

Submission to The Human Rights Committee – 123rd Session (2 – 27 July 2018)

LAO PEOPLE'S DEMOCRATIC REPUBLIC

11 June 2018

Reporting Organizations:



Harm Reduction International is a leading non-governmental organisation working to reduce the negative health, social and human rights impacts of drug use and drug policy by promoting evidence-based public health policies and practices, and human rights based approaches to drug policy. Our vision is a world in which individuals and communities benefit from drug laws, policies and practices that promote health, dignity and human rights.



The **World Coalition Against the Death Penalty** is an alliance of more than 150 NGOs, bar associations, local authorities and unions. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. The World Coalition is striving to achieve these aims by supporting its member organisations and by coordinating the international advocacy towards worldwide abolition of the death penalty.

Introduction

Harm Reduction International and the World Coalition against the Death Penalty (hereafter: World Coalition) welcome the opportunity to submit information to the Human Rights Committee ahead of its review of the periodic report of the Lao People's Democratic Republic (hereafter: Lao PDR), at its 123rd Session.

This submission will assess the compatibility of key drug control policies and practices pursued by Lao PDR with its obligations under the International Covenant on Civil and Political Rights (ICCPR). Accordingly, information will be provided on:

- (a) The death penalty for drug offences (as per para. 9, List of Issues)¹
- (b) Arbitrary arrest and detention of people who use drugs and "drug offenders" (as per paras. 12 and 15, List of Issues)²

Right to life (ICCPR, Article 6)

The death penalty for drug offences in law

Lao DPR is one of thirty-three countries and territories that still retain the death penalty for drug offences in their legislation.³

The Government of Lao PDR, in its report, states that the death penalty is only imposed for "especially serious crimes such as drugs trafficking."⁴ More precisely, death is envisaged as punishment for the production, trade, distribution, possession, import, export, and transport through Lao PDR of specified (and modest) amounts of listed substances.⁵

A plethora of human rights mechanisms have authoritatively stated that the "**most serious crimes**" to which the death penalty must be limited are only "crimes of extreme gravity involving intentional killing."⁶ Accordingly, drug-related offences have been determined not to meet this critical threshold. This opinion is shared by the United Nations High Commissioner for Human Rights, the Economic and Social Council, the General Assembly and the Secretary-General, the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions,⁷ and the Human Rights Committee itself.⁸

¹ Human Rights Committee, List of Issues in relation to the initial report of the Lao People's Democratic Republic (28 March 2018), para. 9. Un Doc. CCPR/C/LAO/Q/1

² Human Rights Committee, List of Issues in relation to the initial report of the Lao People's Democratic Republic (28 March 2018), paras 12 and 15. Un Doc. CCPR/C/LAO/Q/1

³ Gen Sander, 'The Death Penalty for Drug Offences: Global Overview 2017 (London: Harm Reduction International, 2018), 39

⁴ Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure: Initial reports of States parties due in 2010, Lao People's Democratic Republic (27 April 2017), para. 39. Un Doc. CCPR/C/LAO/1 (hereafter: Lao People's Democratic Republic initial report)

⁵ Lao People's Democratic Republic, Penal Law, art. 146. Accessible at: http://www.wipo.int/wipolex/en/text.jsp?file_id=180194

⁶ Human Rights Committee, General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life (Advance Unedited Version), para. 39

⁷ Among others, see: Economic and Social Council, Resolution 1984/50: Safeguards guaranteeing protection of the rights of those facing the death penalty (25 May 1984); Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston: Civil and Political Rights, Including the Questions of Disappearances and Summary Executions (29 January 2007), para. 39-53. Un Doc. A/HRC/4/20; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development (14 January 2009), para. 30. Un Doc. A/HRC/10/44.

⁸ Among others, see: UN Human Rights Committee. Concluding Observations: Thailand (8 July 2005), para 14. Un Doc CCPR/CO/84/THA; UN Human Rights Committee. Concluding Observations: Sudan (29 August 2007), para. 19. Un Doc CCPR/C/SDN/CO/3; UN Human Rights Council. Question of the death penalty: report of the Secretary-General (30 June 2014), para. 29. Un Doc. A/HRC/27/23

The Government of Lao PDR was also requested to report on whether “the imposition of the death penalty is automatic and **mandatory** for certain categories of crimes” (paragraph 9 on the List of Issues),⁹ in violation of fundamental standards related to the right to life as well as the right to fair trial. Although the Government stated that “in practice” individuals sentenced to death “receive reduction of death sentence to life imprisonment,”¹⁰ Laotian law still envisages death as the mandatory punishment for certain drug-related crimes.¹¹

During the latest Universal Periodic Review in January 2015, Lao PDR reiterated its commitment to review “the list of offenses subject to death penalty under the current Penal Law [...] to be in full compliance with Article 6 of the ICCPR”.¹² Regrettably, there is no evidence that reforms to this effect have taken place since. During the review, Lao PDR also received recommendations by several States to ratify the Second Optional Protocol to the ICCPR, establish an official moratorium on executions, restrict the application of the death penalty to the most serious crimes, and/or abolish the death penalty.¹³ The country did not accept any of these recommendations.

The Government has also repeatedly abstained from voting on UN General Assembly resolutions aimed at establishing a moratorium on the use of the death penalty.¹⁴

Recorded death sentences and executions for drug-related crimes

The last recorded execution in Lao PDR dates back to 1989, and the Government repeatedly stated that a moratorium has “in practice” been in place in the country for some years.¹⁵ The State is thus classified as abolitionist in practice.¹⁶ However, the Government has not established an **official moratorium**, and death sentences – including for drug offences - continue to be imposed, although a lack of transparency and the failure of the State to provide disaggregated data in respect of individuals on death row precludes accurate reporting, or details on the crimes for which people are being sentenced.

In 2015, Amnesty International reported at least twenty people on death row in Lao PDR; while at least three people were reported to be sentenced to death in 2016.¹⁷ At least one death sentence was handed down in 2017 against a 29-year old man found guilty of drug trafficking.¹⁸ Due to a concerning lack of official records, it is not possible to determine whether the sentence was commuted, the individual remains on death row, or the execution was carried out.

Harm Reduction International and the World Coalition wish to reiterate their concerns for the lack of complete, reliable and disaggregated data on the use of the death penalty in the country.

⁹ Human Rights Committee, List of Issues in relation to the initial report of the Lao People’s Democratic Republic (28 March 2018), para. 9. Un Doc. CCPR/C/LAO/Q/1

¹⁰ Human Rights Council, Lao People’s Democratic Republic initial report, para. 39

¹¹ Lao People’s Democratic Republic, Penal Law, art. 146(1), 146(2), 146(3). Accessible at: http://www.wipo.int/wipolex/en/text.jsp?file_id=180194

¹² Human Rights Council, Lao People’s Democratic Republic initial report, para. 36

¹³ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Lao People’s Democratic Republic, paras. 121.4 – 121.9. UN Doc. A/HRC/29/7

¹⁴ UN General Assembly, 71st Session, 65th Plenary Meeting: official records (19 December 2016), pag. 25/47. UN Doc. A/71/PV.65; UN General Assembly, 69th Session, 73rd Plenary Meeting: official records (18 December 2014), pag.17. UN Doc. A/69/PV.73; UN General Assembly, 67th Session, 60th Plenary Meeting: Official records (20 December 2012), pag. 17. UN Doc. A/67/PV.60

¹⁵ Human Rights Council, Lao People’s Democratic Republic initial report, para. 75; Human Rights Council, Report of the Working Group on the Universal Periodic Review: Lao People’s Democratic Republic, para. 77. UN Doc. A/HRC/29/7

¹⁶ Gen Sander, ‘The Death Penalty for Drug Offences: Global Overview 2017 (London: Harm Reduction International, 2018), 39

¹⁷ Amnesty International, ‘Death Sentences and Executions for 2016 (London: Amnesty International, 2017), 17

¹⁸ Dead penalty sentence for a drug trafficker in Laos (Suab Hmong News, 3 November 2017). Available at: <http://shrdo.com/dead-penalty-sentence-for-a-drug-trafficker-in-laos/>

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty (ICCPR, Articles 7, 9, and 10)

Since 2011, human rights bodies and non-governmental organizations have reported violations and abuses suffered by individuals in so-called drug-rehabilitation centres in the country, such as (but not limited to): forced testing and treatment (often not based on scientific evidence); involuntary entry and lack of medical evaluation; forced labour; detention in unsanitary conditions; sexual violence. What is formally described as treatment and rehabilitation, in reality constitutes arbitrary detention following arbitrary arrest, lacking due process guarantees or judicial oversight, in a context where violence and abuses are commonplace.¹⁹

The most infamous among these centres is Somsanga Rehabilitation Centre, where since 1996 more than 25,000 people have been “treated.”²⁰ Although the centre is still operational, no information is available concerning current conditions.²¹

Harm Reduction international and the World Coalition wish to express their concerns regarding the failure of the State to provide updated and reliable information on drug detention centres, a lack of transparency and accountability, and failure to ensure justice and the provision of full reparations to those who endured torture, ill-treatment, and other violations of their human rights while detained in these centres

Equally concerning is the failure of the State to respond to reports of arbitrary arrest and detention of persons who use drugs, as requested by the Human Rights Committee in paragraph 15 of the List of Issues. More generally, although Lao PDR report notes law enforcement is prohibited from using violence against “drug offenders”, and refers to an ongoing commitment to “developing better management of detention and correctional facilities,”²² it does not elaborate specifically on national drug control strategies, and on whether drug detention centres are still in operation, nor provides “relevant statistics on the number of reported cases of torture and ill-treatment, investigations, prosecutions of prison officials and convictions secured.”²³

Conclusions and Recommendations

Harm Reduction International and the World Coalition invite the Human Rights Committee to recommend the Government of Lao PDR to:

- Ratify the Second Optional Protocol to the ICCPR;
- Adopt an official moratorium on executions with a view to amend the Penal Code, as a first step towards the definitive abolition of the death penalty;
- Make disaggregated, updated and reliable information available on: death sentences and individuals in death row, executions and/or commutation of death sentences; the existence and functioning of drug

¹⁹ Among others, see: Human Rights Watch, ‘Somsanga’s Secrets: Arbitrary Detention, Physical Abuse, and Suicide inside a Lao Drug Detention Centre (USA: Human Rights Watch, 2011); Joseph J. Amon et al., ‘Compulsory Drug Detention Centers in China, Cambodia, Vietnam, and Laos: Health and Human Rights Abuses’ 15/2 Health and Human Rights (December 2013), 126

²⁰ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Lao People’s Democratic Republic, para 89. UN Doc. A/HRC/29/7

²¹ In July 2017, in the context of the Australia – Laos Human Rights Dialogue, a delegation of foreign officials was allowed to visit the centre. More information is available here: <http://dfat.gov.au/news/media/Pages/5th-australia-lao-pdr-human-rights-dialogue.aspx>

²² Human Rights Council, Lao People’s Democratic Republic initial report, para. 54

²³ Human Rights Committee, List of Issues in relation to the initial report of the Lao People’s Democratic Republic (28 March 2018), para. 12. Un Doc. CCPR/C/LAO/Q/1

detention centres; allegations of human rights violations in drug detention centres; and reports of arbitrary arrest and detention of persons who use drugs;

- Adopt measures to ensure all allegations of human rights violations in drug detention centres and reports of arbitrary arrest and detention of persons who use drugs are “promptly and thoroughly investigated by an independent mechanism, that perpetrators are prosecuted and punished accordingly and that victims are provided with full reparation”;
- Review domestic policies and practices to ensure access to evidence-based and health-centred approaches to drug use, including access to harm reduction services and interventions both inside and outside detention settings, in line with internationally recognised human rights standards.