

19 October 2024

LAWASIA STATEMENT OF CONCERN ON BANGKOK CRIMINAL COURT DECISION TO EXTRADITE REFUGEE AND HUMAN RIGHTS DEFENDER Y QUYNH BDAP TO VIETNAM

LAWASIA expresses deep concern at the recent decision of a Bangkok Criminal Court to extradite Mr. Y Qunyh Bdap, founder of Montagnards Stands for Justice (MSFJ), and a UNHCR recognized refugee to Viet Nam. This decision would place Mr. Bdap at significant risk.

In January 2024, Bdap was convicted of terrorism offences *in absentia* in Viet Nam in connection with alleged anti-government attacks in Viet Nam's Central Highland province of Dak Lak in June 2023¹. Furthermore, MSFJ, which campaigns for political, religious, and Indigenous rights in Viet Nam, was designated as a "terrorist organisation" on 6 March 2024².

The Thai Criminal Court acknowledged that section 13 of Thailand's Prevention and Suppression of Torture and Enforced Disappearance Act prohibits extradition when there is a substantial risk of torture or ill-treatment upon return. However, the Court ruled that it did not have the authority to assess whether the Vietnamese judicial process adhered to due process standards in prosecuting and punishing Mr. Bdap.³

LAWASIA notes that the decision fails to adhere to the principle of non-refoulement as has been recognized by international law. In the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 19874 which Thailand ratified in 2007, it is stated that:

Article 3 (1) No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

¹ <https://www.ohchr.org/en/press-releases/2024/10/thailand-court-ruling-puts-human-rights-defender-danger-if-extradited-viet>

² <https://www.ohchr.org/en/press-releases/2024/08/experts-condemn-misuse-counter-terrorism-law-against-montagnards-viet-nam>

³ supra (1)

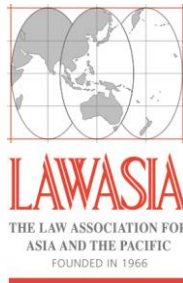
⁴ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

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The principle of non-refoulement has also been enunciated in the International Convention for the Protection of All Persons from Enforced Disappearance, 2010⁵, which had been ratified by Thailand in May 2024⁶, which states that:

Article 16

(1) No State Party shall expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

(2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

LAWASIA also notes that under section 22 of the Extradition Act B.E. 2551 (2008), a court order and approval from the Royal Thai Government are needed for extradition.⁷ It is also noted that in the absence of a formal extradition treaty between Thailand and Viet Nam, the Royal Thai Government may decline to approve the extradition order.⁸

LAWASIA calls on the Thai Criminal Court to reconsider its decision in the appeal which is to be filed on behalf of Mr. Bdap and determine the matter on the basis of its international law obligation of non-refoulement, taking into account the risks to Mr. Bdap if extradited to Viet Nam. LAWASIA also calls on the Royal Thai Government to decline to approve the extradition order given the country's obligations under international law.

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LAWASIA, The Law Association for Asia and the Pacific

⁵ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

⁶ <https://www.icj.org/thailand-ratification-of-the-convention-on-enforced-disappearance-an-important-step-for-justice-and-accountability/>

⁷ <https://www.fidh.org/en/region/asia/thailand/thailand-open-letter-to-the-royal-thai-government-on-the-extradition>

⁸ supra (1)

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