

Legal Memorandum on the case of Sombath Somphone

I. Introduction

1. Sombath Somphone, a prominent community organizer and proponent of sustainable development, in Lao People's Democratic Republic (Lao PDR), has been missing since 15 December 2012, when he was stopped by traffic police at a checkpoint and, as recorded on closed circuit television, taken away by unidentified men. Based on the information publicly available, Sombath Somphone appears to have been subjected to an enforced disappearance. This prima facie suspicion is based on the well-grounded conclusion that Sombath Somphone was abducted by or with the complicity or acquiescence of State officials, but that this abduction has not been acknowledged by State officials, who have declined to provide any information as to his fate or whereabouts.
2. To date, the Government of the Lao PDR has denied any knowledge of the whereabouts of Sombath Somphone since he was last seen. The Government of Lao PDR has also failed to investigate Sombath's "disappearance" promptly, impartially and thoroughly, as required under applicable international law and standards, including international treaties to which the Lao PDR is a party or signatory. The investigation is said to be currently undertaken by the police, who have so far not passed the results of their investigation or transferred responsibility for further investigation to the public prosecutor. The public prosecutor, for [his] part, has not launched a prosecution. The Government of Lao PDR has declined to accept assistance from foreign experts in seeking and analyzing forensic evidence. Sombath Somphone's wife, Ng Shui Meng, has not received copies of the relevant investigation documents.
3. The International Commission of Jurists is calling on the Government of Lao PDR, and in particular the public prosecutor, to launch a credible, prompt, thorough, impartial and effective investigation into the fate and whereabouts of Sombath Somphone. In the event that the public prosecutor fails to do so, an independent and credible authority should be established to undertake prompt, thorough and impartial investigation, consistent with international standards, into the alleged enforced disappearance as well as allegations of arbitrary detention, torture or ill-treatment. In furtherance of this investigation, it should immediately seek and accept assistance from foreign experts on analysis of forensic evidence and provide relevant material and conclusions from any investigation to Sombath Somphone's wife, to the extent compatible with the prosecution of the case.

A list of more detailed recommendations appears at the end of the memorandum.

II. General Background

A. *Brief background of Sombath Somphone, his work, and the circumstances surrounding his alleged enforced disappearance*

4. Sombath Somphone, 62 years old, is the founder and former Director of the Participatory Development Training Center (PADETC), an organization registered with the Ministry of Education of Lao PDR and known for supporting holistic education and youth development as well as "promoting eco-friendly technologies and micro-enterprises, including the introduction of organic fertilizers, garbage recycling, fuel-efficient stoves, and new processing techniques for small agri-business enterprises."¹

¹ Socorro A. Villanueva, *Sombath Somphone Biography*, Ramon Magsaysay Award Foundation (2005) <http://sombathdotorg.files.wordpress.com/2012/12/magsaysay-bio.pdf> (Accessed 16 August 2013). See

In 2001, he received the Human Resource Development Award from the United Nations Economic and Social Commission for Asia and the Pacific for his efforts in promoting eco-agricultural practices and empowering the rural poor.² In 2005, he became the first (and so far only) Lao recipient of the Ramon Magsaysay Award for Community Leadership. The citation issued with the Award indicated that he is recognized for his "hopeful efforts to promote sustainable development in Lao PDR by training and motivating its young people to become a generation of leaders."³

5. Sombath Somphone was last seen on 15 December 2012, a few months after he helped the Government of Lao PDR and non-government organizations in organizing the Asia-Europe People's Forum (AEPF), which was held from 16 to 19 October 2012 in Vientiane. As co-chair of the Lao National Organizing Committee, Sombath Somphone played a major role in coordinating the event.⁴ At least 948 participants from Lao PDR, other Asian countries, and Europe attended the AEPF. According to the information on the AEPF's website, discussions during the forum centered on "reflections, aspirations and visions of the Laos people from a wide range of citizen groups, civil society, and mass organizations across Lao society." It appears that this event was the first time in both AEPF and Lao PDR history that civil society groups from all over the country publicly spoke in a critical manner on issues regarding development and human rights.⁵
 6. It is believed that his abduction was related to his prominent role during the AEPF in Vientiane.⁶
 7. For a more detailed narration of the events leading up to the alleged enforced disappearance of Sombath Somphone, please see the attached *Annex*.
- B. *Does the ICJ consider this case an enforced disappearance?*
8. The International Commission of Jurists considers that there is good reason to suspect that Sombath Somphone has been subjected to an enforced disappearance and that an effective investigation is absolutely essential to determine his fate or whereabouts and whether he has been subject to enforced disappearance and/or other human rights violation or criminal act, and, if so, to establish responsibility for such violations and/or crimes.
 9. The International Convention for the Protection of All Persons from Enforced Disappearance (ICPED), which was adopted by consensus by the UN General Assembly in 2006 and entered into force in 2010, provides the international definition of enforced disappearance. It should be noted that Lao PDR has, signed, but not yet ratified the ICPED. Under Article 2 of the ICPED, enforced disappearance is defined 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."⁷ This definition is similar, though

also *History of PADETC*, Participatory Development Training Center (2013) <http://www.padetc.org/about-us/history-of-padetc/> (Accessed 16 August 2013).

² *Our founder: Sombath Somphone*, Participatory Development Training Center (2013) <http://www.padetc.org/about-us/our-founder/> (Accessed 16 August 2013).

³ *Ibid.*

⁴ *Laos: Caught on Camera*, Amnesty International (2013), page 9. http://www.amnestyusa.org/sites/default/files/laos_-_caught_on_camera_-_the_enforced_disappearance_of_sombath_somphone.pdf (Accessed 15 August 2013).

⁵ *AEPF 9: Reflections and Lesson Learning*, Asia-Europe People's Forum, <http://www.aepf.info/> (Accessed 6 August 2013).

⁶ Jonah Fisher, 'Fears grow for abducted Laos campaigner Sombath', in *BBC*, 30 April 2013, <http://www.bbc.co.uk/news/world-asia-22338101> (Accessed 13 December 2013).

⁷ Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED).

not identical, to the earlier 1992 UN General Assembly's Declaration on the Protection of All Persons from Enforced Disappearance (DPED), which describes enforced disappearances as occurring 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."⁸

10. The International Covenant on Civil and Political Rights (ICCPR), to which Lao PDR is a party, protects a number of rights, which are constitutive of enforced disappearances. The ICCPR imposes a duty to investigate, prosecute and punish and provide reparation for such violations. Enforced disappearance necessarily entails a violation of the prohibition against torture or ill-treatment protected under article 7; the prohibition of arbitrary detention under article 9; and the right to recognition as a person under the law under article 16. In instances where the fate of the "disappeared" person turns out to be extrajudicial, summary or arbitrary execution, it also constitutes a denial of the right to life under ICCPR article 6. Accordingly, the UN Human Rights Committee has made clear in its General Comment on the General Legal Obligations under the ICCPR, as well as in numerous cases and jurisprudence, that States Parties must investigate and bring to justice perpetrators of enforced disappearance.⁹ Lao PDR is also under an obligation to provide Sombath Somphone, and his family, with an effective remedy, including a prompt, thorough and effective investigation, his immediate release if he remains detained, and adequate information resulting from its investigation.¹⁰
11. The ICJ believes that the publicly available facts in this case strongly suggest it is an incident of enforced disappearance. The available CCTV footage taken during the last few minutes that Sombath Somphone was seen seem to establish that he was deprived of his liberty. Moreover, the last known whereabouts of Sombath Somphone was the police outpost where local traffic police stopped him. The local traffic police are under the control and administration of the Ministry of Public Security. The claim made by the traffic police who were on duty at that time was that "the situation that evening was normal [and] without any violence"¹¹ and the fact that they did not mention that Sombath Somphone was led away from the outpost by unidentified men raises serious questions and warrants further investigation and explanation. The fact that the local traffic police apparently did not attempt to help Sombath Somphone or intervene in any way strongly suggests that Sombath Somphone was taken away by officials or by private individuals acting with the consent or at least the acquiescence or complicity of members of the local traffic police. The Lao Ministry of Public Information has issued at least three "progress reports" on the investigations, in which they effectively deny and knowledge of Sombath Somphone's or whereabouts.¹² The reports reveal a lack of any meaningful progress in the investigations.

⁸ Para 3 of the Preamble of the Declaration on the Protection of All Persons from Enforced Disappearance (DPED).

⁹ Human Rights Committee, General Comment 31, 'Nature of the general legal obligation imposed on State parties to the Covenant,' 2004, UN Doc. CCPR/C/21/Rev.17/Add.13, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, 26 May 2004, para 18. See also Human Rights Committee, Decision of 27 October 1995, Case of Nydia Erika Bautista (Colombia), Communication 563/1993, UN Doc CCPR/C/55/D/563/1993; and Decision of 29 July 1997, Case of José Vicente and Amado Villadefene, Luis Napoeon and Angel Maria Torres Crespo and Antonio Hugues Chaparro (Colombia), Communication 612/1994, UN Doc CCPR/C/60/D/612/1995.

¹⁰ Human Rights Committee, Sharma v. Nepal, UN Doc CCPR/C/94/D/1469/2006, para 9.

¹¹ Rachel Vandenbrink, "Police Answers Unsatisfactory", in *Radio Free Asia*, 4 February 2013, <http://www.rfa.org/english/news/laos/sombath-somphone-02042013162045.html> (Accessed 9 September 2013).

¹² "Sombath Somphone: Investigation progress report no.3", in *Vientiane Times*, 8 June 2013, http://www.vientianetimes.org.la/FreeContent/FreeContent_Sombath.htm (Accessed 15 August 2013);

12. Notwithstanding the strong evidentiary elements that indicate that Sombath Somphone has been subjected to a deprivation of liberty at the hands of the Lao governments, or with its complicity, the Government of Lao PDR denies that it has to this day any knowledge about his fate and whereabouts. Taken together, such conduct is prima facie an indication that an enforced disappearance has occurred, under the Convention definition and the terms of the Declaration.

III. Obligations of Lao PDR under international law in cases of enforced disappearances

13. In addition to the international instruments that deal directly with enforced disappearance as a human rights violation and crime in its own right, other international human rights cover the constituent elements that make up an enforced disappearance. Lao PDR is a State party to both the ICCPR and CAT, which means that it has the obligation to ensure implementation into domestic law the provisions in the treaties, including those addressing the right to liberty and security (Article 9 of the ICCPR), the right to life (Article 6 of the ICCPR), the right to be free from torture or cruel, inhuman or degrading treatment (Article 7 of the ICCPR, the CAT), and the right to recognition as a person before the law (Article 16 of the ICCPR). The State has an affirmative obligation to prevent breaches of these provision, as well as to hold criminally accountable those responsible for their violation, and to provide for a remedy and reparation to the victim (Article 2 of the ICCPR and Article 14 of the CAT).¹³
14. Lao PDR has not yet ratified the ICPED, but the State signed the Convention on 29 September 2008. Under the Vienna Convention on the Law of Treaties, when a State has signed a treaty, it is obliged to act in good faith and refrain from acts that would defeat its object and purpose.¹⁴ Thus, while Lao PDR is not under a legal obligation to comply strictly with every element of the Convention, it should observe its general terms.
15. In 2010, Lao PDR expressly pledged to ratify the ICPED during its Universal Periodic Review (UPR) at the UN's Human Rights Council.¹⁵ It reiterated this commitment during

"Police report on the disappearance of Mr Sombath Somphone", in *Vientiane Times*, 4 February 2013, <http://sombath.org/2013/02/04/police-report-on-the-disappearance-of-mr-sombath-somphone/#more-895> (Accessed 15 August 2013); "Police report on Sombath Somphone's disappearance", in *Lao Times*, 2 March 2013, <http://www.laotimes.com/content/police-report-sombath-somphone's-disappearance> (Accessed 15 August 2013).

¹³ Article 2, 6, 7 and 16 of the International Covenant of Civil and Political Rights (ICCPR) and Article 2, 4 and 5 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). See also Human Rights Committee, General Comment No. 20, Prohibition on Torture or cruel, inhuman or degrading treatment or punishment, UN Doc HRI/GEN/1/Rev.9 (Vol.1), 1992, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument), para 1 and Committee against Torture, General Comment No. 2, Implementation of article 2 by States parties, UN Doc CAT/C/GC/2, 24 January 2008, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en, para 2; Human Rights Committee, General Comment 31, Nature of the general legal obligation imposed on State parties to the Covenant, 2004, UN Doc. CCPR/C/21/Rev.17/Add.13, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, 26 May 2004, para 8.

¹⁴ Article 18 of the Vienna Convention on the Law of Treaties.

¹⁵ Working Group on the Universal Periodic Review, National report in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 submitted by the Lao People's Democratic Republic, UN Doc A/HRC/WG6/8/LAO/1, 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/111/67/PDF/G1011167.pdf?OpenElement>, para 78.

the interactive dialogue with other Member States when it accepted the recommendation made by Spain and France to ratify the Convention.¹⁶

16. Additionally, the DPED, which was adopted unanimously, by resolution 47/133, by the UN General Assembly in 1992, sets forth the duties of States in preventing and terminating acts of enforced disappearances as well as the rights of victims and their relatives. The DPED "sets forth rules that all Member States of the United Nations, without the requirement of ratification, are called upon to apply as a minimum to prevent and suppress the practice."¹⁷
- A. *Duty to criminalize all acts of enforced disappearance, torture and ill-treatment and summary, extrajudicial and arbitrary detention as offences under domestic law and prosecute and punish those responsible*
17. Both the ICCPR and the CAT require criminalization, prosecution and punishment of human rights violations constituting serious crimes. The general obligations arising under article 2 of the ICCPR, as affirmed by the UN Human Rights Committee, require that "States Parties...ensure that those responsible [for certain violations] are brought to justice...[f]ailure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6)."¹⁸ Similarly, the CAT requires criminalization and prosecution of conduct prohibited under the Convention (articles 4-7), which the Committee against Torture has indicated is obligatory both for torture and other ill-treatment.¹⁹
18. Under the provisions of both the ICPED and the DPED, the Government of Lao PDR should ensure that all acts of enforced disappearance are offences under its domestic laws, and provide penalties that should account for the extreme seriousness of these acts.²⁰ There is currently no provision under the Penal Law of Lao PDR²¹ punishing acts of enforced disappearance. The only offence under the Penal Law that comes closest to the definition of an enforced disappearance is that of unlawful arrest and detention under Article 99 of the Penal Law.
19. Pursuant to the Convention against torture, each State party must make torture a specific offence under its domestic law, consistent with the definition under the CAT. The Government of Lao PDR has thus far, yet to introduce a definition that complies with their international obligations pursuant to the CAT, while torture is a specific

¹⁶ Human Rights Council, Report of the Working Group on the Universal Periodic Review of the Lao People's Democratic Republic, UN Doc A/HRC/15/5, 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/144/18/PDF/G1014418.pdf?OpenElement>, para 96.1.

¹⁷ UN OHCHR, Fact Sheet No. 6/Rev.3: Enforced or Involuntary Disappearances,, <http://www.ohchr.org/Documents/Publications/FactSheet6Rev3.pdf>, page 6.

¹⁸ Human Rights Committee, General Comment 31, Nature of the general legal obligation imposed on State parties to the Covenant, 2004, UN Doc. CCPR/C/21/Rev.17/Add.13, 26 May 20014, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, para 18.

¹⁹ Committee against Torture, General Comment 2, Implementation of article 2 by States parties, UN Doc CAT/C/GC/2, 24 January 2008, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en, para 6.

²⁰ Article 4 of the Convention on Enforced Disappearance provides:

"Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law."

Article 4.1 of the Declaration on Enforced Disappearance provides:

"All acts of enforced disappearance shall be offences under criminal law, punishable by appropriate penalties which shall take into account their extreme seriousness."

²¹ Note: Lao PDR's Penal Law was last revised in 2005.

offence in only two situations: in the handling of an arrested person²² and the manner in which a testimony is being obtained from either a suspect, accused, defendant or any other person.²³

20. Article 102 of the Penal Law punishes violations of individual freedom. If it is found Sombath Somphone was detained by perpetrators who sought to deter him from exercising his rights to freedom of speech or peaceful assembly, the perpetrators may be punished under this provision with imprisonment from 3 months to 1 year or be re-educated without deprivation of liberty, and imposed a fine from 100,000 Kip (approximately €9.52) to 300,000 Kip (approximately €28.56). While the offence of murder carries the sentence of ten to fifteen years of imprisonment and a fine from 1,000,000 Kip (€89) to 5,000,000 Kip (€447).²⁴ As for death caused negligently, a person found guilty could face up to five years imprisonment and a fine between 200,000 Kip (€18) to 1,000,000 Kip (€89).²⁵ These offences apply equally to public officials and private persons.²⁶
21. To accord its conduct with Article 4.1 of the Declaration and Article 7 of the ICPED, the Government of Lao PDR must make acts of enforced disappearance a separate criminal offence,²⁷ clearly distinguished from related offences such as enforced deprivation of liberty, abduction, kidnapping, and incommunicado detention.²⁸
22. The Government of Lao PDR, in complying with its duty to make all acts of enforced disappearance offences under its domestic laws, should characterize an enforced disappearance as a 'continuous violation' so that the principle of non-retroactivity of laws does not bar accountability for ongoing incidents of enforced disappearance.²⁹ This means that it should show that an enforced disappearance is a crime that is "a unique and consolidated act and not a combination of acts."³⁰ Thus, individuals responsible for the enforced disappearance of Sombath Somphone would still be criminally liable, even if the law making enforced disappearance a specific crime were to take effect after the enforced disappearance began.³¹

B. *Duty to investigate*

23. As a State Party to the ICCPR and CAT, the Government of Lao PDR has the duty to conduct effective investigations in cases of human rights violations, including instances of torture and other ill treatment, summary, arbitrary and extrajudicial executions, and arbitrary detention.³² As the UN Human Rights Committee has stressed, under the

²² Article 12 (4) of Lao PDR's Criminal Procedure Code.

²³ Ibid Article 24 (2).

²⁴ Article 88 of Lao PDR's Penal Law.

²⁵ Ibid, Article 89.

²⁶ Ibid Article 3 and 4.

²⁷ Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. E/CN.4/1996/38, 15 January 1996, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G96/102/18/PDF/G9610218.pdf?OpenElement>, para 54.

²⁸ Ibid at para. 55.

²⁹ Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. A/HRC/16/48, 26 January 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/104/45/PDF/G1110445.pdf?OpenElement>, para 7.

³⁰ Ibid at para. 2.

³¹ Ibid at para 5.

³² Article 2 of the ICCPR and Article 12 and 13 of the CAT. See also Human Rights Committee, General Comment No.20, 'Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment', UN Doc HRI/GEN/1/Rev.9 (Vol.1), 1992, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument), para 14; Human Rights Committee, General Comment 31, Nature of the general legal obligation imposed on State parties to the Covenant, 2004, UN Doc. CCPR/C/21/Rev.17/Add.13, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, 26 May 2004, paras 15 and 18; Committee Against Torture, General Comment No. 2, Implementation of article 2 by States parties, UN Doc

ICCPR there is a "general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.... 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."³³ A similar obligation is provided under articles 12 and 13 of the CAT. As the Committee against Torture makes clear, this investigation should not be limited to persons whose direct conduct is at issue. Rather "it [is] essential that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial prosecutorial and judicial authorities.³⁴ Further, under the ICPED, States must also ensure that necessary measures are taken to hold superior officials criminally responsible.³⁵ No order from any public authority may be used to justify the offence of enforced disappearance.³⁶

24. In addition, consistent with both the ICPED³⁷ and the DPED,³⁸ as well as the ICCPR and CAT the Government of Lao PDR must conduct such an investigation promptly and impartially for all alleged cases of enforced disappearances.³⁹ Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State has the duty to promptly refer the matter to competent authorities for investigation, even if no formal complaint has been filed. It should not take any measures to impede the investigation.⁴⁰ The failure or undue delay of a State to investigate any allegations of acts of torture or ill-treatment, including enforced disappearances, in a prompt, efficient and impartial manner amounts to the denial of a victim's legal redress and other forms of compensation.⁴¹

25. The United Nations General Assembly has called on States to ensure that law enforcement and security authorities are fully accountable, especially in law, in the discharge of their duties.⁴² They become legally responsible for any unjustifiable excesses, which could lead to enforced disappearances and other human rights violations.⁴³ States should also cooperate with other Governments, specialized agencies and organizations in their efforts to locate a person who had reportedly involuntarily "disappeared".⁴⁴

CAT/C/GC/2, 24 January 2008,

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en, para 9 and 26; Committee against Torture, General Comment No. 3, UN Doc CAT/C/GC/3, 13 December 2012, Implementation of article 14 by States parties, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f3&Lang=en, para 46(i).

³³ Human Rights Committee, General Comment 31, Nature of the general legal obligation imposed on State parties to the Covenant, 2004, UN Doc. CCPR/C/21/Rev.17/Add.13, 26 May 2004, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, para 15.

³⁴ Committee against Torture, General Comment No. 2, Implementation of article 2 by States parties, UN Doc CAT/C/GC/2, 24 January 2008, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en, para 26.

³⁵ Article 6 (1)(b) of the ICPED.

³⁶ Ibid Article 6 (2).

³⁷ Ibid Article 12.

³⁸ Article 13 of the DPED.

³⁹ Ibid Article 13 (1). See also Principle 19 of UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, UN Doc E/CN.4/2005/102/Add.1, 8 February 2005, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>

⁴⁰ Ibid.

⁴¹ Committee Against Torture, General Comment No. 3, UN Doc CAT/C/GC/3, 13 December 2012, Implementation of article 14 by States parties, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f3&Lang=en, para 17 and 25.

⁴² General Assembly, Disappeared Persons, UN Doc. Res. 33/173, adopted 20 December 1978, <http://www.un.org/documents/ga/res/33/ares33r173.pdf>, para 1(b).

⁴³ Ibid

⁴⁴ Ibid

26. Moreover, the Government of Lao PDR should ensure that competent authorities have the necessary powers and resources to conduct these investigations effectively.⁴⁵ It should also continue to pursue such investigations for as long as the fate of the victim of the alleged enforced disappearance remains unclarified.⁴⁶ In the event where ongoing investigations are insufficient due to the lack of expertise or impartiality, or where there have been complaints from the family members of the victim of such inadequacies, States should establish an independent commission of inquiry, consisting of impartial, competent and independent individuals, tasked to take over the investigations.⁴⁷ Investigations should result in a written report that is available for the public.⁴⁸
27. Since reporting her husband's "disappearance" in December 2012, Ng Shui Meng has only been called to speak to investigators at the police department three times. During each visit, the interrogating officer did not ask anything pertaining to the circumstances surrounding the "disappearance" of her husband. The interrogating officer merely asked about matters such as details of Sombath Somphone's education, his family background, her marriage and whether or not they have children.
28. The Government of Lao PDR has also publicly refused to accept the assistance of foreign experts to technically enhance the CCTV footage taken during the time Sombath Somphone "disappeared",⁴⁹ despite the fact that it had earlier admitted that it did not possess the technical capacity to enhance the footage so that the persons and vehicles shown there may be properly identified.⁵⁰ This refusal by the Government of Lao PDR to cooperate with experts to look into evidence may be construed as an act impeding the investigation, in contravention of its obligations under the ICCPR, the CAT and the standards of the Convention and the Declaration. Under both the Convention and Declaration, State Parties shall ensure that authorities tasked to investigate the enforced disappearance "have the necessary powers and resources to conduct the investigation effectively."⁵¹
29. Moreover, since Sombath Somphone's "disappearance" in December 2012, the government of Lao PDR has issued three formal statements⁵² and three police reports,⁵³ none of which contained substantial findings or leads related to the case.

⁴⁵ Article 13 (1) of the DPED. See also Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 24 May 1989, <http://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>, para 10; and Para 80 of the Istanbul Protocol.

⁴⁶ Article 13, para 6 of the DPED.

⁴⁷ Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, UN Doc. Resolution 1989/65, 24 May 1989, <http://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>, para 11. See also Para 75 of the Istanbul Protocol.

⁴⁸ Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, UN Doc. Resolution 1989/65, 24 May 1989, <http://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>, para 17.

⁴⁹ Jonah Fisher, "Fears grow for abducted Laos campaigner Sombath", in *BBC News*, 30 April 2013. <http://www.bbc.co.uk/news/world-asia-22338101> (Accessed 17 August 2013).

⁵⁰ Nirmal Ghosh, "Lao gov't 'lacks will' to find missing activist", in *Asia News Network*, 17 January 2013. <http://www.asianewsnet.net/Lao-govt-lacks-will-to-find-missing-activist-41548.html> (Accessed 17 August 2013).

⁵¹ Article 12 para 3(a) of the ICPEP and Article 13, para 2 of the DPED.

⁵² The Government of Lao PDR issued three formal statements:

- *19 December 2012* – A spokesperson for the government informed the public that investigations are underway and expressed the view that the incident could have been due to "personal conflict or a conflict in business." See Elise Mala, Vee Intarakratug, and Matthew Pennington, "Laos gov't denies kidnapping missing activist", in *Boston.com*, 20 December 2012. <http://www.boston.com/news/world/asia/2012/12/20/laos-gov-denies-kidnapping-missing-activist/oTxriVsPhhPMqd4J3WvFCK/story.html> (Accessed 15 August 2013).

C. *Duty to prosecute and try perpetrators of acts of enforced disappearance*

30. When suspects are identified, the Government should ensure that they are brought before competent civil authorities or tribunals for the purpose of prosecution and trial.⁵⁴ These suspects should only be tried by competent ordinary courts and not by any other special tribunal, in particular military courts.⁵⁵ If found guilty, those responsible should be duly punished.⁵⁶ Families and heirs should be able to institute proceedings on either an individual or collective basis and States should guarantee broad legal standing in the judicial process to any wronged party or person.⁵⁷ The UN Guidelines on the Role of Prosecutors provide that "[p]rosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly...grave violations of human rights and other crimes recognized by international law..."⁵⁸ In addition, the Istanbul Protocol, has

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- 4 January 2013 – Lao PDR's Ambassador to the United Nations in Geneva stated that investigations are being accelerated, but did not elaborate whether there have been leads or findings on the case. See Rachel Vandenberg, "Laos clarifies activist case to UN", in *Radio Free Asia*, 4 January 2013. <http://www.rfa.org/english/news/laos/sombath-somphone-01042013170238.html> (Accessed 15 August 2013).
 - 17 January 2013 – Mr. Phongsavath Boupha, Lao PDR's Minister and Head of the Presidential Office, responded to queries from parliamentarians from ASEAN Member States (Philippines, Malaysia, and Indonesia), denying any involvement and highlighted that Mr. Sombath Somphone's disappearance is not the first disappearance case in the country. See "Laos gov't response to ASEAN delegation", in *Vientiane Times*, 17 January 2013. <http://sombath.org/2013/01/17/lao-govt-response-to-asean-delegation> (Accessed 15 August 2013).

⁵³ As of 22 August 2013, only three police reports were issued on this case:

- 11 January 2013 – The first police report summarized that no persons or vehicles from the CCTV footage could be identified. The traffic police at the outpost were also interrogated but they claim that nothing beyond the ordinary happened on the evening of 15 December 2012. No witnesses were reported to have been approached by the police. See "Police report on the disappearance of Mr Sombath Somphone", in *Vientiane Times*, 4 February 2013, <http://sombath.org/2013/02/04/police-report-on-the-disappearance-of-mr-sombath-somphone/#more-895> (Accessed 15 August 2013).
- 2 March 2013 – The second police report contained an explanation by Colonel Pengsavanh Thiphavongxay that they did not find Sombath Somphone's jeep. He also said that there have been further developments on the case but did not elaborate what these are. He emphasized that Lao PDR will not be seeking foreign assistance in the investigations. See "Police report on Sombath Somphone's disappearance", in *Lao Times*, 2 March 2013, <http://www.laotimes.com/content/police-report-sombath-somphone's-disappearance> (Accessed 15 August 2013).
- 8 June 2013 – The third police report contained only updates on local and international coordination. No leads or progress were noted in this report. See "Sombath Somphone: Investigation progress report no.3", in *Vientiane Times*, 8 June 2013. http://www.vientianetimes.org.la/FreeContent/FreeContent_Sombath.htm (Accessed 15 August 2013).

⁵⁴ Article 14 of the DPED. See also Article 7 of CAT; Principle 4 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>; Committee Against Torture, General Comment No. 3, Implementation of article 14 by States parties, UN Doc CAT/C/GC/3, 13 December 2012, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f3&Lang=en, para 22

⁵⁵ Article 11(3) of the ICPED and Article 16(2) of the DPED.

⁵⁶ Principle 19 of UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, UN Doc E/CN.4/2005/102/Add.1, 8 February 2005, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>.

⁵⁷ Ibid

⁵⁸ Guideline 15 of the UN Guidelines of the Role of Prosecutors, U.N. Doc. A/CONF.144/28/Rev.1, 1990, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx>.

also clearly set out the duty of prosecutors to investigate and prosecute crimes involving torture committed by public officials.⁵⁹

31. This duty to prosecute and try perpetrators in an impartial tribunal are crucial elements required for the criminalization and punishment of enforced disappearances, integral to both the ICCPR⁶⁰ and CAT,⁶¹ as highlighted in paragraph 17 above.
32. Under both the Convention and the DPED, acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have "disappeared" and these facts remain unclarified.⁶² This means that the crime of enforced disappearance extends "until the State acknowledges the detention or releases information pertaining to the fate and whereabouts of the individual."⁶³
33. As described above in paras 2, 3, 10, 23 and 24, to date, the public prosecutor has failed to institute any formal investigation or criminal proceedings against any person allegedly responsible for the enforced disappearance and it is important that the public prosecutor commences a prompt, thorough and impartial investigation. Under Article 5 of the 2012 CPC, if an investigator or public prosecutor finds probable cause that an offence has been committed, he shall begin an investigation and use all means provided by law to find evidence of the offence, the offenders, and then prosecute these offenders in court.

IV. Rights of Ng Shui Meng under international and domestic laws

A. Rights of Ng Shui Meng under the Declaration on the Protection of All Persons from Enforced Disappearance and other international jurisprudence

34. Under international law, it is well established that victims of "disappearance" and their family members have the right to remedy or to know the truth behind the said events. Principle 4 of the 2005 United Nations Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity makes this clear by providing that "irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or "disappearance", the victims' fate'. In addition to this, the right to satisfaction is also attached to the principle of effective restitution, which includes the verification of facts following with a public disclosure of the truth, as well as to search for the whereabouts of the "disappeared".⁶⁴
35. Under the ICPED, family members, as persons who have "suffered harm as the direct result of an enforced disappearance" are themselves identified as victims, entitled to a range of reparative measures.⁶⁵ Article 18 provides that States must "guarantee to any

⁵⁹ Para 49 of the Istanbul Protocol.

⁶⁰ Article 2 of the ICCPR and Human Rights Committee, General Comment 31, Nature of the general legal obligation imposed on State parties to the Covenant, 2004, UN Doc. CCPR/C/21/Rev.17/Add.13, 26 May 2004, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, para 18.

⁶¹ Articles 4, 5, 6 and 7 of the CAT and Committee against Torture, General Comment No. 2, Implementation of article 2 by States parties, UN Doc CAT/C/GC/2, 24 January 2008, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en, para 6.

⁶² Article 17(1) of the DPED.

⁶³ Article 6 of the ICPED and Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearance, UN Doc A/HRC/16/48 (para 39) http://www.ohchr.org/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf, para 1.

⁶⁴ Principle 22(b) and (c) of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

⁶⁵ Article 24(1) of the ICPED.

person with a legitimate interest in ... information [about the enforced disappearance], such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information: "the authority that ordered the deprivation of liberty; date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty; the authority responsible for supervising the deprivation of liberty; whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer; date, time and place of release; elements relating to the state of health of the person deprived of liberty; and in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains".⁶⁶

36. Similarly, the DPED also lays out certain elements of the victim's right to the truth, which is sometimes called the right to know the truth in relation to enforced disappearances. These include "the right to know about the progress and results of an investigation, the fate of the whereabouts of the "disappeared" persons, and the circumstances of the "disappearances", and the identity of the perpetrators."⁶⁷ This right is different from the right to information, particularly the right of the relatives or other persons with a legitimate interest, their representatives or their legal counsel, to obtain information on a person who is deprived of his liberty.⁶⁸
37. Ng Shui Meng has the right to know the truth and whereabouts of her husband, Sombath Somphone. This right is not subject to any limitation or derogation and no legitimate aim or exceptional circumstances may be invoked by the Government of Lao PDR to restrict this right. The "anguish and sorrow" caused upon relatives of victims of enforced disappearance "reaches the threshold of torture." Not to know the fate and whereabouts of the disappeared person only adds to the continuous torture or ill-treatment inflicted upon the relatives.⁶⁹
38. Ng Shui Meng informed the ICJ earlier this year that she had repeatedly asked law enforcement authorities in Lao PDR for copies of the results of investigations in the case, but that the requests had always been refused. Her right to information specified under Article 18 of the ICPED, must be respected at all times, except where "a person is under the protection of the law and the deprivation of liberty is subject to judicial control".⁷⁰ Any restrictions placed on this right must be in accordance with the objectives of the ICPED and only be on an "exceptional basis", i.e. strictly necessary; provided for by law; could adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law.⁷¹ The limitation on the right of relatives like Ng Shui Meng and other interested persons to copies of findings of investigations should be "interpreted narrowly." The Working Group emphasized in its General Comment that it is important that "relatives of the victims should be closely associated with an investigation into a case of enforced disappearance."⁷²

B. Rights of Ng Shui Meng under the domestic laws of Lao PDR

39. Under Article 100 of the 2012 Criminal Procedure Code (CPC) of Lao PDR, law enforcement authorities are obliged to maintain comprehensive case files. The head of the investigation organization, investigation officer, or the head public prosecutor shall

⁶⁶ Ibid Article 18(1).

⁶⁷ Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearances, UN Doc A/HRC/16/48 (para 39), http://www.ohchr.org/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf, para 1.

⁶⁸ Ibid para 2.

⁶⁹ Ibid para 4.

⁷⁰ Article 20 of the ICPED.

⁷¹ Ibid.

⁷² Ibid para 3.

keep records that include testimonies given related to the case, results of face-to-face investigation, photos, pictures, or sound record, etc.

40. Since under its domestic laws, authorities are required to keep comprehensive files of cases being investigated, the Government of Lao PDR should be well able to provide Ng Shui Meng copies of the investigations into the alleged enforced disappearance of Sombath Somphone, including copies of documentation of the information, some of which form the basis of evidence, gathered such as the CCTV footage taken on the evening he "disappeared".
41. Moreover, the continuing failure of law enforcement authorities of Lao PDR to honour the requests of Ng Shui Meng for copies of the case file, including the original CCTV footage taken during the evening when Sombath Somphone "disappeared", in the absence of any legitimate articulated bases, is inconsistent with Article 6 of the Constitution which stipulates that "[t]he State protects the freedom and democratic rights of the people which cannot be violated by anyone...All acts of bureaucratism and harassment that can be detrimental to the people's honor, physical well-being, lives, conscience and property are prohibited."
42. On 3 September 2013, Ng Shui Meng filed an application with the Provincial Court of Vientiane seeking relief from acts of "bureaucratism and harassment" by law enforcement authorities who refuse to provide her a copy of the results of the investigation of the case of her husband.
43. She alleges in her application that the failure of law enforcement authorities to conduct a vigorous, comprehensive, thorough, and objective investigation constitute acts of "bureaucratism and harassment" and detrimental to the life and physical well-being of her husband.
44. It should be noted that it was necessary for Ng Shui Meng to file this application on her own since lawyers in Lao PDR have declined to take up this case and represent the family of Sombath Somphone. Those lawyers who have been approached to take up this case disclosed that they would be endangering their lives [or well-being] should they take on such a sensitive case.
45. It is generally difficult to secure legal representation in Lao PDR. As of 2012, the Lao Bar Association has approximately only 145 members, which means that in a country with a population of 6.6 million,⁷³ there is only a single lawyer available for every 45,500 persons.
46. At least 80 percent of practicing lawyers are based in the capital, Vientiane. People in rural areas of Lao PDR are often left without legal representation whenever they engage with the judicial system to defend themselves against charges filed against them or to seek redress for their grievances. More often than not, people appear in court without legal counsel and are left to represent themselves.⁷⁴
47. The fact that the very few lawyers in Lao PDR have declined to render legal assistance to the family of Sombath Somphone illustrates the climate of fear being fostered in the country surrounding this case. The ICJ notes that one of the obligations of the

⁷³ Total population of Lao PDR in 2012, according to World Bank data.

<http://search.worldbank.org/data?qterm=population%20of%20Lao%20PDR&language=EN> (Accessed 17 August 2013).

⁷⁴ ICJ interview with members of the Lao Bar Association, 6 May 2013, Bangkok, Thailand

Government of Lao PDR under the right to the truth is "to provide full protection to witnesses, relatives, judges, and other participants in any investigation."⁷⁵

48. Under the UN Basic Principles on the Role of Lawyers, "Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference"⁷⁶ and "shall not be identified with their clients or their clients' causes as a result of discharging their functions."⁷⁷ In addition, "[w]hen the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities."⁷⁸ This means that the Government of Lao PDR should also protect those lawyers representing the family of Sombath Somphone. These lawyers should not be subjected to any form of harassment or interference, much less fear for their lives, when representing the family of Sombath Somphone.

V. International, including regional and mechanisms

A. *The ASEAN Intergovernmental Commission on Human Rights (AICHR)*

49. In 2009, the Association of Southeast Asian Nations (ASEAN) established the ASEAN Intergovernmental Commission of Human Rights (AICHR). There are 10 members of the AICHR, one from each Member State, including Lao PDR. Since its establishment, the AICHR has been criticized for having a very limited mandate that prevents it from effectively promoting and protecting human rights in the region.⁷⁹
50. Immediately after the "disappearance" of Sombath Somphone, various human rights organizations called on the AICHR to take up the case and ensure Sombath Somphone's safety and well-being.⁸⁰
51. In January 2013, the ICJ issued a public statement asserting that the AICHR under its mandate can and should address the apparent enforced disappearance of Sombath Somphone.⁸¹ Under its Terms of Reference (TOR), it can "develop common approaches and positions on human rights matters of interest to the ASEAN."⁸² The ICJ pointed out that under this mandate, the AICHR can discuss this issue as a matter of interest in the region and recommend strategies that Member States may take to prevent and eradicate all acts of enforced disappearances. This position must aim at hastening the resolution of all cases of enforced and involuntary disappearances in the region, as well as effectively preventing these violations in the future.
52. In July 2013, the representative of Thailand to the AICHR, Dr. Seree Nonthasoot, revealed to the media that the AICHR discussed in one of its meetings how to address

⁷⁵ Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearance, UN Doc A/HRC/16/48 (para 39)

http://www.ohchr.org/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf, para 5.

⁷⁶ Principle 16 of the UN Basic Principles on the Role of Lawyers, 7 September 1990, UN Doc. A/CONF.144/28Rev.1 at 118, 1990,

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

⁷⁷ Ibid Principle 18.

⁷⁸ Ibid Principle 17.

⁷⁹ Simon Roughneen, "ASEAN human rights body launched amid controversy", in *The Irrawaddy*, 23 October 2009. http://www2.irrawaddy.org/article.php?art_id=17051 (Accessed 15 August 2013).

⁸⁰ *Request for AICHR to ensure the safety and well-being of disappeared development worker, Mr. Sombath Somphone*, Asian Forum for Human Rights and Development (FORUM-ASIA) (2013). <http://www.forum-asia.org/?p=15722> (Accessed 22 August 2013).

⁸¹ *Laos: community leader Sombath Somphone must be found*, International Commission of Jurists (2013). <http://www.icj.org/laos-community-leader-sombath-somphone-must-be-found> (Accessed 20 August 2013).

⁸² Paragraph 4.11 of the Terms of Reference (TOR) of the ASEAN Intergovernmental Commission on Human Rights (AICHR) (TOR of the AICHR).

the alleged enforced disappearance of Sombath Somphone.⁸³ Moreover, during the workshop held by the Working Group for an ASEAN Human Rights Mechanism from 10 to 11 June 2013, the ICJ raised the case of Sombath Somphone as a key topic that should be discussed by the AICHR. Ambassador Rosario Manalo, the representative of the Philippines to the AICHR, who was chairing the session, replied that the representative of Lao PDR should respond to ICJ's query, being the sole objector to the AICHR discussing this case. Mr. Phongsavanh Sisoulath, alternate representative of Lao PDR to the AICHR responded to the ICJ and said that the Government of Lao PDR would consider a discussion of the case of Sombath Somphone or enforced disappearances in general to constitute interference in their internal affairs if the AICHR.⁸⁴ He invoked the principle of non-interference, one of the guiding principles entrenched in the TOR of the AICHR.⁸⁵

53. The ICJ considers that it is critical that the AICHR address the issue of enforced disappearances in the region. Indeed, representatives from the Philippines, Thailand, and Indonesia have expressed strong interest in continuing this discussion.
54. Several ASEAN Member States continue to experience cases of enforced disappearances, including the Philippines, Thailand, and Indonesia. Note only is it within the AICHR's mandate to develop common approaches and positions on human rights matters of interest to the ASEAN, AICHR is also expressly directed to "encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments."⁸⁶ To date, among the 10 Member States of the ASEAN, only Cambodia has acceded to the ICPED.⁸⁷ Three other Member States of the ASEAN, a Lao PDR, Indonesia and Thailand have signed but neither ratified nor acceded to the Convention.⁸⁸ As for the ICCPR, Lao PDR along with Cambodia, Indonesia, Philippines, Thailand and Vietnam have become party to the Covenant. Lao PDR, as well as Cambodia, Indonesia, Philippines and Thailand are also parties to CAT.

B. The UN Working Group on Enforced or Involuntary Disappearances

55. The UN Working Group on Enforced or Involuntary Disappearances (Working Group) is composed of five independent experts established under the UN Human Rights Council "to examine questions relevant to enforced or involuntary disappearances of persons."⁸⁹ Its mandate was mostly recently renewed in 2011.⁹⁰
56. The basic mandate of the Working Group is "to assist relatives to ascertain the fate and whereabouts of their disappeared family members."⁹¹ Hence, it mainly receives and examines reports submitted to it by relatives of disappeared persons or human rights groups acting on their behalf. Upon verifying the reports and deciding that it fulfills certain criteria, the Working Group then sends communications to the governments concerned, requesting that they undertake investigations and inform the Working

⁸³ "Seree tips big shift in rights blueprint", in *Bangkok Post*, 4 July 2013.

<http://www.bangkokpost.com/opinion/opinion/358210/seree-tips-big-shift-in-rights-blueprint> (Accessed 22 August 2013).

⁸⁴ *Workshop on ASEAN Human Rights Mechanisms: Challenges and Ways Forward*, organized by the Working Group for the Establishment of an ASEAN Human Rights Mechanism, 10-11 June 2013, Bangkok, Thailand.

⁸⁵ Paragraph 2.1 (b) of the TOR of the AICHR.

⁸⁶ Paragraph 4.5 of the TOR of the AICHR.

⁸⁷ Cambodia acceded to the Convention on 27 June 2013.

⁸⁸ Indonesia signed the ICPED on 27 September 2010, while Thailand signed the ICPED on 9 January 2012.

⁸⁹ UN OHCHR, Fact Sheet No. 6/Rev.3: Enforced or Involuntary Disappearances, <http://www.ohchr.org/Documents/Publications/FactSheet6Rev3.pdf>, page 11.

⁹⁰ Human Rights Council, Enforced or Involuntary Disappearances, UN Doc A/HRC/RES/16/16, 12 April 2011, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/127/20/PDF/G1112720.pdf?OpenElement>.

⁹¹ UN OHCHR, Fact Sheet No. 6/Rev.3: Enforced or Involuntary Disappearances,, <http://www.ohchr.org/Documents/Publications/FactSheet6Rev3.pdf>, page 12.

Group of the results.⁹² These communications are usually sent to governments concerned through their permanent missions in Geneva. In cases where the report is received less than three months after the "disappearance" occurred, the communication is transmitted through the quickest means possible to the country's Minister for Foreign Affairs.⁹³

57. Ng Shui Meng formally filed a report to the Working Group on 7 July 2013. After verifying the information and examining whether it fulfilled the necessary criteria, the Working Group accepted the case on 18 July 2013. To date, there is no public report on whether or not the government of Lao PDR responded to the communication by the Working Group on this case.

VI. Recommendations to the government of Lao PDR, ASEAN, and Laos' international interlocutors

The Government of Lao PDR must fulfill its obligations under international law, and where necessary, request assistance from the international community, to resolve the alleged enforced disappearance of Sombath Somphone. The Government of Lao PDR, during the UPR in 2010, had expressed its intention to fully comply with international law. Notably, it accepted the recommendation from Germany to "harmonize national legislation with international obligations under the respective conventions".⁹⁴ More importantly, it accepted the recommendations from France and Spain to ratify the Convention on Enforced Disappearances.⁹⁵

Specifically, the Government of Lao PDR should:

- i. Implement the commitments it made during the 2010 UPR, including by becoming a party to the ICPED;
- ii. Amend its Penal Law to provide for criminal liability for all acts of enforced disappearances and corresponding penalties accounting for the extreme seriousness of these acts;
- iii. Amend both its Penal Law and Criminal Procedure Code to include a definition on torture in line with the CAT and to incorporate specific offences on torture;
- iv. Demonstrate its commitment that it intends to fulfill its duties under the ICPED and DPED, the ICCPR and the CAT by:
 - (a) Requesting foreign experts to assist in examining evidence, including the CCTV footage taken on the evening Sombath Somphone "disappeared";
 - (b) Requesting the public prosecutor to open investigations on this case, in accordance with international standards and Article 5 of the Lao PDR's Criminal Procedure Code. In the event the public prosecutor continues to be unable or unwilling to carry out a credible, prompt, thorough impartial and effective investigation, establish an independent and credible authority to undertake prompt, thorough and impartial investigation, consistent with international standards, into the alleged enforced disappearance of Sombath Somphone, as well as allegations of arbitrary detention, torture or ill-treatment;
 - (c) Allowing Sombath Somphone's wife, Ng Shui Meng, to have access to files and findings of the investigation and other information to which she is entitled under article 20 of the ICPED;

⁹² Ibid.

⁹³ Ibid page 17.

⁹⁴ Human Rights Council, Report of the Working Group on the Universal Periodic Review of the Lao People's Democratic Republic, UN Doc A/HRC/15/5, 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/144/18/PDF/G1014418.pdf?OpenElement>, para 96.5.

⁹⁵ Ibid paras 96.1 and 96.3.

- (d) If alleged perpetrators have been identified, promptly bringing them before competent civil authorities for the purpose of prosecution and a fair trial under international standards; and
- (e) Provide Ng Shui Meng with access to an effective remedy and reparation and reparation for the enforced disappearance and other serious human rights violations.

The Government of Lao PDR should also cooperate with regional and international mechanisms such as the ASEAN and the UN Working Group on Enforced and Involuntary Disappearances. Specifically, Government of Lao PDR should:

- i. Instruct its representative to the AICHR to engage in discussions with representatives of other ASEAN Member States on how to develop common approaches and positions on the issue of enforced disappearances, with the aim of hastening the resolution of all cases of enforced and involuntary disappearances in the region, as well as effectively preventing these violations in the future;
- ii. Respond substantially to the communication received from the UN Working Group on Enforced or Involuntary Disappearances, including, if possible, detailed information on the fate or whereabouts of Sombath Somphone; and

Extend an invitation to the UN Working Group on Enforced or Involuntary Disappearances to visit the country in the immediate future.

ANNEX: Detailed narration of the events leading up to the enforced disappearance of Sombath Somphone on 15 December 2012 (Lao PDR)

1. On 15 December 2012, at around 5:30pm, Ms. Ng Shui Meng and Sombath Somphone were preparing to leave the PADETC officer together. They left the office in separate vehicles. Ng Shui-Meng drove her car ahead and Sombath Somphone followed in his jeep, with plate number 2624.
2. Ng Shui-Meng reached their house at 6:00pm and waited for her husband. He, however, did not return that night. Concerned for his well-being, she drove around looking for him and checked different hospitals, but still could not find him.
3. On 16 December 2012, Ng Shui Meng filed a missing person's report with the Vientiane Municipality Police Station.
4. On 17 December 2012, Ng Shui Meng requested the Vientiane Municipality Police Station to view the closed circuit television (CCTV) footages on the evening that her husband 'disappeared'. The Vientiane Municipality Police Station granted her request and she was able to view the footage of her husband driving through the street in his jeep on 15 December 2012.
5. The CCTV footage showed Sombath Somphone's jeep being stopped by traffic police at the police outpost on KM 3 on Thadeua Road, at around 6:03pm. Sombath Somphone turned his headlights off and stepped out of his vehicle. He walked towards the traffic policemen stationed at the outpost. Shortly thereafter, an unidentified man riding a motorcycle arrived at the scene. The unidentified man parked his motorcycle in front of Sombath Somphone's jeep and ran towards the police outpost. After a few minutes, another unidentified man coming from the police outpost got into Sombath Somphone's jeep and drove it away. Thereafter, a white pick-up truck with flashing hazard lights pulled up in front of the police outpost. On the footage, some unidentified men and Sombath Somphone hurriedly boarded the white pick-up truck. After the men and Sombath Somphone boarded, the white pick-up truck sped away, followed by two unidentified men on a motorcycle.

6. Ng Shui Meng and other family members made copies of the CCTV footage through their cellular phones and thereafter, immediately reported this to the Vientiane Police Department.
7. Since reporting her husband's enforced disappearance to the Vientiane Police Department, Ng Shui Meng has only been called to the police department on approximately four occasions.. However, during each visit, the interrogating officer did not ask anything pertaining to the enforced disappearance of her husband. He merely asked unrelated matters, such as details of her marriage to her husband and how many children they have.
8. Since Sombath Somphone's enforced disappearance one year ago, the Government of Lao PDR has only issued three formal statements and three police statements, informing the public on the progress of the case. They are as follows:

Formal statements made by the Government of Lao PDR, as of 14 December 2013:

- *19 December 2012* – A spokesperson for the government informed the public that investigations are underway and expressed the view that the incident could have been due to "personal conflict or a conflict in business."
- *4 January 2013* – Lao PDR's Ambassador to the United Nations in Geneva stated that investigations are being accelerated, but did not elaborate whether there have been leads or findings on the case.
- *17 January 2013* – Mr. Phongsavath Boupha, Lao PDR's Minister and Head of the Presidential Office, responded to queries from parliamentarians from ASEAN Member States (Philippines, Malaysia, and Indonesia), denying any involvement and highlighted that Mr. Sombath Somphone's enforced disappearance is not the first enforced disappearance case in the country.

Police reports issued on this case, as of 22 August 2013:

- *11 January 2013* – The first police report summarized that no persons or vehicles from the CCTV footage could be identified. The traffic police at the outpost were also interrogated but they claim that nothing beyond the ordinary happened on the evening of 15 December 2012. No witnesses were reported to have been approached by the police.
- *2 March 2013* – The second police report contained an explanation by Colonel Pongsavanh Thiphavongxay that they did not find Sombath Somphone's jeep. He also said that there have been further developments on the case but did not elaborate what these are. He emphasized that Lao PDR will not be seeking foreign assistance in the investigations.
- *8 June 2013* – The third police report contained only updates on local and international coordination. No leads or progress were noted in this report.