

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/16, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the situation of Mr. **Sombath Somphone**, a human rights defender who has been working on issues of land grabbing in the Lao People's Democratic Republic and assisting victims to speak out about their experiences.

According to the information received:

On the evening of 15 December 2012, at approximately 6:00 p.m., Mr. Sombath Somphone was on his way home, driving his jeep when the traffic police stopped him and took him into the police post. A man in civilian clothing on a motorcycle reportedly later stopped at the police post and drove away Mr. Somphone's jeep, leaving the motorcycle on the roadside. Subsequently, a truck allegedly stopped at the police post and two men in civilian clothing reportedly pushed Mr. Somphone into the back seat of the vehicle, in which other people were sitting, and drove away.

Mr. Somphone's family has repeatedly visited all hospitals in the area and been in touch with the police and other officials. On 20 December, the Government released a statement indicating that a serious investigation was underway about

his case. However, at the time of the current communication, the fate and whereabouts of Mr. Somphone remain unknown.

Prior to his enforced disappearance, Mr. Somphone actively participated in the organizing committee of the Asia-Europe People's Forum held in November 2012, alongside the Asia-Europe Meeting Summit. At the Forum, some people from different areas of the Lao People's Democratic Republic spoke up against land grabbing they suffered. According to the information received, officials allegedly threatened some of these individuals. Mr. Somphone was reportedly involved in trying to address these threats, by calling for an investigation into them.

Serious concerns are expressed that the disappearance of Mr. Somphone may be related to his legitimate activities in defence of human rights. Further concerns are expressed about the alleged threats made by officials against people who publicly spoke about their own land grabbing cases.

While we do not wish to prejudge the accuracy of these allegations, in relation to the allegations, we would like to bring to the attention of your Excellency's Government the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction);
- article 9 (right to a prompt and effective judicial remedy and the right to access of competent national authorities to all places of detention);
- article 10 (any person deprived of liberty shall be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention, the accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest);
- article 12 (each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention; each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.)

Furthermore, we would like to refer to article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

We would further like to remind your Excellency's Government of article 21 of the ICCPR, which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others”.

In this connection, we would also like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In addition, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5, point c) which states that in order to promote and defend human rights and freedoms fundamental everyone has the right, individually or collectively, both nationally and internationally, "to communicate with non-governmental or intergovernmental organizations."
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and

other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Sombath Somphone in compliance with the above international instruments.

As it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Mr. Sombath Somphone?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to a) the enforced disappearance of Mr. Somphone, and b) the threats made by officials against some of the participants at the Asia-Europe People's Forum. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which will be undertaken in relation to a) the enforced disappearance of Mr. Somphone, and b) the threats made by officials against some of the participants at the Asia-Europe People's Forum. Will penal, disciplinary or administrative sanctions be imposed on the alleged perpetrators?

5. Please provide information on the fate and whereabouts of Mr. Sombath Somphone. If his fate and whereabouts are unknown, please provide the details on any investigation or other queries which may have been carried out. If no queries have taken place, or if they have been inconclusive, please explain why.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

We would like to bring to the attention of your Excellency's Government that should sources submit the allegations of enforced disappearance mentioned in this communication a case to the Working Group on Enforced or Involuntary Disappearances, it will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by a separate correspondence.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Sombath Somphone are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Olivier de Frouville
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Disappearances

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