation by undertaking a "campaign against Lao PDR" through illegal activities and by having a connection with "bad elements" both in Lao PDR and abroad.

We request that WGAD take note of other arrests of environmental activists and human rights defenders in Laos and closely monitor the false accusations and unwarranted imprisonment of individuals.

IV. IDENTITY OF THE PERSONS SUBMITTING THE CASE

- a. Family name: Singh
- b. First name(s): Akum
- c. Status: Legal Intern

⁷¹ *Id.*

⁷² *Id.*

- d. Address (telephone, e-mail): 350 Fifth Avenue, Suite 4202, New York, NY, 10118 Tel: +1 (212) 246-8486
Email: akum@hrf.org
Website: <http://www.hrf.org>
- e. Please state whether you want your identity to be kept confidential: As stated above, co-submitters waives their right to confidentiality, but asks for the confidentiality of the victim to be kept.

V. PETITION

In accordance with resolution 24/7 of 26 September 2013, co-submitters hereby submit this individual complaint to the U.N. Working Group on Arbitrary Detention, and respectfully calls on the working group to initiate the procedure of investigation of individual cases toward reaching an opinion declaring Houayheung Xayabouly's ("Muay") detention to be arbitrary and in violation of international law. Specifically, co-submitters call on the WGAD:

1. To initiate a procedure involving investigation of individual cases, in the case of Muay, and send an allegation letter to the state inquiring about her case generally, and specifically about the legal basis for her arrest, imprisonment, and/or the cruel, inhumane, and degrading treatment suffered by Muay while in detention.
2. To urge the State of Lao PDR to release Muay immediately and unconditionally, as she is arbitrarily and illegally being deprived of her freedom solely for peacefully exercising her rights to freedom of association and freedom of expression according to international law;
3. To issue an opinion declaring that the ongoing detention of Muay is arbitrary and in violation of international law as a result of Category I, Category II, Category III and Category V violations; and
4. Call on the government of Lao PDR to take measures to guarantee that Muay will not be further subjected to arbitrary detention, psychological torture, or any other measure as a result of his exercise of the rights to freedom of expression and opinion, as guaranteed under international law.