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## **Human Rights Watch Submission to Australia's Department of Foreign Affairs and Trade in Advance of the Australia-Laos Human Rights Dialogue**

**February 2015**

Human Rights Watch makes this submission on the occasion of the Australia-Laos Human Rights Dialogue, scheduled for March 2015 in Canberra. Laos recently appeared for its second Universal Periodic Review (UPR) before the United Nations Human Rights Council on January 20, 2015, in which its human rights record and future commitments to improve respect for rights were discussed. We appreciate that Australia raised concerns at Laos's UPR session about increased government-backed Internet censorship and a shrinking space for Lao civil society to engage in human rights activities. Notably, the statement also mentioned the case of Sombath Somphone and the need for a credible investigation into his enforced disappearance.

The Australia-Laos dialogue represents a crucial opportunity to further raise pressing human rights concerns and to improve the efficacy of the dialogue by setting clear benchmarks for improvements and ensuring the outcome of discussions are public. As Laos prepares to take chair of the Association of Southeast Asian Nations (ASEAN) for the second time in 2016, it will have the opportunity to play a greater role in promoting compliance with international human rights standards across the ASEAN region.

We understand that the Australian government has provided funding to the Lao Ministry of Foreign Affairs from 2012-2015 to support their human rights work. Additional projects have been funded under the Department of Foreign Affairs and Trade's Human Rights Grants Scheme. We urge the Australian government to use its influence to promote reform on a range of human rights issues. All Australian development assistance funding, programming, and activities in Laos should be reviewed to ensure that no funding is contributing to policies and programs that violate human rights.

The government of Laos has not taken significant steps to remedy its poor human rights record and continues to severely restrict fundamental rights including freedom of speech, association, and assembly. Since 2010, the government has arbitrarily arrested and detained, and in at least

two cases, forcibly disappeared civil society activists and those deemed critical of the government. In September 2014, the government adopted a decree on the Internet that severely limits the type of information that can be shared. This measure, compounded with a history of government control over all newspapers, television, and radio in the country, ensures that the fundamental right to freedom of speech cannot be exercised. In addition, the government is in the process of amending legislation and decrees to further strengthen control over the activities of local and international nonprofit associations. The draft legislation reveals plans to require burdensome permissions for local nonprofits to receive foreign funds.

While there are many human rights abuses within Laos, Human Rights Watch urges you to address four core areas within the scope of this dialogue, specifically (1) enforced disappearances; (2) freedom of speech, association, and assembly; (3) the treatment of detainees in drug detention centers; and (4) labor rights.

### **Enforced Disappearances**

Laos has signed, but not ratified, the International Convention for the Protection of all Persons from Enforced Disappearance. Enforced disappearances violate a range of fundamental rights protected under international law, including prohibitions against arbitrary arrest and detention, torture and other cruel, inhuman or degrading treatment, and extrajudicial execution. The Lao government has an obligation to conduct a transparent, thorough, and impartial investigation in all cases of alleged enforced disappearances to resolve them and bring those responsible to justice.

The Lao government has failed to make progress on at least 10 cases of enforced disappearance. Emblematic of the government's failure to act in line with its international obligations is the case of prominent civil society activist Sombath Somphone. Sombath was detained at police checkpoint and subsequently disappeared on the evening of December 15, 2012. Close-circuit television (CCTV) footage obtained by Sombath's family from the Vientiane police shows that Sombath's jeep was stopped by the police at a police post. The police then took Sombath into the checkpoint, after which he was escorted to a different vehicle and driven away.

Lao authorities have repeatedly denied that the government took Sombath into custody and have failed to conduct a serious investigation into his enforced disappearance or provide any other credible information on his fate or whereabouts. Furthermore, the government has repeatedly rejected all offers of technical assistance for the investigation from various governments, including offers to analyze the original CCTV footage to assist with determining the identities of the individuals in the videotape or gathering additional details of the vehicles that were involved.

In another instance, the Lao government has failed to make progress in the case of Sompawn Khantisouk, the owner of two ecotourism businesses in Luang Namtha province, who was forcibly disappeared on January 23, 2007. Sompawn received a call from a local police officer to visit the police station concerning an alleged arson attack on his home the previous day. Riding his motorcycle, Sompawn received another phone call from the same police officer. A few minutes later, as he was driving to the police station, witnesses saw an SUV signal to Sompawn to pull his motorcycle over. Witnesses stated that four men wearing police uniforms then forced Sompawn into the car and drove away. A rudimentary police investigation ensued that focused on discrediting the witnesses, and concluded without further evidence that Sompawn's disappearance was the result of an unspecified personal or business conflict.

Laos is obligated under international human rights law to prevent and remedy any enforced disappearances. Despite widespread calls for accountability, both regionally and internationally, questions about enforced disappearances are met with denial or silence by the government of Laos.

### **Freedom of Speech, Association, and Assembly**

Laos has failed to protect the rights to freedom of speech, press, and assembly and is taking legislative measures to further entrench a culture of censorship and government control. All TV, radio, and printed publications are strictly monitored and controlled by the government. The constitution prohibits all mass media activities that run contrary to "national interests" or "traditional culture and dignity." While the constitution also recognizes that citizens of Laos have fundamental freedoms of speech, press, assembly, association, and demonstration, article 44 severely restricts those rights by requiring that their exercise does not run contrary to the penal code. The penal code contains broad limitations that prohibit "slandering the state, distorting party or state policies, inciting disorder, or propagating information or opinions that weaken the state." This effectively gives authorities sweeping powers to limit basic rights and fundamental freedoms for anyone they deem critical of the government and the authorities. Harsh prison sentences, ranging from one to five years for anti-government propaganda, and up to 15 years for journalists who fail to file "constructive reports" or who seek to "obstruct" the work of the government, are provided for in article 59.

The adoption of the Internet decree in September 2014 places significant restrictions on freedom of expression online. The language of the decree is vaguely worded and can effectively be used to prohibit speech on a wide range of political, economic, and social subjects. For instance, the decree forbids spreading "false information" about the ruling Lao People's Revolutionary Party. It further states that it is impermissible to send information that could be conceived of as "divid[ing] solidarity" among ethnic groups and between Laos and other countries. Any information that could prompt involvement in "social disorder" is forbidden under the decree. Any information that

“distorts truth or tarnishes the dignity and rights of individuals, sectors, institutions, and organizations” is banned. The decree also prohibits the creation of anonymous identities or accounts with pseudonyms online, thereby denying the right to privacy.

Laos has also undertaken a worrisome step to tighten government control in the operating guidelines for the Non-Profit Associations (NPAs), the civil society organizations organized by Lao people, as well as the decree overseeing the activities of international nongovernmental organizations. These restrictions set out greater requirements to provide notification and seek permission to receive or spend international development funds; limitations on areas of permitted work; limitations or prohibitions on any speech or activities deemed to offend government defined notions of peace and social order. The result is likely to be greater bureaucratic scrutiny over programs and budgets of nonprofit groups working in development and other grassroots projects in the country.

Restrictions on freedom of expression mean that self-censorship is common, and as mentioned previously, the media remains tightly controlled by the authorities. For example, in January 2012, the Ministry of Information, Culture and Tourism cancelled the popular radio program, *Talk of the News*, without explanation. The show encouraged political and social debate on a range of topics, including land grabs and corruption. In a separate instance, the authorities arbitrarily detained activists Thongpaseuth Keuakoun, Bouavanh Chanhmanivong, and Senaloun Phengpanh for trying to hold a peaceful protest in 1999. Both were sentenced to 15 years in prison and remain incarcerated today. Ethnic Hmong Thao Moua and Pa Phue Khang were arrested in 2003 after serving as guides for foreign journalists reporting on the situation of the Hmong in Laos. They were sentenced for 12 and 20 years respectively for obstruction of justice.

### **Drug Detention Centers**

The arbitrary detention of people suspected of using drugs, along with beggars, homeless people, children, and people with mental illnesses in compulsory drug detention centers across Laos remains of grave concern. As of mid-2011 (the last year for which data is publicly available), there were at least eight such centers across the country, of which the Somsanga detention center on the outskirts of Vientiane is the oldest and largest. Somsanga functions as a detention center, and persons who are sent there (as well as to other drug detention centers) are detained administratively, without any judicial due process or oversight, and no mechanism for appeal. None of the persons whom Human Rights Watch interviewed had seen a lawyer or been sent to a court prior to their detention in Somsanga.

Human Rights Watch found that detainees at the Somsanga center are locked in cells inside barbed wire compounds. Former detainees told Human Rights Watch that they were held for periods of three months to more than a year. Police who guard the facility’s main gate are

responsible for security and are a constant presence among detainees. Detainees live in a punitive and heavily controlled environment. Those who try to escape are sometimes brutally beaten by “room captains”—trusted detainees whom police and center staff designate to play a central role in the daily control of other detainees, including serving the centers as adjunct guards and punishing detainees who infringe center rules. One former detainee told Human Rights Watch that “room captains” beat detainees who had attempted escape “until they were unconscious.” The detainee stated that guards witnessed the beatings and encouraged the “room captains.” Former detainees also reported being punished by being tied up in the sun for hours without food or water.

Somsanga offers little effective, evidence-based treatment for drug addiction to those who need it. Confinement is Somsanga’s central operating principle: most detainees remain in locked cells inside compounds with high walls topped with barbed wire. Human Rights Watch found that Somsanga holds most of its detainees against their will. Police or village militia (*tamnautbaan*) detain and bring people to Somsanga. Other detainees enter because their family members “volunteer” them to go out of a mistaken belief that the center offers therapeutic treatment, or because they feel pressure from authorities to help make their village “drug free.”

The treatment of individuals in compulsory drug detention centers violates a wide range of human rights, including the right to freedom from torture and cruel, inhuman and degrading treatment; the right to freedom from arbitrary arrest and detention; the right to a fair trial; the right to privacy; and the right to the highest attainable standard of health. Despite new reports of arbitrary detention and cruel, inhuman or degrading treatment or punishment at Somsanga, the Lao government has not investigated these reports, held any person responsible or taken steps to close the center down. In March 2012, 12 UN agencies—the International Labor Organization, UN Office of the High Commission for Human Rights, UN Development Program, UNFPA, UNHCR, UNICEF, UNODC, UN Women, World Food Programme, WHO, and UNAIDS—issued a joint statement condemning compulsory drug detention centers in the region and calling for their immediate closure.

### **Labor Rights**

Laos violates the right to freedom of association for workers in law and in practice. The Trade Union Law 2008 defines a trade union as a “mass organization in the political system of the democratic centralism unified leadership under the Lao People’s Revolution Party” and requires that unions affiliate to the Lao Federation of Trade Unions (LFTU), which is controlled by the government and the ruling party. Article 5 of the law requires trades unions to “organize and conduct activities in line with the unified leadership under the Lao Revolution Party.” Preventing workers from establishing or joining a union of their own choosing violates Laos’ obligations

under article 22 of the International Covenant on Civil and Political Rights and article 8 of the International Covenant on Economic, Social and Cultural Rights.

The LFTU is so close to the government that the president and two vice presidents of the LFTU are given status equal to a minister and vice ministers in the government and are paid salaries by the government. In public statements, the LFTU has regularly said that it plays a role in helping the government enforce “labor discipline” in line with the law. The LFTU’s quasi-state function compromises its ability to represent workers, since it plays a dual, and sometimes conflicting, role as a controller as well as a potential protector of workers’ interests.

Laos also effectively prohibits workers from exercising the right to strike. Article 65 of the Labor Law 2007 strictly prohibits workers or their representatives from calling a work stoppage in a wide variety of situations, including disputes regarding implementation of the labor law or regulations, or over workers benefits under the law. Work stoppages are also forbidden when the matter in dispute is currently being discussed in a negotiation that both sides have agreed to participate in, or during the period when the dispute is being considered by government labor authorities, or is being considered by the labor disputes settlement procedures of the courts. Any person or organization that engages either “directly or indirectly” in a stoppage, or who “verbally or materially incites workers” to conduct a stoppage “thus causing damage...or social disorder” is subject to prosecution. The penal code provides for between one and five years’ imprisonment for those who join an organization that encourages protests, demonstrations, and other actions that might cause “turmoil or social instability.”

## **Recommendations**

*During the upcoming dialogue, Australia should call on the government of Laos to:*

- Conduct a transparent, thorough, and impartial investigation into all pending cases of enforced disappearances and ensure that those responsible for the disappearances are held to account.
- Disclose the fate or whereabouts of Sombath Somphone and Sompawn Khantisouk, and others forcibly disappeared.
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and enact appropriate implementing legislation.
- Cease the harassment and arbitrary arrest of human rights defenders, independent journalists, social activists, and worker advocates.
- Ensure that civil society and media organizations can function without government interference.
- End government control of the media, and reform licensing rules to allow media organizations to function freely and without fear of reprisal.

- Revise the Internet Decree to ensure that it aligns with international standards protecting freedom of speech and expression.
- Revise the draft decrees governing the functioning of local and international nongovernmental organizations, ensuring that they can exist independently and without government interference.
- Stop the arbitrary arrest and detention of people deemed “undesirable” in drug detention centers.
- Close all drug detention centers and release current detainees.
- Carry out investigations into allegations of arbitrary detention and cruel, inhuman or degrading treatment or punishment in Somsanga and other drug detention centers.
- Instruct the Ministry of Health to encourage and expand access to voluntary, community based drug-dependency treatment.
- Amend the Trade Union Act and the Labor Act to bring them into full compliance with international labor standards, especially with the provisions of International Labour Organization Conventions Nos. 87 (Freedom of Association) and 98 (Right to Organize and Collectively Bargain).
- Allow all workers to form unions of their own choosing, including those not affiliated with the LFTU.