

## Enforced disappearance in Lao PDR

“The phenomenon of enforced disappearances [...] is the worst of all violations of human rights. It is certainly a challenge to the very concept of human rights, denial of the right for humans to have an existence, an identity. Enforced disappearance transforms humans into non-beings. It is the ultimate corruption, abuse of power that allows those responsible to transform law and order into something ridiculous and to commit heinous crimes.”

Niall MacDermot, Secretary General of the International Commission of Jurists (1970-1990)<sup>1</sup>

### Introduction

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) defines “enforced disappearance” 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.*

Between 1994 and 2012, eight cases of reported enforced disappearance in Lao PDR were referred to the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID):<sup>2</sup>

Year of alleged ED	Year WGEID transmitted case to Government	Names	Status
1993	1994	A leader of repatriation group	Discontinued by WGEID in 2006
1999	2001	5 members of Lao student movement for democracy	Clarified in 2005/2006
2009	2010	Ms. Kingkeo Phongsely <sup>3</sup>	Outstanding
2012	2012	Mr. Sombath Somphone	Outstanding

While eight cases have been referred to the WGEID, the actual number of enforced disappearances may be higher. There are many reasons why cases may not be reported to the WGEID, including fear of approaching the authorities and/or lack of knowledge of, or access to, the UN mechanisms.

There are also other cases in which persons have either gone missing in suspicious circumstances,<sup>4</sup> or who are allegedly being held by the authorities in incommunicado detention.<sup>5</sup>

<sup>1</sup> *Le Refus de l'oubli - La politique de disparition forcée de personnes - Colloque de Paris, janvier - février 1981*, Ed. Berger-Levrault, Paris 1981, p. 35 (original in French, free translation).

<sup>2</sup> <http://www.ohchr.org/EN/Issues/Disappearances/Pages/Annual.aspx>

<sup>3</sup> For a summary of the case see the 2011 opinion of the UN Working Group on Arbitrary Detention: <http://hrlibrary.umn.edu/wgad/51-2011.html>

<sup>4</sup> [http://www.atimes.com/atimes/Southeast\\_Asia/OA16Ae01.html](http://www.atimes.com/atimes/Southeast_Asia/OA16Ae01.html)

<sup>5</sup> <https://www.fidh.org/en/region/asia/laos/three-government-critics-arbitrarily-arrested-detained-incommunicado>

A primary task of the WGEID<sup>6</sup> is to assist families in determining the fate or whereabouts of their family members who are reportedly disappeared.<sup>7</sup> It does this by serving as a channel of communication between family members of victims of enforced disappearance, other sources reporting cases of disappearances, and the Governments concerned.<sup>8</sup>

Of these eight cases, the 2012 case of Sombath Somphone has become emblematic of the problem of enforced disappearance and impunity both in Lao PDR and the ASEAN region more broadly.

Part of what makes Sombath Somphone's case significant is that the abduction was caught on Closed Circuit Television (CCTV).

### **Enforced disappearance of Sombath Somphone**

CCTV footage taken by cameras near a police checkpoint on 15 December 2012, in Vientiane, Lao PDR, appears to show the abduction of Sombath Somphone by, or with the consent or acquiescence of, agents of the State.<sup>9</sup> He has not been seen since.

Sombath Somphone disappeared shortly 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.

Since Sombath Somphone disappeared, the Laotian authorities have neither acknowledged the deprivation of his liberty nor provided information as to his fate and whereabouts.

Although the authorities have reportedly taken some measures to investigate the case, they have released very little information concerning the progress of the investigation despite repeated requests to do so.

The last statement on the progress of the investigation containing any detail was released on 8 June 2013, over three years ago.<sup>10</sup>

Most recently, in January 2015, during the UN Human Rights Council's Universal Periodic Review of Lao PDR, at which several States made recommendations to Lao PDR on Sombath's case,<sup>11</sup> Lao PDR State Representatives said:

*The accusation Lao government is involved can be refuted ... Laos is still seriously conducting the investigation...*

In June 2015, during the same process, Lao PDR State Representatives stated:

*The Lao Government confirms that the concerned authorities of the Lao PDR are still thoroughly conducting the investigation and will continue to do so in order to find out the truth and bring perpetrators to justice in accordance with the law of the Lao PDR.*

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<sup>6</sup> <http://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx>

<sup>7</sup> The Working Group on Enforced Disappearances was set up in 1980. Its mandate has been regularly renewed in order to continue its primary task of 'assisting families in determining the fate or whereabouts of their family members who are reportedly disappeared'. In this way, families of victims can use the weight of an international organization as leverage to communicate with the Government concerned.

<sup>8</sup> <http://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx>

<sup>9</sup> <http://www.sombath.org/en/video/>

<sup>10</sup> <http://www.sombath.org/video/the-investigation/>

<sup>11</sup> <http://www.sombath.org/en/2015/01/upr-recommendations-on-sombath/>

Despite the Government's claims that an investigation is ongoing, Sombath Somphone's wife, Ng Shui Meng, and the public are no closer to knowing the truth about what happened to him or his whereabouts.

A secondary consequence of Sombath's "disappearance" is that members of civil society have become afraid to carry out their important work out of fear of retaliation.

### **Recommendations on investigation**

In December 2014, the ICJ released a report on Sombath Somphone's case entitled "Missed opportunities, recommendations for investigating the disappearance of Sombath Somphone."<sup>12</sup>

The co-author is a former senior British investigator, formerly of Scotland Yard and now head of investigations at the Special Tribunal for Lebanon in the Hague.

In the report, the expert described the case as being "eminently solvable" and went on to make 19 concrete recommendations to Lao PDR, including:

1. Formulate a sensitive family liaison strategy with Shui Meng that ensures she is kept informed of the progress of the investigation;
2. Submit the CCTV footage to accredited and expert laboratories that could provide the best possibility of enhancement; and
3. Seek the assistance of appropriate agencies in other states in the forensic examination of crime scenes, vehicles, phone and CCTV data.

### **Lao PDR's international legal obligations**

As a state party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>13</sup> Lao PDR has a number of international legal obligations with respect to enforced disappearance, including:<sup>14</sup>

1. ensuring an independent, impartial, thorough and effective investigation without delay into all cases of alleged or suspected violations of the rights guaranteed under those treaties, including in all cases of suspected enforced disappearance;
2. when suspects are identified, ensuring they are brought before competent civil authorities or tribunals for the purpose of prosecution and trial; and
3. keeping the victims regularly updated about the investigation's progress and the fate of the disappeared person consistent with the victim's rights to know the truth regarding the circumstances of the enforced disappearance.

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<sup>12</sup> <http://www.icj.org/lao-pdr-properly-investigate-sombaths-disappearance-icj-report-says/>

<sup>13</sup> Lao PDR ratified the ICCPR in 2009, and the CAT in September 2012. It also signed (but has not yet ratified) the ICPPED in 2008.

<sup>14</sup> <http://www.icj.org/lao-pdr-government-must-account-for-fate-of-sombath-somphone/>

**Further reading:**

- The website of the Sombath Initiative:  
<http://www.sombath.org/en/>
- Publications of the International Commission of Jurists on Lao PDR's international legal obligations and recommendations concerning the investigation:  
<http://www.icj.org/lao-pdr-properly-investigate-sombaths-disappearance-icj-report-says/>  
<http://www.icj.org/lao-pdr-government-must-account-for-fate-of-sombath-somphone/>
- The text of the International Convention for the Protection of All Persons from Enforced Disappearance:  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/IntConventionEnforcedDisappearance.aspx>
- The official page of the Working Group on Enforced Disappearances:  
<http://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx>
- The status of ratifications of the ICCPED:  
[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-16&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en)
- Practitioners Guide No. 9 of the International Commission of Jurists, *Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction*:  
<http://www.icj.org/enforced-disappearance-and-extrajudicial-execution-investigation-and-sanction-icj-practitioners-guide-no-9-now-also-in-english/>