

Universal Periodic Review Second Cycle - Lao PDR Stakeholders' Submission

Joint Submission by:

**Asian Forum for Human Rights and Development (FORUM-ASIA)
International Organising Committee of the Asia-Europe People's Forum
(AEPF-IOC)**

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Introduction

1. This stakeholders' information is jointly submitted by the Asian Forum for Human Rights and Development (FORUM-ASIA) and the International Organising Committee of the Asia-Europe People's Forum (AEPF-IOC) for the second cycle of the Lao PDR's Universal Periodic Review. This joint submission focuses on freedoms of expression, assembly and association, and civil society space in the Lao PDR.

Lao Government's engagement with civil society in the UPR process

2. Despite having accepted the recommendation to "involve civil society, including human rights non-governmental organisations, in the follow-up of [the] review" (96.53) during the first cycle of the Lao PDR's UPR, the government held only one meeting with civil society, jointly organised with the UN Office of the High Commissioner for Human Rights (OHCHR) in February 2014, which was limited only to registered organisations. No other consultation with civil society has been known to be held for the UPR process at the time of submission of this report.

3. Lao-based international NGOs and local NGOs (known as non-profit associations, NPAs) that are not led by ex-government officials do not feel free or safe to make submission for this review, fearing consequences for their organisation and the security of their local staff.

4. Civil society actors in Laos generally cannot openly attend international human rights forums and engage with international human rights mechanisms due to fears of reprisals (see also paragraph 17). Human rights organisations (national and international) are not permitted to operate in the country.

Laws and policies relating to freedoms of expression, assembly and association, and civil society space in Laos

5. The **Constitution of the Lao PDR** provides for the rights to freedoms of speech, assembly and association for citizens of the Lao PDR. Article 44 of the Constitution states that "Lao citizens have the right and freedom of speech, press

and assembly; and have the right to set up associations and to stage demonstrations which are not contrary to the laws”.

6. The **Decree on Associations (Decree No. 115/PM)**,¹ approved by the Prime Minister’s Office in April 2009, is the law that governs the right to freedom of association guaranteed in the Constitution. The Decree on Associations “sets rules and regulations governing the establishment, operation and management of associations registered as legal entities” with the objective of promoting “people’s freedoms, creativity and ownership in associations aiming at national protection and development”.² This Decree only governs the establishment and registration of “associations” generally known in Laos as non-profit associations (NPAs). In the Decree, “association” is used to mean “non-profit civil organisation[s] set up on a voluntary basis and operating on a permanent basis to protect the rights and legitimate interests of the association, its members and communities”.³ The Decree is applicable only to associations – which includes associative federations, federations, councils, clubs or bodies with members – and has no effect on mass organisations, religious organisations, funds or foundations operating in the Lao PDR.

7. During the first cycle of the Lao PDR’s UPR, the Lao government lauded the Decree on Associations as the answer to recommendations related to the functioning of civil society organisations, particularly to their role in the promotion and protection of human rights in the Lao PDR. Expressing only its partial support to the recommendation that urged the government to “encourage civil society engagement on human rights issues” (98.12), the Lao government noted that the “Decree on Associations [has been adopted] to assist and enhance the participation of civil societies in the promotion and protection of human rights”.⁴ Similarly, the government accepted, in part, the recommendation to “[a]llow media and civil society organizations to undertake education, advocacy, monitoring and reporting on human rights issues”⁵ (98.46), with the “understanding that the human rights activities of these societal sectors shall be within the national constitution and laws, especially the Law on Mass Media and the Decree on Associations”.⁶

8. By the government’s own admission and the objectives of the Decree listed in Article 1, the Decree on Associations aims to enable civil society organisations to promote and protect human rights. Despite such pronouncements and provisions in the Decree, domestic and international organisations that work on the promotion and protection of human rights are not permitted to operate in Laos.

9. The Lao government is currently in the process of reviewing the existing Decree on Associations and has held limited consultations with few selected registered associations and international organisations working in the Lao PDR. The

¹ The Decree on Associations (Decree Number 115/PM), 29 April 2009, available online at http://www.iccsf.org/pubs/lao_pdr_decree_law_on_associations.pdf [last accessed 9 June 2014].

² Article 1, The Decree on Associations (Decree Number 115/PM), 29 April 2009.

³ Article 2, The Decree on Associations (Decree Number 115/PM), 29 April 2009.

⁴ A/HRC/15/5/Add.1 (para. 7).

⁵ A/HRC/15/5.

⁶ A/HRC/15/5/Add.1.

new proposed Decree on Associations and Foundations is a significant step backwards from the already restrictive Decree on Associations. The proposed new decree will tremendously limit the scope and role of associations to “service providers”, preventing them from representing and protecting the rights and legitimate interests of their members and communities.

10. Both the existing Decree and the new draft Decree seem to recognise the importance of civil society in the Lao PDR. However, in addition to restrictions on civil society organisations’ human rights activities, both Decrees place civil society organisations and their activities under direct scrutiny and control of the government. Civil society organisations are required to undergird the government’s policies and activities, and keep their activities in line with the policies of the government.

11. Furthermore, the current Decree on Associations adds administrative and bureaucratic hurdles to the formation and registration process making registration and incorporation of associations extremely slow and difficult. The draft Decree maintains a similar registration process for associations and foundations. When the current Decree came into force in April 2009, this registration process was imposed on all existing local organisations, and they were given a deadline to initiate their registration process. All organisations were warned that if they did not initiate what many domestic organisations call a “re-foundation” process, they will be considered as illegal.

12. According to the Decree, the registration process could take 6 to 9 months. However, in practice, the registration or re-foundation process usually takes longer. Some organisations still awaiting registration reported that it took over a year for the government authority to accept their initial application for the license of association. While article 12(1) of the Decree requires the government's registration authority to issue a temporary license or reject the application within 30 days of the receipt of the application for the license of associations, the applicants are still awaiting for responses from the registration authority, in some cases, over two years after the initial application. This means organisations awaiting registration have to exert extra caution to ensure they do not engage in any activity that could exasperate the government and jeopardise their prospects of registration or re-registration.

13. The registration process outlined in the existing Decree as well as the draft Decree subject associations seeking registration to unreasonable scrutiny. The government authorities entrusted by the Decree with registration of associations have the power to “scrutinise personal histories of association’s founders, mobilisation committee and board chairperson”.⁷ This intrusive registration process and sweeping powers given to the registration authority allow the government to conduct police background checks on members, often with requests to change the name, composition of the executive board or objectives of the organisations.

⁷ Article 56(1), The Decree on Associations (Decree Number 115/PM), 29 April 2009.

14. Laotian organisations allege that the government uses these powers and the registration process to arbitrarily delay the registration of some associations. Some organisations report that the registration authority had rejected the applications for a license based on the background and personal history of individuals included in the mobilisation committee, requiring review and re-application. The government has often rejected applications of associations in which people from ethnic groups are in leadership positions, or which target the particular needs of ethnic groups.

15. Although not specifically stipulated in the Decree, the government could also decline the application for a license for failure to secure the support of a tutorial institution such as a mass organisation that does not fall within the jurisdiction of the Decree on Associations. Mass organisations had, in the past, withdrawn their support for associations because they felt these associations were in direct competition with mass organisations.

16. Government also creates further obstacles to the work of civil society organisations after their official registration. Registered associations are required to acquire government permission for projects and activities separately (they are required to sign a Memorandum of Understanding (MoU) with the government) as a matter of government policy. This process usually takes one year and in some cases it takes as long as two years. In some cases, the government has rejected the applications for MoUs for grammatical errors, and in other cases the government has requested modification of goals and justification of the project. Acquiring permits for projects and activities that focus on, among others, LGBT and reproductive and sexual rights and issues relating to the rights of ethnic groups are particularly difficult. The government has forced organisations seeking permission to hold events on LGBT rights to change the subject of activities.

17. Similarly, holding major meetings and attending meetings require permission. A specific outline of what will be discussed, names of people who will speak and the target audience must be presented when applying for permission to conduct meetings. Participants attending international meetings need to be agreed by the government. Registration of associations is a precondition for their participation in meetings organised in Laos by the government or aid agencies, and individuals who could attend these meetings are decided by the government. Associations registered at the provincial level are required to acquire permission from the provincial authorities to attend meetings outside their respective province or in Vientiane, the capital of the Lao PDR.

18. The lengthy process of acquiring permission and MoUs from the government for specific projects and activities has forced some registered organizations to shut down because they were not able to get the permission for their activities within the period specified in funding agreements with donors. Denial of approval or failure to secure approval for projects could also incapacitate the organisation for over a year, which could result in the dissolution of the organisation. The government could dissolve a registration for failure to operate for more than a year.⁸

⁸ Article 40(4), The Decree on Associations (Decree Number 115/PM), 29 April 2009.

19. A government official must accompany individuals from an association if they plan visits to villages to speak with people. A report of activities must be presented afterwards. Registered associations are not allowed to undertake their activities without a prior permit from the government.

20. Activities of international non-governmental organisations (INGOs) are governed by the **Decree on International Non-Governmental Organisations (Decree No. 013/PM)**,⁹ issued in January 2010. In order to carry out any activity in Laos, INGOs operating in Laos are required to obtain operation permit, project permits and office permit. INGOs with operation permit are required to obtain project permits separately for each project or activity they plan to undertake in Laos. The vague and overbroad article 18 of the Decree outlines the obligations of INGOs, staff members and their dependents working in Laos, which could be interpreted broadly and invoked arbitrarily. In 2012, this provision was invoked against Anne-Sophie Gindroz, the country director of Helvetas, a Swiss development organisation, who was subsequently expelled from Laos (see paragraphs 37 and 38). INGOs with permit to operate in Laos are not permitted to visit villages without government officials, and in particular, access to villages affected by land conflict has been restricted despite permit to carry out a project or activity in the village.

21. The **Media Law**, approved by the Lao National Assembly in July 2008, determines the roles, principles, responsibilities, duties and activities of media in the Lao PDR. The role and responsibility of media are broadly defined as serving the people's interests and safeguarding harmony and contributing to the development of the country. This law provides legal instruments for the State to guide and manage the media more effectively. The Media Law codifies powers of the Ministry of Information, Culture and Tourism (MICT) as the regulator of the media in the Lao PDR. As the official oversight body of media in the Lao PDR, MICT "conducts every week meetings with editors to discuss the news reporting and give feedback in case of critical reporting or if the news has negative impacts on policies and the state. Journalists who are critical of the government policy or high level authorities will be either warned or restricted in their coverage".¹⁰ National media has been notably silent about the disappearance of Sombath Somphone (see paragraphs 33-36) with virtually no autonomous reporting about the disappearance, the investigation, and actions or concerns of international actors and foreign governments.

22. Meanwhile, the **Law on Publications**, introduced in May 2009, requires publishers and their agents to obtain authorisation to publish from the Ministry of Information, Culture and Tourism in Vientiane. All publications from children's Lao-language readers to academic treatise, regardless of their language, size, or targeted

⁹ Decree on the International Non-Governmental Organisations in the Lao PDR (Decree Number 013/PM), 8 January 2012, available online at <http://www.directoryofngos.org/pub/ngodecree.php> [last accessed 15 June 2014].

¹⁰ Vorasack Pravongviengkham, "Dealing with Media Ethics in Lao PDR", Asia Media Summit, Manado, Indonesia 29-31 May 2013, PowerPoint slide 14, available online at <http://www.aibd.org.my/sites/default/files/Vorasack.pdf> [last accessed 10 June 2014]

readership, must be submitted to the Ministry for authorisation prior to publication. It is forbidden to publish any written materials using any ethnic language. According to the Law, authorisation for publication should normally be granted within three days if the publication does not denigrate Lao authorities or their institutions. Censorship of materials being published also applies to visual materials including photographs.

23. Despite the constitutional provisions on the rights to freedoms of expression, the press, assembly and association including staging demonstrations, the **Penal Law (Criminal Code)** of the Lao PDR includes overbroad and vague provisions that impose undue restrictions on the exercise of these rights:

- Article 51 (Treason to the Nation)
- Article 59 (Propaganda against the Lao PDR)
- Article 60 (Division of solidarity)
- Article 61 (Civil commotion)
- Article 65 (Disclosure of State or administrative secrets)
- Article 66 (Gatherings aimed at causing social disorder)
- Article 74 (Unlawful production and possession of radio communication equipment)
- Article 77 (Hooliganism)
- Article 87 (Defamation and libel)
- Article 88 (Insults)

Attacks against civil society actors and shrinking civil society space in Laos

Arbitrary cancellation of radio show

24. In January 2012, the Lao government arbitrarily ordered the cancellation of a call-in radio news programme, *Wao Kao* (News Talk), hosted by Ounkeo Souksavanh. The programme was the only live broadcast programme in Laos that allowed the airing of comments from the public on current news. *Wao Kao* was taken off the air on 27 January 2012, reportedly with orders from the Ministry of Information, Culture and Tourism. No prior warning or written official order was given.

25. On 23 April 2012, Ounkeo wrote a letter to the minister appealing for the reinstatement of his programme, stating that his program was in line with the journalistic professionalism and the Lao press law, and that it served the public interest. There was however no reply to his appeal. Nevertheless, in response to a petition by the blogging community, the Lao National Radio said Ounkeo's show was cancelled because it was purportedly biased and may cause social division for allowing opposing views to be contested on air.¹¹

¹¹ Southeast Asian Press Alliance, "Laos: Arbitrary cancellation of a radio show", 22 November 2012, <http://www.seapa.org/?p=4008> [last accessed 14 June 2014].

Harassment of activists and civil society organisations at AEPF9

26. The Asia-Europe People's Forum (AEPF) is a meeting held every two years between civil society organisations in Asia and Europe alternating between each region. The 9th AEPF (AEPF9) was held in Vientiane, Laos, on 16-19 October 2012. The AEPF precedes the Asia-Europe Meeting (ASEM) between heads of State of Asia and Europe, and is intended to be a venue for civil society to provide input into the ASEM meeting. With 948 participants from 47 countries: 24 in Europe and 23 in Asia, including Laos – the hosting country, the AEPF9 was without a doubt the largest civil society event ever organised in the Lao PDR.

27. During one of the AEPF9 sessions that focused on land issues, a female villager who made a statement from the floor was harassed and intimidated by Lao government officials, accusing her of making false allegations. The villager also subsequently received threatening messages by SMS. The organisation where the villager works was further subjected to other forms of harassment after the AEPF, including being visited by government officials, and receiving calls by a government department inquiring about information on the organisation and the staff working there.

28. In another case, the police turned up at the office of an organisation that supported the participation of villagers from a northern Lao province at the AEPF, who had made comments or statements during the forum. At the organisation's office, the police accused the villagers of making statements "against the government".

Shrinking civil society space since AEPF9

29. Preceding the AEPF9 in Laos, 17 provincial level consultations, jointly organised with the government and mass organisations, were held contributing to the development of a Lao People's Vision Statement. These brought together the reflections, aspirations and visions of the Lao people from a wide range of citizen groups, civil society and mass organizations across Lao society. They were potentially an important contribution to future dialogues for more equitable development and potentially part of Laos' commitment to strengthening partnerships for development and increasing people's participation. However, the final version of the Lao People's Vision Statement was not allowed to be distributed to participants during the AEPF9 because the document had not been agreed by the government. Similarly, copies of a film, sponsored by the European Union, featuring those consultations were removed from distribution to participants at the AEPF9 upon the request of the Lao government. Since the AEPF9, the spaces for dialogue on sustainable development issues created across Laos by the Lao People's Vision process have closed.

30. Following the AEPF9, some civil society organisations have had new, additional requirements imposed on them, including having to seek permission from different levels of authorities (ministry, district, and village levels) to undertake activities. These new requirements appear to be imposed on some organisations due

to their participation and comments made at AEPF9. Some organisations were also not invited anymore to the annual Round Table Implementation Meeting which took place in November 2012, the month following AEPF9. Organisations working on land issues have also had MoUs not renewed and efforts at localisation have been revoked.

31. In the General Monthly Meeting of the Government for January 2013, as reported in a party magazine, Khamtai Siphandone, a former President and Prime Minister, explicitly asked government ministries to control the actions of non-governmental organisations, social organisations and charitable foundations. In addition, the *Vientiane Times* published an article on 19 January 2013, in which Minister of National Defence, Lt. Gen. Duangchay Phichit, “reminded the soldiers about the stratagems and underhand activities of enemies of the State, saying they are conducting destabilizing activities in comprehensive ways, and focused on the strategy of ‘peaceful change’”.¹²

32. In mid-April 2013, a Lao representative of a local non-profit association (NPA) was warned by a government official that he would “go the way of Sombath” if he organised a civil society meeting around a regional conference that was to be held later in Laos (see paragraphs 33-36 on the disappearance of Sombath Somphone).

Enforced disappearance of Sombath Somphone and its implications on civil society in Laos

33. For each Asia-Europe People’s Forum, the AEPF International Organising Committee (IOC) works in partnership with a National Organising Committee (NOC) from the host country. The Non-Profit Associations (NPAs) of Laos were a key part of this NOC as were the mass-organisations, international NGOs, and the Ministry of Foreign Affairs (MoFA). The Lao NPAs selected Sombath Somphone as their representative. In turn he was elected as the co-chair of the NOC by all NOC members, including representatives of the MoFA, and as a result one of the core group of organisers for the Forum. He was invited to present a key-note address at the opening ceremony, speaking alongside the Lao Foreign Minister. A film he was key in producing, “*Happy Laos*” closed the Forum. He was identified as an important, representative voice for people working collaboratively for sustainable development in Laos.

34. Sombath was abducted on the evening of 15 December 2012. He was last seen at a police checkpoint in Vientiane. CCTV footage revealed that Sombath’s vehicle was stopped and Sombath was seen entering the police post. Despite numerous calls by the international community for the Lao government to undertake transparent investigation into Sombath’s disappearance, the government has only issued three “progress reports” on the investigations, effectively denying any knowledge of Sombath’s whereabouts.

¹² "Army vows to reinforce fine military traditions", *Vientiane Times*, 19 January 2013, http://www.vientianetimes.org.la/FreeContent/FreeContent_Army_vows.htm [last accessed 14 June 2014].

35. Sombath's disappearance is believed to be linked to his role in organising the AEPF9, which for the first time allowed civil society groups in Laos to openly discuss issues relating to human rights and development together with the participation of civil society groups from other countries across Asia and Europe.

36. The disappearance of Sombath Somphone has exacerbated the climate of fear and prevailing practice of self-censorship among civil society in Laos. Sombath's disappearance despite his stature as a widely-respected community leader in Laos has effectively created a general perception that anyone could be a potential target of persecution. Staff and members of Lao civil society organisations have reported that government officials have pressured on Lao civil society to not discuss issues related to Sombath's disappearance, undermining the freedom of expression.

Expulsion of Helvetas country representative

37. On 7 December 2012, the Lao government requested Anne-Sophie Gindroz, the Lao country director of Helvetas, a Swiss development organisation, to leave the country in 48 hours on the accusation of undertaking an "anti-government campaign", violating article 18 of the Prime Minister's Decree on International Non-Governmental Organisations No. 013/PM, which states that "INGO staff members and their dependents working in the Lao PDR have the obligations to respect laws, regulations and fine culture of the Lao PDR" (see paragraph 20).

38. Gindroz had earlier written a letter to donors prior to the annual Round Table Implementation Meeting (RTIM) with donors on 22 November 2012, which included briefings by civil society organisations, including on land issues. Gindroz's letter to raised concerns over restrictions on freedoms of expression, assembly and association, and the increasingly limited space for democratic debates in Laos, and called on donors not to underestimate these realities. Gindroz's letter was in reaction to the increasingly limited number of NGOs being invited to the RTIM from one year to another, and the Lao government's apparent attempts to close this space for the most active and engaged organisations, especially those who had been involved in the AEPF9.

Recommendations

39. FORUM-ASIA and AEPF-IOC thus call on the Lao PDR government to:

39.1 Fully implement all recommendations made and commitments accepted during the first cycle of the Lao PDR's UPR;

39.2 Fully implement legal provisions protecting the rights to freedoms of expression, peaceful assembly and association in accordance with the International Covenant on Civil and Political Rights (ICCPR);

39.3 Repeal or amend all laws that restrict the rights to freedoms of expression, peaceful assembly, and association, including the Decree on Associations, the Media Law, the Law on Publications, and the various restrictive provisions in the Penal Law, with the view to ensure that all laws are in full compliance with international human rights norms and standards;

39.4 Ensure that all new laws, including the proposed draft Decree on Associations and Foundations, are in full compliance with international human rights norms and standards, and undertake broad-based, inclusive and meaningful consultations with civil society in the drafting process;

39.5 Cease all forms of intimidation, threats, and harassment of civil society organisations and community groups who claim their rights, including when seeking fair compensations related to land concessions;

39.6 Allow human rights organisations to work and operate freely;

39.7 Allow privately owned media outlets, including online mediums, to be established and operate freely;

39.8 Immediately undertake a prompt, thorough and impartial investigation, consistent with international standards, into the enforced disappearance of Sombath Somphone, publicly release original images of the closed circuit television (CCTV) video of Sombath's disappearance, and accept offers from foreign experts to assist in examining evidence, including the CCTV footage;

39.9 Extend standing invitations to Special Procedures mandate holders, and immediately accept pending requests for official country visits by the Special Rapporteur on summary executions, Special Rapporteur on adequate housing and the Special Rapporteur on freedom of peaceful assembly and of association;

39.10 Ensure the full involvement of civil society in the follow-up to the review through broad-based, inclusive and meaningful consultations; and

39.11 Present to the UN Human Rights Council a comprehensive national plan of action for the implementation of all accepted recommendations and commitments made at this review.