

Australia-Laos Human Rights Dialogue
APHR Submission
June 2017

Ahead of the upcoming Australia-Laos Human Rights Dialogue to be held in Vientiane on 18 July, ASEAN Parliamentarians for Human Rights (APHR), on behalf of its members from across Southeast Asia, would like to take the opportunity to highlight particular areas of concern in relation to the human rights situation in Laos. APHR commends Australia for holding this bilateral dialogue with Laos – the fifth of its kind – and urges the Australian delegation to ensure that its Lao counterparts take concrete action to address the issues raised below.

As a network of current and former legislators from Southeast Asia working to strengthen human rights and democracy in the region, APHR has worked since its inception in 2013 to highlight concerns about the dire situation for human rights and civil society in Laos.

Unfortunately, the Association of Southeast Asian Nations (ASEAN) as a regional body has largely failed to effectively address developments in Laos, which have threatened not only the enjoyment of human rights, but also the sustainability of economic development in the country. As such, APHR members have taken it upon themselves to call on the Lao government and their counterparts in the Lao National Assembly to enact legislation and policies that strengthen human rights protections and promote an enabling environment for civil society.

APHR has written this submission, in part, because members of Lao civil society cannot speak for themselves as a result of the repressive atmosphere in which they operate, and their own representatives have failed to speak up in defense of their rights. APHR members, who were elected to represent citizens from across the ASEAN Community, therefore constitute a unique voice from the region imploring the government of Australia to address the specific concerns outlined below in their upcoming human rights dialogue.

APHR Fact-Finding Mission

On 15-20 September 2014, an APHR delegation, including legislators from Cambodia, Malaysia, and Myanmar, conducted a fact-finding mission to Vientiane to follow up on developments since the December 2012 disappearance of prominent civil society leader Sombath Somphone and inquire about the status of the investigation into his disappearance. The mission followed two previous visits by members of parliament in January and March 2013. APHR Chair Charles Santiago of Malaysia joined multiple missions.

During the September 2014 visit, the APHR delegation met with representatives from the Lao National Assembly and Ministry of Foreign Affairs, including Mr. Phoukhong Sisoulath, who serves as the Lao Representative to the ASEAN Inter-Governmental Commission on Human Rights (AICHR). The delegation also met with international NGOs and diplomats to

learn about issues affecting their work and the situation for local civil society in the country. APHR was unable to meet with local civil society directly due, in part, to concerns over the security of those groups and the potential for government retaliation against them.

The assessment of APHR following that mission was that the Lao government was failing to conduct a proper investigation into the disappearance of Sombath Somphone. Their post-mission statement characterized the Lao authorities' approach to the investigation as a "deceptive game of hiding behind national sovereignty to excuse it from engaging in a sincere conversation regarding the investigation into his disappearance."¹

During their meeting, the APHR delegation presented Mr. Phoukhong and other representatives of the Lao government with suggestions for breaking the apparent deadlock in the investigation. These included setting up a hotline and offering a reward for information on the case, as well as sharing information with other law-enforcement agencies, conducting proper analysis of CCTV footage, and questioning officers stationed at the police checkpoint where Sombath was abducted. All of these suggestions were dismissed offhand as incompatible with "Lao tradition."

APHR concluded that the Lao government had erected "a brick wall of silence" surrounding the investigation and surmised that this could imply a cover-up by Lao officials. APHR also concluded that the failure to investigate the disappearance of a prominent and well-respected "citizen of ASEAN" reflected "badly not just on Lao PDR, but on all of ASEAN."²

The 2014 mission also shed light on a number of additional human rights concerns, particularly with regard to the following areas:

Restrictions on Civil Society

The delegation was shocked by the fear that permeated Lao society, influenced by severe restrictions on civil society actors, as well as the implications of and developments following the disappearance of Sombath in December 2012. Overall, APHR found that the space for civil society in Laos was extremely restricted, and work on human rights issues, particularly for local civil society organizations, was effectively impossible.

APHR expressed alarm following the mission and remains concerned by draft restrictions included in two bills introduced in 2014 regulating the operations of local and international organizations in Laos.³ The decrees were written to restrict and monitor funding of organizations, as well as limit the issues on which they can work and engage. The first

¹ APHR, Lao government's deceptive game on Sombath investigation must end, 23 September 2014, <http://aseanmp.org/2014/09/23/lao-governments-deceptive-game-on-sombath-investigation-must-end/>.

² APHR, Lao government's deceptive game on Sombath investigation must end, 23 September 2014, <http://aseanmp.org/2014/09/23/lao-governments-deceptive-game-on-sombath-investigation-must-end/>.

³ South China Morning Post, "Laos NGO restrictions threaten development, say non-profit groups," 17 September 2014, <http://www.scmp.com/news/asia/article/1594490/laos-ngo-restrictions-threaten-development-say-non-profit-groups>.

decree, which is concerned with foreign NGOs, would put the Ministry of Foreign Affairs in charge of supervising organizations' work in Laos. The second decree, which focuses on local Non-Profit Associations (NPAs), as local CSOs are known in Laos, restricts the ability of groups to receive funding and donations from abroad by forcing organizations to declare any amounts greater than 50 million kip (6139 USD) to the government for approval, and limits the work of NPAs to "providing support" in approved fields of agriculture, education, public health, sport, science, and humanitarian benefits.

Moreover, many so-called CSOs and trade unions are little more than extensions of the government, and civil society representatives from Laos who have attended previous regional and international events have been appointed by the government and some even carried official government passports.⁴

Enforced Disappearance

The case of Sombath Somphone highlighted longstanding concerns about enforced disappearance in Laos. Although Laos signed the International Convention for the protection of all Persons from Enforced Disappearance in 2008, it has yet to ratify the treaty. In addition, despite signing the Convention, the government's commitment to implementing key principles of it is suspect, based on APHR's assessment.

Though information is limited, it is clear that the case of Sombath is not an isolated incident. During a meeting with ASEAN MPs in 2013, Mr. Phoungsavath Boupha, President of the National Committee for Human Rights in the Office of the President, acknowledged that Sombath's was not the first case of disappearance in Laos.⁵ The lack of adequate investigations into additional cases of enforced disappearance, which have been reported, has entrenched the perception that Laos is using this tactic to crack down on dissent in the country. Although details of additional cases are hard to come by, human rights organizations estimate that the Lao government has failed to make progress on at least ten such cases.⁶

Restrictions on Fundamental Freedoms

Coinciding with the APHR delegation's visit in 2014, then-Lao Prime Minister Thongsing Thammavong approved Decree 327, which specifically limited freedoms of citizens online.⁷ The law prohibits any online criticism of the government or communist party, and sets criminal charges for those who publish "untrue information" for the purpose of "undermining ... the country."

⁴ Sombath Initiative, "What is ... civil society in Laos?" Briefing Paper, 21 October 2016.

<http://www.sombath.org/en/2016/10/what-is-civil-society-in-laos/>.

⁵ APHR, Submission to the Universal Periodic Review of the Lao PDR (June 2014), <http://aseanmp.org/2014/06/14/aphr-submission-to-the-universal-periodic-review-of-the-lao-pdr-june-2014/>.

⁶ Human Rights Watch, Submission to Australia's Department of Foreign Affairs and Trade in Advance of the Australia-Laos Human Rights Dialogue, 2 March 2015, <https://www.hrw.org/news/2015/03/02/human-rights-watch-submission-australias-department-foreign-affairs-and-trade>.

⁷ Radio Free Asia, "New Decree Prohibits Online Criticism of Lao Government Policies," 25 September 2014, <http://www.rfa.org/english/news/laos/decree-09242014143032.html/>.

Other domestic legal provisions place significant additional restrictions on the rights to freedom of expression, assembly, and association. Article 59 of the Lao Penal Law, for example, forbids “slandering the Lao People’s Democratic Republic, or distorting the guidelines of the Party and policies of the Government, or circulating false rumours causing disorder by words,” setting a prison term of one to five years for anti-government propaganda.⁸

Additionally, Article 66 of the Penal Law restricts the participation in and organization of gatherings and associations for the intent of “causing social disorder.” As such, any form of protests is rare and those taking part officially face up to five years in prison. In reality, the time in prison can be much longer, evident in the case of five student activists who were imprisoned in 1999 for peacefully protesting “for economic, political and social change” and sentenced to 20 years in jail on charges of treason. One of them died in prison, one’s fate remains unknown, and the three others have allegedly been released, although their current whereabouts are unknown, potentially amounting to enforced disappearances.⁹

Restrictions on freedoms of expression, assembly, and association, as well as the generally restrictive atmosphere for civil society, significantly impact the enjoyment of other rights as well. Land grabs, for instance, have had serious consequences for local and indigenous communities, who are often forcibly displaced and relocated by development schemes.¹⁰ Large-scale infrastructure projects, such as the Chinese-built Kunming-Singapore railway or the construction of hydroelectric dams along the Mekong, have led to forced evictions and relocations. The challenges faced by the affected communities and individuals are compounded by restrictions on civil society space and fundamental freedoms, which make it close to impossible to raise awareness about the violations being perpetrated by both the government and the private sector.

Subsequent Developments

Unfortunately, the concerns identified during APHR’s mission to Laos in 2014 remain largely unresolved to this day. In particular, the space for civil society remains severely restricted, and the implications of these restrictions have been felt regionally.

Most notably, regional civil society decided not to hold the 2016 ASEAN Peoples’ Forum (APF) in Laos, and instead to hold the event in ASEAN observer state Timor-Leste, breaking a longstanding tradition of the annual conference being held in the country serving as the year’s ASEAN Chair. The decision reflected concerns for the safety of APF organizers and participants were the meeting to go ahead in Laos. The government’s efforts to closely monitor the activity of NPAs has not subsided, and the fear permeating Lao society has only intensified.

⁸ Available at: <https://www.unodc.org/tldb/pdf/LaosPLO6.pdf>.

⁹ US Department of State, Laos 2016 Human Rights Report, <https://www.state.gov/documents/organization/265560.pdf>.

¹⁰ IRIN, “Laos ‘land grabs’ drive subsistence farmers into deeper poverty,” 22 May 2014,

<https://www.farmlandgrab.org/post/view/23540-laos-land-grabs-drive-subsistence-farmers-into-deeper-poverty>.

Sombath Somphone's disappearance remains unresolved, and the Lao authorities continue to play the same "deceptive game" that APHR criticized in 2014. APHR has continued to follow developments in the case, and it is clear that the recommendations APHR provided to the Lao government in 2014 have still not been acted upon.

Regional Concerns

Unfortunately, with the exception of some isolated efforts around the case of Sombath Somphone, most Southeast Asian governments have chosen not to engage with the Lao government on human rights. Members of APHR are therefore heartened that Australia continues to conduct a human rights dialogue with the Lao government, and hope that the dialogue will prove to be a fruitful and productive discussion of the challenges laid out above, as well as potential solutions.

While elements of Laos' human rights violations are unique to the country, the trends reflect what APHR has observed throughout the region: a worrying erosion of democracy and human rights protections, which ASEAN as a regional body has largely failed to address. The broader international community therefore has an important role to play in calling for human rights and democratic governance to be promoted and protected region-wide.

Recommendations

APHR recommends that the Australia delegation encourage the Lao government to do the following:

- Amend all existing domestic laws, decrees, and policies that contravene Laos' obligations under international human rights law, including the International Covenant on Civil and Political Rights, which it has ratified;
- Repeal all existing legal provisions which place unnecessary restrictions on local civil society organizations and international NGOs and withdraw the draft decrees introduced in 2014;
- Immediately release all individuals currently in jail for exercising their rights to freedom of expression, assembly, and association;
- Review and adopt the National Land Policy, ensuring that it adequately protects human rights in all aspects of land management and use;
- Ratify the International Convention for the protection of all Persons from Enforced Disappearance and pass relevant implementing legislation; and
- Make public the status and results of any existing investigations into cases of enforced disappearances and instruct relevant authorities to ensure that such investigations are conducted and concluded within reasonable timeframes and in accordance with international rule of law standards.

It is also critical that the delegation from Australia raise the case of Sombath Somphone with their Lao hosts during the dialogue. For Sombath's family, for all the all those he

supported and worked with across Laos, and for civil society and concerned citizens throughout the entire ASEAN Community, it is important to acknowledge his disappearance, as well as his work, and continue to press for answers. Sombath's case has come to define Laos' clear denial of internationally-accepted human rights norms, and as such, satisfactorily investigating it and providing answers represents an opportunity for Lao authorities to demonstrate to the international community that they are willing and able to turn the tide.