

LAOS: CAUGHT ON CAMERA
THE ENFORCED DISAPPEARANCE OF
SOMBATH SOMPHONE



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We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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LAOS: CAUGHT ON CAMERA

THE ENFORCED DISAPPEARANCE OF SOMBATH SOMPHONE



Sombath Somphone and his wife Ng Shui-Meng © www.sombath.org

1. INTRODUCTION AND SUMMARY

“Acts constituting enforced disappearance shall be considered a continuing offence as long as perpetrators continue to conceal the fate and whereabouts of persons who have disappeared.”

Article 17.1 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance.

Sombath Somphone, aged 61, is a well-known and respected member of civil society in the Lao People’s Democratic Republic (Laos). At around 5.30 pm on 15 December 2012, he left in his car from his office in Vientiane, the capital of Laos. He was driving behind his wife Ng Shui-Meng, who was in another car. They were due to have dinner together at their home. But traffic police stopped Sombath at around 6 pm at a police post on Thadeua Road, in Vientiane’s Sisattanak district. He was taken away in a pick-up truck and never made it home. Six months on, his fate and whereabouts remain unknown.

This report provides some background to Sombath’s work in Laos, and reviews the facts of his disappearance – including the video evidence of the same – and the extent to which the Lao authorities’ investigations into his disappearance were impartial, thorough and efficient. These developments are then analysed against international human rights standards as well as Lao law. The report concludes with recommendations to the Lao government and the international community, with the aim of ensuring Sombath’s safe return to his family.

Despite public commitments made by the Lao authorities over the last few months to investigate Sombath’s disappearance, the police investigations have so far been inadequate. Further, until now, the authorities have failed to provide adequate information on the progress of the investigations to Sombath’s family and others with a legitimate interest, and to publish findings that answer some of the key questions around Sombath’s disappearance. Offers by other states to assist with the investigations have been refused. Together, these factors suggest a cover-up.

It is difficult to determine the extent to which Lao authorities were involved in Sombath’s disappearance. However – along with the inadequate investigations – the fact that Sombath was last seen at a police post, where the police had stopped him, and that the police there did nothing to prevent him from being taken away even as a gunshot was seemingly fired in the air, suggest some level of involvement by the Lao authorities.

WHAT IS AN ENFORCED DISAPPEARANCE?

The International Convention for the Protection of All Persons from Enforced Disappearance prohibits enforced disappearance, which it defines as: “*the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.*”¹

Considering the background and the facts that are currently known, Amnesty International’s research finds that Sombath Somphone has most likely been a victim of enforced disappearance, which is a serious human rights violation and a crime under international law. The organization concludes that Lao officials are responsible for Sombath’s disappearance, whether through direct perpetration or through complicity, support or acquiescence, in violation of Laos’s obligations under international law.

Among a number of recommendations, Amnesty International calls on the Lao government, with the support of the international community, to establish a new, independent commission to undertake an impartial and thorough investigation into Sombath’s disappearance and ensure that all steps are taken to locate, rescue him from his captors and return him safely to his family without further delay. The commission should identify those officials responsible for Sombath’s enforced disappearance, including those with command or superior responsibility, with a view to bringing them to justice, in proceedings that meet international standards of fairness. The commission’s report and recommendations should be made available to the public. Sombath and his family should be provided with reparations for the human rights violations and suffering they have entailed.

METHODOLOGY

Amnesty International representatives have been unable to visit Laos to investigate Sombath Somphone’s disappearance. On 18 January 2013, Amnesty International issued an Urgent Action to the organization’s members, calling on them to write to the Lao government to demand prompt, transparent and thorough investigations into Sombath’s disappearance.² The government responded to members’ communications by sending them copies of its statements about the disappearance (see chapter 4 of this report). On 20 March 2013, Amnesty International made a formal request to the Lao government for permission to visit Laos and to discuss Sombath’s disappearance. A follow-up request was also made. By the date of publication of this report, the Lao government has not responded or given permission for the visit. In May 2013, Amnesty International made a request to meet with Lao Deputy Prime Minister Somsavat Lengsavad at the World Economic Forum in Nay Pyi Taw, Myanmar in June 2013, in part to present an advance copy of this report, but this was declined.

Amnesty International representatives have been in regular contact with those who know Sombath and are familiar with the developments surrounding his enforced disappearance.

2. BACKGROUND

“There does not appear to be a secure environment that ... provides space for open, respectful, diverse and constructive debate.”

‘Reflections and lesson learning’ on the 2012 9th Asia Europe People’s Forum in Laos, International Organising Committee³

Organized civil society in Laos remains embryonic. While space has slowly opened up, there is little evidence of a growth in civil society along the lines of some neighbouring countries. According to credible sources, Lao mass organizations sponsored by the ruling Lao People’s Revolutionary Party (LPRP) – the only party recognised by the Lao Constitution⁴ – continue to claim to fulfil many of the roles of civil society.

Indeed, the Lao government did not accept the recommendation made by France at the 8th session of the Universal Periodic Review at the United Nations (UN) Human Rights Council in 2010, to “guarantee the free activity of civil society and human rights organizations”.⁵ The explanation for rejecting this recommendation was that the activity of these organizations is regulated by national legislation, particularly the Decree on Associations.⁶ But according to credible sources, the Lao government has apparently used the registration process under this Decree to exert control over Lao civil society organizations.

In this restrictive context, Sombath Somphone has played an important role in supporting the development of civil society in Laos. He has dedicated his life to sustainable development and poverty reduction, and has advocated the strengthening of civil society as a means of encouraging the Lao government to ensure that development benefits the whole population in Laos. Indeed, Sombath has always worked closely with the Lao authorities. But his latest work in the run up to the parallel civil society event organised in October 2012 around the Asia-Europe Meeting (ASEM), appears to be linked to his enforced disappearance a few weeks later.

HUMAN RIGHTS SITUATION⁷

The human rights to freedom of expression, association and peaceful assembly are protected in the Lao Constitution and in the International Covenant on Civil and Political Rights (ICCPR), to which Laos is a State party. But the Lao authorities continue to restrict these freedoms. In particular, public opposition to human rights violations associated with development – including loss of land and livelihoods – is rarely tolerated. There are many examples:

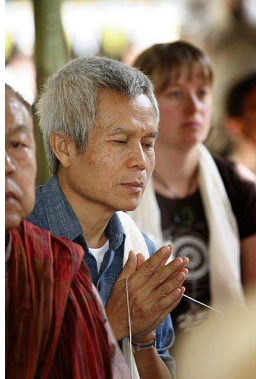
In November 2009, security forces rounded up over 300 farmers and others who had planned to protest over loss of land and lack of economic and social support in several provinces. All but nine of those arrested were released. The fate or whereabouts of the nine remains unknown after they were moved from Vientiane’s Samkhe prison.

In January 2012, the Lao Ministry of Information and Culture ordered the closure of a long-running and popular radio talkback show – “Vao Khao” (Talk of the News) – after listeners called-in to raise their concerns about land grabbing and corruption.

In June 2012, eight villagers were arrested for petitioning the authorities over a land dispute with a Vietnamese company, which had been granted a rubber concession in 2006 affecting their village in Sekong province's Thateng district. All the villagers were released within a few days, except for one man who was held for around two weeks and reportedly ill-treated before being freed.

Meanwhile, prisoners of conscience Thongpaseuth Keuakoun and Seng-Aloun Phengphanh remain imprisoned, serving 20-year prison sentences. They have been imprisoned since October 1999, when they tried to hold a peaceful protest in Vientiane and display posters calling for economic, social and political change. Another protester arrested at the same time, Khamphouvieng Sisaath, died in prison in September 2001 as a result of punishment inflicted by prison guards. According to the Lao authorities, another protester, Bouavanh Chanhmanivong, was reportedly released recently, although this has not been verified.

2.1 SOMBATH SOMPHONE⁸ AND THE LAO PEOPLE'S VISION



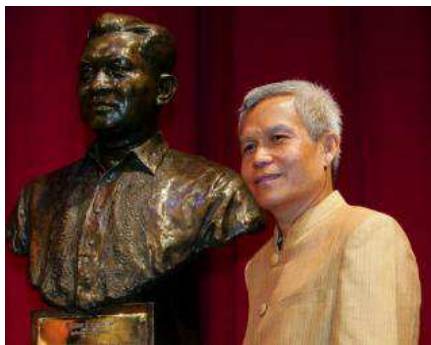
Sombath at prayer, left. © www.sombath.org

Born in Done Khio village in southern Laos, Sombath is the eldest of eight brothers and sisters, and has been married to his Singaporean wife Ng Shui-Meng since 1983. They met when they were studying together in the USA during the 1970s. Sombath supports his mother, who is 83 years old, and two nieces who are attending high school in Vientiane.

After his studies in the USA, in 1983, Sombath moved back to Laos with Ng Shui-Meng. Throughout the 1980s, he struggled to secure Lao government approval for his projects promoting community-based sustainable agricultural development.

Eventually, in 1986, after he undertook a successful consultancy for the UN Children's Fund (UNICEF) in Cambodia – for which the Cambodian government thanked their Lao counterparts – the Lao government accepted some of Sombath's project proposals.

With the permission of the Lao Ministry of Education, in 1996 Sombath founded the Participatory Development Training Centre (PADETC) to promote education, leadership skills and sustainable development in Laos. He trained young volunteers and local government officials in community-based development, in areas including sanitation, recycling and agricultural production.



PADETC became perhaps the best-known civil society organization in Laos, and in 2005 Sombath received the Ramon Magsaysay Award for Community Leadership – known as Asia's Nobel Peace Prize – for his work.⁹

Sombath Somphone receiving the Ramon Magsaysay Award in 2005. © www.sombath.org

Sombath retired from his position as PADETC Director in June 2012, to spend more time with his family, meditating and writing. Further, he led a survey to measure “happiness” throughout Laos’s provinces, with support from the UN Development Programme (UNDP) and co-operation from local authorities and Lao mass organizations. The findings of this consultation were incorporated into a document entitled “The Lao People’s Vision”. But – as the developments that followed seem to show – the Lao authorities did not apparently appreciate this consultation and visionary document, the first of its kind in Laos.

2.2 THE ASIA-EUROPE PEOPLE’S FORUM AND AFTERMATH

ASEM is designed to deepen the relationship between Asia and Europe, with discussions in the economic, political and socio-cultural fields. Before each ASEM, the Asia-Europe People’s Forum (AEPF) – a network of civil society organizations across Asia and Europe – holds an alternative civil society summit of the same name.



Photo of Sombath with former prime minister Bounyang Vorachit. © www.sombath.org

The 9th AEPF was held in Vientiane from 16 to 19 October 2012, and was organized jointly by the AEPF’s International Organising Committee and the Lao National Organising Committee, which was co-chaired by Sombath Somphone. The Lao National Organising Committee included Lao civil society groups, Lao mass organizations, representatives of international non-governmental organizations (NGOs) working in Laos and an agency of the Lao Ministry of Foreign Affairs. The 9th AEPF was by far the largest civil society event ever held in Laos, with around 1,000 participants from Laos, across Southeast Asia and Europe. “The Lao People’s Vision” was presented during the AEPF and was referenced in the forum’s closing declaration. Sombath was a keynote speaker, and the film his work and survey inspired – “Happy Laos”¹⁰ – closed the forum.

However, plain-clothed security officials monitored AEPF participants, and harassed some of them. One participant informed Amnesty International about a woman who was confronted by security officials and castigated for raising concerns publicly about land and housing rights in her village. Towards the end of the forum, security officials confiscated printed copies of “The Lao People’s Vision” that were to be distributed to participants.¹¹

The AEPF's International Organising Committee has since noted "reports of harassment at the local level of participants in the AEPF9".¹²

The Lao Ministry of Foreign Affairs had cooperated with the AEPF organizers; and most of those involved in AEPF initially considered the forum a success because – despite the problems outlined above – Lao civil society groups had used the forum to share their views on the development of Laos and network with each other and regional and international participants.

But in a country where perceived challenges to government policy are not tolerated, and open discussion and debate outside of the government and LPRP networks are rare,¹³ "The Lao People's Vision" – promoting an alternative development model based on consultation with the Lao people – and the coming together of civil society at the AEPF, were seemingly perceived as a threat by some elements within the Lao authorities. The events that followed corroborate this assessment.

On 7 December 2012, the Lao government expelled Anne-Sophie Gindroz, country director of HELVETAS Swiss Intercooperation in Laos, a Swiss international NGO that works on agricultural development and land issues. Gindroz had been involved closely in the 9th AEPF, and – along with Sombath Somphone – had raised the harassment of participants in the forum with the Lao government. The decision to expel her was apparently made after she had sent a letter on 21 November 2012 to other international NGOs and Laos' international donors, in which she referred to the limited space for meaningful democratic debate, and the repercussions that follow for those who speak out. The Lao government obtained a copy of this letter and ordered Gindroz to leave the country.

Gindroz's expulsion sent shockwaves through Lao civil society, with which she had worked closely. But worse was to follow. A week after she was thrown out, Sombath Somphone disappeared.

3. DISAPPEARANCE ON CAMERA

Sombath Somphone's colleagues last saw him in person at around 5.30 pm on 15 December 2012, when he left his office in Vientiane in his car. He was driving behind his wife, Ng Shui-Meng, who was in another car. Traffic police stopped Sombath at around 6 pm at a police post on Thadeua Road, in Vientiane's Sisattanak district, separating him from his wife who was in a car further ahead. That was the last she saw of him.

When her husband did not show up for dinner that night, Ng Shui-Meng searched for him around the police post where he was last seen, and in Vientiane's hospitals. The next day, on 16 December, she reported him missing to the police. She and her family again searched the city's hospitals, but there was no sign of Sombath. So on 17 December, she made a request to the Vientiane Capital Police Station to view the footage recorded by closed-circuit television (CCTV) cameras of the area around the police post where Sombath was last seen. The police officers on duty were very cooperative and allowed the family to view the CCTV footage, and record it from the screen on mobile phones and video cameras. The family were not able to obtain a copy of the original CCTV film.

3.1 VIDEO EVIDENCE



Screenshot from the recorded CCTV footage of Sombath Somphone getting out of his jeep to talk to the police. © www.sombath.org.

The blurred CCTV footage recorded on mobile phones and video cameras, which is available online¹⁴ shows Sombath stopping his car at the police post at around 6:03 pm. After about 30 seconds, the vehicle's lights are switched off, and shortly after that a man identified by Sombath's family and friends¹⁵ to be Sombath himself, steps out of his car to speak with the police personnel on the pavement on the passenger's side. Sombath's car appears to have been the only vehicle stopped at that time, as regular traffic continues on the busy road throughout around 15 minutes of footage.

Within a couple of minutes of Sombath being stopped, a motorcyclist arrives at the scene. He parks his motorcycle on the pavement and runs over to the police post. After another couple of minutes, an individual who appears to be the motorcyclist drives off with Sombath's car, leaving his motorcycle behind. A further few minutes later, another man emerges from the

direction of the police post and stands by the road – he appears to be waiting for someone. Barely 45 seconds later, a pick-up truck with flashing lights arrives at the spot. The waiting man gets into the truck, as do another couple of men – apparently including Sombath. The truck is driven away, apparently following two individuals on a motorcycle, which emerges from near the police post at seven minutes 12 seconds into the video recording.



Screenshot from the recorded CCTV footage showing a passenger on a motorbike apparently firing a gunshot into the air.

Another very concerning incident appears to occur, which has so far not been mentioned in media reports and statements around Sombath's disappearance: the passenger on the motorcycle driving ahead of the pick-up truck appears to fire a gunshot in the air before riding away. This can be seen and heard at seven minutes 15 seconds into the video.

The apparent gunshot may have been fired as a warning to witnesses, as a signal for the pick-up truck carrying Sombath to leave immediately, or for another reason. The fact that this man is armed may also explain why Sombath did not struggle to avoid being taken away, although those who know Sombath say that he would have tried to discuss the situation peacefully to find a resolution, rather than resist.

Sombath has not been seen or heard from since.

3.2 DISAPPEARANCE AT A POLICE POST



The police post where Sombath disappeared. The red arrow indicates where his jeep and the pickup which took him away were parked. © www.sombath.org

In determining whether Sombath was the victim of an enforced disappearance, for which the Lao authorities are responsible, it is of particular significance that he was last seen at a police post. In Laos, local and traffic police are overseen by the Ministry of Public Security.

As the CCTV footage shows, it was at the police post where the police stopped Sombath deliberately and from here that unknown persons took him away.

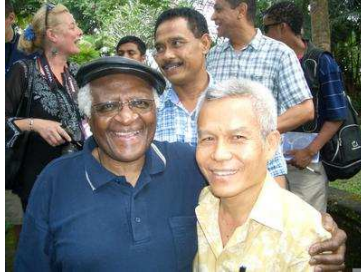
The fact that the police did nothing to stop Sombath from being taken away seems to suggest either their involvement or complicity. There was no attempt by the police to resist the abductors or protect Sombath. At the very least, Sombath could not have been taken without the police knowing about it, thus suggesting either support or acquiescence.

It is inaccurate to describe the scene as “normal”, as the Lao authorities have sought to do (see chapter 4 below), as an excuse for the police doing nothing to stop Sombath being taken away. It must be unusual for a motorcyclist to take someone’s car away, after they have apparently been stopped for a routine check at a police post. It is strange that Sombath’s car appears to have been the only vehicle stopped for a routine check in a 15 minute period, as the CCTV footage shows. It cannot be “normal” for someone who has been stopped in a routine check to be taken away in a pick-up truck with flashing lights. Nor can it be “normal” for a passenger on a motorcycle at a police post in a busy street in central Vientiane to apparently fire a gunshot in the air.

4. FLAWED INVESTIGATIONS

“The European Parliament ... [i]s concerned at the tardiness and lack of transparency of the investigations into the disappearance of Sombath Somphone”.

European Parliament resolution of 7 February 2013.



Sombath with Archbishop Desmond Tutu in 2006. © www.sombath.org. The Archbishop wrote to the Lao Prime Minister in February 2013, urging the government to initiate a further investigation and renew its efforts to find Sombath and return him safely.

The likely involvement of police officers in Sombath’s enforced disappearance in mid-December 2012 is compounded by the failure of the Lao authorities – including the police – to conduct an impartial and effective investigation into the matter and to make public a detailed account of the investigation. This suggests that they may have something to hide.

4.1 GOVERNMENT ASSURANCES

On 19 December 2012 – four days after Sombath’s disappearance – the Lao Ministry of Foreign Affairs issued a statement which claimed that the “authorities concerned” were “seriously investigating” the matter.¹⁶

On 3 January 2013, in a letter responding to queries about Sombath’s disappearance “raised by the UN Special Procedures”, Ambassador Yong Chanthalangsy, the Permanent Representative of Laos to the UN in Geneva, wrote:

“The Lao Government is deeply concerned about the missing of [sic] Sombath Somphone and attaches importance to the investigations underway in order to find out the truth of this incident”.

The letter stated:

“The traffic police stopped Mr Sombath’s jeep in order to check his driving licence and car documents as normal procedures ... After the police checked the documents they returned them to Mr Sombath and continued their duty of checking other vehicles.”

The Ambassador continued: “it may be possible Mr Sombath has been kidnapped perhaps because of a personal conflict or a conflict in business”; but recognised that the “concerned authority” in Laos:

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“has the legal duty to find out the truth in order to bring perpetrators to justice and ensure justice to Mr Sombath and his family according to the law.”¹⁷

Then, on 11 January 2013, Police Colonel Dr Phengsavanh Thippavongxay, Deputy Director General of Laos' General Police Department, issued a written "Briefing on the result of the preliminary investigation on the case of Mr Sombath Somphone's missing [sic]", which was published on 4 February 2013 in the government-backed *Vientiane Times* English language newspaper.¹⁸

The briefing states that, based on the "legal duty" to investigate and in accordance with the "assignment given by the Minister of Public Security", the Department of General Police together with the Vientiane Capital Police set up a joint committee on 20 December 2012 to solve Sombath's case. The focus of the investigation was apparently on reviewing the CCTV footage of the incident, but the identities of those individuals and vehicles filmed could not be established.

According to the briefing, the traffic police at the police post checking cars on the day of Sombath's disappearance had been questioned but remembered:

“the situation was normal and there was not any incident of fighting or violence occurred and no car or individual was detained.”

People living nearby had not reported any incident; a request for information was apparently sent to all police forces in Laos; and information from Sombath's family had been obtained.

The briefing stated that the "authority does not detain him" and again suggested that Sombath may have been taken due to a private dispute. The briefing concludes that:

“Mr Sombath Somphone ... has not yet been found and no further evidence and information concerning his missing obtained [sic].”

On 1 March 2013, almost two months after the preliminary briefing, the police issued a second report on their investigations to find Sombath.¹⁹ The report did not establish the possible motives for Sombath being taken. It did not explain why the police on duty had done nothing to stop Sombath being taken away, instead noting again that the police officers at the police post said "the situation was normal." The report found that the CCTV footage was too unclear to determine the number plates of the vehicles involved, and effectively rejected external assistance in analysing the CCTV footage:

“we ourselves are capable to handle the inspection of the recorded CCTV footage concerning the case because it is our internal responsibility and thus it is unnecessary to seek assistance from outsiders.”

Like the preliminary briefing, the second police report made no reference to the apparent gunshot apparently fired by the passenger on the motorcycle that drove ahead of the pick-up truck in which Sombath was taken away. The report said that the police on duty had found a motorcycle at the scene – apparently of the person who had taken Sombath's car away. But the report does not say whether they noted the number plate or what happened to the

motorcycle thereafter. The report found that other CCTV cameras in the vicinity did not capture the incident and its aftermath. Most importantly, the report did not provide any information about Sombath's fate or whereabouts.

On 7 June 2013, the police issued their third and latest briefing, but provided no new information about Sombath's disappearance or whereabouts.²⁰

4.2 INCONSISTENCIES AND OUTSTANDING QUESTIONS

Even though six months have passed since the disappearance, a number of matters remain unclear:

- If Sombath's car was stopped in a routine check, why were no other vehicles stopped at the police post around that time, as evidenced by the CCTV footage that shows Sombath being taken away?
- Why did the police officers at the police post do nothing to stop Sombath from being taken away? It is completely implausible to describe the situation as normal. CCTV footage shows that a motorcyclist who parked near the police post took Sombath's car away, and that Sombath himself was driven off in a truck along with other men who appear to emerge from the police post. Further, two men drove in front of the truck on a motorcycle, one of whom appears to fire a gunshot in the air.
- Has this apparent gunshot been investigated by the police?
- Did the police at the post record the number plate of the motorcycle found at the scene – has this been traced yet? What happened to the motorbike subsequently? The CCTV footage shows a policeman looking at the motorcycle and moving it, after which it appears to be moved by some persons from right in front of the police post.
- Why did other CCTV cameras not capture the aftermath of the incident, as the pick-up truck carrying Sombath appeared to drive off down the main Thadeua Road, on which there are other cameras?

4.3 INTERNATIONAL ASSISTANCE REFUSED

Soon after Sombath's enforced disappearance, his friends started an online campaign for his safe return, and set up a website – sombath.org – with information and links to media coverage and advocacy initiatives.

Sombath's family and friends, regional and international civil society groups, foreign governments and the UN have called for his disappearance to be investigated thoroughly, and some have offered their assistance to ensure his safe return.²¹

Amnesty International is concerned that Lao authorities are refusing expert external technical assistance in undertaking a forensic analysis of the original CCTV camera footage that shows Sombath being taken away, and other original CCTV footage from cameras on the same main road. Among other issues, such an analysis could help to determine the number plates and owners of the vehicles involved, and possibly contribute to determining the fate and whereabouts of Sombath.

In a press briefing on 21 December 2012, the spokesperson for the UN High Commissioner for Human Rights stated:

*“We are concerned by what appears to be the enforced disappearance of Mr. Sombath Somphone, a prominent human rights defender ... and urge the authorities to do everything possible to ensure that Mr. Somphone is found safe and unharmed.”*²²

In a statement made following their trip to Laos from 14 to 16 January 2013, three parliamentarians from across Southeast Asia – Charles Santiago (Malaysia), Lily Wahid (Indonesia) and Walden Bello (Philippines) – noted “discrepancies in our hosts’ accounts of the circumstances of the abduction”; and said that their visit “raised more questions than answers”.²³



Solidarity event for Sombath Somphone in Manila, the Philippines, April 2013. © www.sombath.org.

On 7 February 2013, in a strongly worded resolution, the European Parliament stated that it is “concerned at the tardiness and lack of transparency of the investigations into the disappearance of Sombath Somphone ...”²⁴

And in a statement on 24 March 2013, US Secretary of State John Kerry said:

*“We are concerned at the lack of significant information we have received from the Lao government about Mr. Sombath’s case, despite our offers to assist with the investigation and numerous expressions of concern about Mr. Sombath’s welfare.”*²⁵

5. APPLYING THE LEGAL STANDARDS: AN ENFORCED DISAPPEARANCE

5.1 A SERIOUS HUMAN RIGHTS VIOLATION

Laos is a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance (CPED) but has not yet ratified it. As a signatory to the Convention, Laos is expected to act according to the spirit of its provisions and has the obligation to refrain from any actions that may defeat the object and purpose of the Treaty prior to its entry into force.²⁶

CPED prohibits enforced disappearance, which it defines as: *“the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”*²⁷

The circumstances of Sombath Somphone being stopped by police, then taken from a police post without the police resisting – despite the concerning and extraordinary situation, including a gun apparently being fired into the air – strongly indicate that he has been deprived of his liberty either by agents of the Lao state, or with their support or acquiescence.

These facts are compounded by the inadequacy of the investigation and attempts to locate Sombath, and the rejection of external assistance in this regard, which indicate that the Lao authorities may be further concealing information about the fate and whereabouts of Sombath and preventing him and his relatives from accessing their rights to an effective remedy. Amnesty International therefore considers that Sombath Somphone has most likely been a victim of an enforced disappearance.

The seriousness of enforced disappearances is well reflected in Article 1 of the Declaration on the Protection of all Persons from Enforced Disappearance (DPPED):

“Any act of enforced disappearance places the person subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.”

These rights are also provided in the International Covenant on Civil and Political Rights (ICCPR), to which Laos is a state party.²⁸ Article 9 of the ICCPR provides for the right to liberty and security of person. It prohibits authorities from arbitrarily arresting and detaining

anyone, and provides that anyone who is arrested or detained must be brought promptly before a judge and tried or released within a reasonable time. States parties must ensure that their own officials respect this right; additionally, they also have an obligation to protect individuals against abuses of the right by non-state actors.²⁹ Similarly, the right to life is recognized in Article 6, and the absolute prohibition of torture and other cruel, inhuman or degrading treatment in Article 7 of the ICCPR.

Some of these international human rights rules and standards are also recognised in Lao law. Article 42 (new) of the Lao Constitution, as amended in 2003, provides for the right to be free from arbitrary arrest or search without a court order:

“The right of Lao citizens in their bodies, honour and houses are inviolable. Lao citizens cannot be arrested or searched without the order of the Public Prosecutor or the people's courts, except if otherwise provided by the laws.”

The Lao Penal Code, last amended in 2005, prohibits arbitrary arrest and detention, and abduction. Article 99 provides that: *“Any person unlawfully arresting or detaining another person shall be punished by six months to two years of imprisonment and shall be fined ...”*, while the sentence is increased if harm is done to the person unlawfully arrested or detained.

5.2 THE RIGHT TO REMEDY

The Lao authorities' failure to undertake proper investigations violates Laos's obligations under Article 2 (3(a)) of the ICCPR to provide an “effective remedy” for anyone whose rights under the Covenant have been violated. As the Human Rights Committee, the UN expert body charged with overseeing the Covenant's implementation has explained, this provision *“requires that States Parties make reparation to individuals whose Covenant rights have been violated... where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.”*³⁰

The Committee added that states parties must comply with their *“general obligation to investigate allegations of violations promptly, impartially and effectively through independent and impartial bodies”*, adding: *“A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.”*³¹

5.3 A CRIME UNDER INTERNATIONAL LAW

Enforced disappearances, as well as being a serious violation of human rights, is also a crime under international law, and, in certain circumstances, may amount to crimes against humanity.³² Therefore, all states should, irrespective of where the crime took place, investigate and, where sufficient admissible evidence exists, prosecute persons suspected of enforced disappearance before their courts on behalf of the international community in fair judicial proceedings and without the death penalty, or alternatively they should extradite them to a state that is able and willing to do so.

Article 9(2) of CPED expressly requires that:

“Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction...”

6. CONCLUSIONS AND RECOMMENDATIONS

“Help us find our friend ... Sombath is a friend, colleague and a visionary who has spent his life working for his people and country.”



Sombath.org, the website on Sombath's work and disappearance. © www.sombath.org.

Based on the facts and the background outlined in this report, Amnesty International concludes that Sombath Somphone is most likely a victim of an enforced disappearance. This situation has left his family and friends distraught, and desperate for answers. Further it raises questions about the state of freedom of expression and the role of civil society today in Laos.

As explained in this report, Sombath's enforced disappearance occurred in the aftermath of the Asia Europe People's Forum in Vientiane, where participants had been harassed, copies of the "Lao People's Vision" – a result of Sombath's work – confiscated, and the country director of an international NGO expelled soon after raising these and other issues. Today, Laos' fledgling civil society is deprived of one of its most dynamic leaders, thus sending a chilling message to others who want to debate and share ideas around human rights and development in Laos. Amnesty International is very concerned that some members of civil society fled Laos in the aftermath of Sombath's disappearance, worried about what may happen to them as a result of their activism.

Sombath's enforced disappearance is not only an internal matter for Laos. As the numerous statements of concern and offers of assistance have shown, it is a matter of regional and international concern. Further, an enforced disappearance constitutes a crime under international law. The Lao authorities' handling of this case and their sincerity and success in ensuring the safe return of Sombath is the test by which their commitment to upholding human rights will be judged moving forward. The attention will not go away until Sombath is returned safely to his family, the perpetrators are held accountable and steps are taken to protect and respect human rights, including by ensuring the safety of human rights defenders.

Below, Amnesty International provides recommendations to the Lao authorities and the international community, which if implemented would hopefully contribute to ensuring the safe return of Sombath Somphone, and ensuring that his family is provided with truth, justice and reparation. Some recommendations are also geared towards supporting respect for freedom of expression in Laos, and in particular the development and protection of civil society.

6.1 RECOMMENDATIONS TO THE LAO AUTHORITIES

In order to ensure that Sombath Somphone is returned safely to his family, and that he and his family can access truth, justice and reparation about his enforced disappearance, Amnesty International recommends that the Lao government:

- Publicly demand the immediate and unconditional release of Sombath and safe return to his family; and
- Establish without delay a new, independent commission to undertake an impartial and thorough investigation into Sombath's disappearance and ensure that all steps are taken to locate, rescue him from his captors and return him safely to his family as soon as possible, in accordance with Laos' obligations under international law.

This new commission must:

- Whenever necessary, cooperate and seek technical assistance for its investigations, including releasing the original CCTV footage of Sombath's disappearance and requesting expert technical assistance in undertaking a forensics analysis of the same;
- Frequently provide detailed information about the progress of the investigations to Sombath's family, lawyers and others with a legitimate interest. In particular, ensure that the unanswered questions raised by Sombath's family and others, including those set out in Chapter 4 of this report, are addressed;
- Work with law enforcement officials and the Lao courts to bring to justice, in fair proceedings, all those against whom there is sufficient admissible evidence that they took part in ordering, carrying out or covering-up Sombath's enforced disappearance and any other human rights violation to which he may have been subjected, irrespective of rank or official position; and
- Work with law enforcement officials and the Lao courts to ensure that Sombath and his family can access reparation for his enforced disappearance including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

In order to ensure that there are strong mechanisms in place to prevent and combat enforced disappearances, Amnesty International recommends that the Lao government:

- Take necessary measures to ensure that the crime of enforced disappearance is defined as a criminal offence with appropriate penalties under Lao law.
- Ratify the CPED at the earliest opportunity, making declarations under Article 31 and

Article 32 recognizing the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals claiming to be victims of enforced disappearance or abduction, incorporate its provisions into domestic law and implement it in policy and practice; and

- Ratify the Rome Statute of the International Criminal Court and the Agreement on Privileges and Immunities of the International Criminal Court, incorporate their provisions in to domestic law and implement them in policy and practice.

Further, in order to ensure respect for freedom of expression and in particular that civil society in Laos is protected and able to grow, Amnesty International recommends that the Lao authorities:

- Respect and protect the right of human rights defenders and other civil society actors in Laos so that they can carry out their work unimpeded, including through training and instruction of law enforcement officials; and
- Remove all restrictions in law and practice which are infringing upon the work of civil society organizations in Laos, and ensure that legal provisions on the rights to freedom of expression, peaceful assembly and association are in line with international human rights standards.

6.2 RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY

In order to ensure that Sombath Somphone is returned safely to his family, Amnesty International recommends that other countries, and in particular ASEAN member states, EU member states and the USA, which have already expressed concerns about this case:

- Demand that the Lao government implements immediately the recommendations set out in Section 6.1 above;
- Raise at every opportunity, with the Lao government and publicly, Sombath's enforced disappearance; and
- Offer publicly and provide expert and/or other technical assistance to assist the Lao authorities in undertaking the investigations into the enforced disappearance of Sombath Somphone.

Amnesty International recommends that the ASEAN Intergovernmental Commission on Human Rights (AICHR) should:

- Immediately investigate the enforced disappearance of Sombath Somphone, request information from the Lao government and offer to coordinate the provision of forensic and other expertise from other ASEAN Member States in support of Laos' own investigation.

Further, Amnesty International recommends that other countries should:

- Consider initiating their own investigations into persons suspected of being responsible for the enforced disappearance of Sombath Somphone, irrespective of rank or official

position, and attempt to bring them to justice in their own national courts in proceedings that meet international standards of fair trial.

Finally, in order to promote respect for freedom of expression and to protect the work of civil society organizations and individuals in Laos, Amnesty International recommends that donor countries:

- Provide financial and technical assistance to support the development of an independent civil society in Laos, free from threats, harassment, discrimination and other human rights violations;
- Condemn publicly, past and on-going restrictions on freedom of expression and other human rights violations in Laos; and
- Provide technical assistance to support effective police investigations and the development of the criminal justice system.

ENDNOTES

¹ Article 2, International Convention for the Protection of All Persons from Enforced Disappearance (CPED).

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³ Briefing by the International Organising Committee of the Asia Europe People's Forum, 28 February 2013: <http://sombathdotorg.files.wordpress.com/2013/03/13-02-28-aepf9-reflections-and-lesson-learning-laos-revision-summary.pdf>, last accessed on 4 June 2013.

⁴ See for example Article 3, Constitution of the Lao People's Democratic Republic (amended 2003).

⁵ See Report of the Working Group on the Universal Periodic Review, Lao People's Democratic Republic, UN Doc. A/HRC/15/5, 15 June 2010, recommendation 98.42 and UN Doc. A/HRC/15/5/Add.1, Addendum, 14 September 2010, para. 25.

⁶ Decree on Associations (English translation), Laos, 29 April 2009: http://www.iccs.org/pubs/lao_pdr_decree_law_on_associations.pdf, last accessed on 4 June 2013.

⁷ For more information on the human rights situation in Laos, see Amnesty International's publications and annual report entries on Laos at <http://www.amnesty.org/en/region/laos>, last accessed on 17 May 2013.

⁸ Based on 'Who is Sombath?', Sombath.org, website on Sombath Somphone's work and disappearance: <http://sombath.org/>, last accessed on 17 May 2013.

⁹ 'Sombath Somphone', article written on occasion of Sombath receiving the Ramon Magsaysay Award, 2005, <http://sombathdotorg.files.wordpress.com/2012/12/magsaysay-bio.pdf>. last accessed on 17 May 2013.

¹⁰ 'Happy Laos' is available on Youtube.com and includes footage of Sombath: <http://www.youtube.com/watch?v=DWQ113aTyDg>, last accessed on 17 May 2013.

¹¹ Briefing by the International Organising Committee of the Asia Europe People's Forum, 28 February 2013: <http://sombathdotorg.files.wordpress.com/2013/03/13-02-28-aepf9-reflections-and-lesson-learning-laos-revision-summary.pdf>, last accessed on 4 June 2013.

¹² Ibid.

¹³ See for example 'Countries at the crossroads 2011: Laos', Martin Stuart-Fox, Freedom House: http://www.freedomhouse.org/sites/default/files/inline_images/LAOSFINAL.pdf, last accessed on 17 May 2013.

¹⁴ The full video is available on Youtube.com: <http://www.youtube.com/watch?v=c2kra80T13c>, last accessed on 17 May 2013.

¹⁵ See for example 'An Open Letter To Sombath's Well-Wishers', Ng Shui-Meng, 13 January 2013: <http://sombath.org/2013/01/14/open-letter-from-wife/>, last accessed on 4 June 2013.

¹⁶ The Lao authorities' statements on Sombath Somphone's disappearance are available on Sombath.org: <http://sombath.org/category/lao-government-statements/>, last accessed on 17 May 2013.

- ¹⁷ 'Govt clarifies disappearance of Mr Sombath Somphone', Vientiane Times, 4 January 2013: <http://sombath.org/category/lao-government-statements/>, last accessed on 17 May 2013.
- ¹⁸ 'Police Report on the Disappearance of Sombath Somphone', Vientiane Times, 4 February 2013: <http://sombath.org/category/lao-government-statements/>, last accessed on 17 May 2013.
- ¹⁹ 'Second briefing on the result of the police investigations to locate the whereabouts of Mr Sombath Somphone', Vientiane Times, 2 March 2013: <http://sombath.org/category/lao-government-statements/>, last accessed on 17 May 2013.
- ²⁰ 'Sombath Somphone: Investigation progress report No 3', Vientiane Times, 8 June 2013. http://www.vientianetimes.org.la/FreeContent/FreeContent_Sombath.htm, last accessed on 10 June 2013.
- ²¹ Statements by foreign governments and civil society organizations on Sombath Somphone's disappearance are available on Sombath.org at <http://sombath.org/statements/>, last accessed on 17 May 2013.
- ²² Press briefing notes on Democratic Republic of the Congo, Hissène Habré and Laos, Spokesperson for the UN High Commissioner for Human Rights, 21 December 2012: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12906&LangID=E>, last accessed on 4 June 2013.
- ²³ 'Missing Activist Mystery Deepens', Radio Free Asia, 16 January 2013: <http://www.rfa.org/english/news/laos/missing-01162013202912.html>, last accessed on 4 June 2013.
- ²⁴ 'European Parliament resolution on Laos: the case of Sombath Somphone', European Parliament, 6 February 2013: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2013-0054+0+DOC+XML+V0//EN>, last accessed on 4 June 2013.
- ²⁵ '100 Days Since the Disappearance of Lao Civil Society Leader Sombath Somphone', statement by US Secretary of State John Kerry, 24 March 2013: <http://www.state.gov/secretary/remarks/2013/03/206599.htm>, last accessed on 4 June 2013.
- ²⁶ Article 18, Vienna Convention on the Law of Treaties (VCLT). The VCLT was adopted on 22 May 1969 and opened for signature on 23 May 1969 by the United Nations Conference on the Law of Treaties. Entry into force: 27 January 1980. Laos acceded to the VCLT on 31 March 1998.
- ²⁷ Article 2, CPED.
- ²⁸ Laos ratified the International Covenant on Civil and Political Rights (ICCPR) in September 2009.
- ²⁹ Human Rights Committee, General Comment No. 31 on Article 2 of the ICCPR: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8.
- ³⁰ *Ibid.*, para. 16.
- ³¹ *Ibid.*, para. 15. See similarly Articles 3 and 24 of the CPED.
- ³² The preamble to CPED provides that enforced disappearance: "... constitutes a crime and, in certain circumstances defined in international law, a crime against humanity." CPED affirms that enforced disappearance constitutes a crime against humanity when practiced as part of a widespread or systematic attack against a civilian population.