



# General Assembly

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## Human Rights Council Working Group on Arbitrary Detention

### **Opinions adopted by the Working Group on Arbitrary Detention at its sixty-first session, 29 August–2 September 2011**

#### **No. 51/2011 (Lao People's Democratic Republic)**

#### **Communication addressed to the Government on 22 February 2011**

**Concerning: Kingkeo Phongsely**

#### **The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying 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, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (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);

(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 the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

## **Submissions**

### *Communication from the source*

3. The source informs that Mrs. Kingkeo, born in 1971, mother of three children, was one of the organizers of a group of individuals dedicated to peacefully seeking greater respect for human rights in the Lao People's Democratic Republic. Mrs. Kingkeo was involved in creating a loosely affiliated group called the Social Economic Laos United, which focused on peacefully working towards the advancement of women and children's rights in the Lao People's Democratic Republic.

4. According to the source, on 2 November 2009, Mrs. Kingkeo and a group of approximately ten individuals attempted to travel south by taxi to the Lao capital, Vientiane, where they planned to participate in a peaceful demonstration requesting greater respect for human rights and democratic reforms.

5. Between 8:00 a.m. and 9:00 a.m., close to the town of Phonhong, the convoy was stopped. Mrs. Kingkeo along with eight other individuals, with whom she was travelling, were pulled from their taxis by Lao authorities. The source reports that Mrs. Kingkeo and eight of her fellow travellers were arrested by four uniformed members of the Lao military and three plainclothes members of the Lao secret police.

6. The source informs that the detention of Mrs. Kingkeo has not been acknowledged by Lao authorities and alleges that she is detained in Samkhe Prison.

7. According to the source, Mrs. Kingkeo was presented with no arrest warrant or any other judicial decision authorizing the arrest; it maintains that the authorities have failed to notify Mrs. Kingkeo's family of her arrest and no charges have been formulated against her.

8. The source asserts that, at the moment of her arrest, Mrs. Kingkeo was not engaged in any type of illegal activity. She was en route to a planned peaceful demonstration in Vientiane, where she intended to exercise her rights to freedom of speech, freedom of assembly and freedom of association, as guaranteed, inter alia, by article 31 of the Lao Constitution.

### *Response from the Government*

9. In its letter of 30 March 2011, the Government of the Lao People's Democratic Republic informed the Working Group that, according to the information received from the Ministry of Public Security, "during November 2010, there was no report of any demonstration in Lao People's Democratic Republic and nobody corresponding to the name of Mrs. Kingkeo Phongsely was arrested and detained by any authorities."

## **Discussion**

10. Pursuant to paragraph 33 (a) of its revised methods of work, if, upon examining allegations of violations of human rights, the Working Group considers that the allegations could be more appropriately dealt with by another working group or special rapporteur, it will refer them to the relevant working group or rapporteur within whose competence they fall for appropriate action.

11. According to paragraph 5 of the revised methods of work of the Working Group on Enforced or Involuntary Disappearances of 14 November 2009, “enforced disappearances occur when persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.”

**Disposition**

12. In the light of the foregoing, the Working Group renders the following opinion:

The allegations of arrest and disappearance of Mrs. Kingkeo Phongsely shall be referred to the Working Group on Enforced or Involuntary Disappearances, in accordance with paragraph 33 (a) of the revised methods of work of the Working Group on Arbitrary Detention.

*[Adopted on 2 September 2011]*

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