
MANUSHYA
Empowering Communities | Advancing Social Justice

3rd UPR CYCLE OF LAO PDR – UPR FACTSHEET

# CIVIC SPACE IN LAO PDR

## OVERALL CONTEXT

Lao PDR is a one-party state in which the ruling Lao People's Revolutionary Party (LPRP) dominates all aspects of politics and harshly restricts civil liberties. Authorities use legislations, media control, surveillance of civil society and intimidation tactics to maintain an environment that secures the regime. Under this condition, there is no truly independent civil society, news coverage is weak and heavy sentences threaten any critique against the state, resulting in a widespread chilling effect and self-censorship. The current condition of civic space in Lao PDR is therefore critical and fragile, with serious violations on freedom of expression, online speech, freedom of assembly, freedom of association and protection of human rights defenders. The practices used by the Government are not only detrimental to an enabling environment for civil society, but also place individuals under serious threat to a dignified life. Recent cases of arbitrary arrests, enforced disappearances, and unjust prosecution reflect these concerns.

## BRIEF ASSESSMENT OF THE IMPLEMENTATION OF THE 2nd CYCLE UPR RECOMMENDATIONS

During the 2nd UPR cycle, the Government of Lao PDR received 33 recommendations relating to the space for civil society (civic space). Of these recommendations, 13 were accepted and 20 were noted, with only three recommendations partially implemented and the rest not implemented. Although freedom of expression and assembly are guaranteed in Article 44 of the Constitution, in policy and practice an array of restrictive laws continue to undermine the creation of a safe and enabling environment for civil society, ranking Lao PDR "not Free" according to the Freedom in the World 2019 Index (Freedom House), "closed" according to CIVICUS' 2019 state of civil society, and 171 out of 180 countries by the 2019 World Press Freedom Index.

**This factsheet was developed using the joint submission of Manushya Foundation, with CIVICUS and FORUM-ASIA to the UPR process for the Third UPR Cycle of Lao PDR, along with additional research covering cases and developments between July and December 2019.**

# REALITIES ON THE GROUND

| Challenges | Cases, Facts, Comments |
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| **Challenge 1: Government's control and restrictions over Civil Society Organizations (CSOs)** is detrimental to the mission and functioning of both national and international CSOs and actors. | In November 2017, Decree No. 238 on Non-profit Associations (NPAs) came into effect to replace the 2009 Decree, imposing further pervasive controls and restrictions on CSOs. This includes unreasonable powers to control or prohibit the formation of non-profit associations; inspect, monitor and curtail the activities and finances of non-profit associations; order the dissolution of associations on arbitrary grounds and without right of appeal; and to discipline associations and individual members on arbitrary grounds. The decree also includes measures to criminalise unregistered associations and allow for prosecution of their members. As a result, many CSOs have experienced fund delays and some even had to shut down.<br><br>International CSOs have also been facing challenges to operate in Lao PDR following Decree No. 13 (2010) that restrict their activities to those in line with the Government's goals. Regarding foreign journalists, they are jeopardised by Decree No. 377 (2015) which requires them to seek approval of content with the Ministry of Foreign Affairs 15 days before entering the country. |
| **Challenge 2: Breach to right to information and control over the media:** the Lao Government's restriction on news coverage and spread of information not only goes against the right to information, but can also endanger people's lives. | The Government of Lao PDR exercises absolute control over the media, including TV, radio and printed publications, through the Ministry of Information, Culture and Tourism. Due to the strict media controls, many Lao people lack access to information. For example, during the July 2018 Xe Pien-Xe Nam Noy dam collapse, many villagers were unaware of the situation, resulting in at least 6,000 immediately affected by the floods and 30 persons confirmed dead. This event has encouraged many people to mistrust state-owned media and seek information online on social media. However, the Government has nonetheless applied a strict intolerance to online speech, encouraging self-censorship and poor access to information.<br><br>**In the Lao dam collapse case,** most first-hand information was being reported on social media, as the Prime Minister's office immediately after the dam collapse, notified that all individuals and entities were blocked from accessing the site unless authorised by the government. Lao Youth started to raise concerns through social media over the lack of accurate information and lack of accountability from the government and constructor sides. It resulted in the Prime Minister issuing a warning letter to all Lao citizens, requesting them not to believe the misinformation of the foreign media and social media and instead to only trust information shared by state-owned media.<br><br>**News agencies forced to register their social media platforms with the government:** In July 2019, the Government has ordered administrators of news on social media platforms like Facebook and others to register their accounts or pages, or they could face legal action. While the Lao Ministry of Information, Culture and Tourism have justified the action as an improved way to control fake news and disinformation, civil society has criticised it for being just another effort to further limit freedom of speech and freedom of the press in the country. |
| **Challenge 3: Digital Dictatorship:** Free online speech is criminalized, allowing authorities to neutralize the threat posed by critics and opponents of the Government. Online | **Dismissal from work for questioning on Facebook the government's responsibility in relation to poor road conditions:** In September 2018, Phijika Boonkwang, the president of the Vientiane |

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| criticism and the circulation of 'false information online' are criminalized in Decree No. 327 on Internet-Based Information Control/Management of 16 September 2014 and in the Law on Prevention and Combating Cyber Crime (2015), which also criminalises vaguely defined web content. Furthermore, the government also uses article 117 of the Penal Code related to propaganda against the government, to prosecute activists who question the government's policies on social media. | Football United Club, was questioned by police and lost her job after being accused of harming the reputation of Lao PDR and conducting inappropriate activities on Facebook. This was only because she criticised the condition of the road leading up to the football federation headquarters in a Facebook live video.<br><br>**Criminalized for propaganda against the government over Facebook posts:** In 2015, a Polish citizen of Lao heritage and pro-democracy activist, Bounthanh Thammavong served a four-year-and-nine-month prison sentence for a Facebook post in which he criticised the Government's policies and actions. He was convicted in October 2015 for propaganda against the state (article 117 of the Penal Code, previously article 65 of the Penal Code).<br><br>On 22 November 2019, a 31-year-old woman from Champasak Province, Houayheuang Xayabouly also known as Mouay was sentenced to 5 years in prison and a 20 million Kip fine on charges under Article 117 of the Penal Code for propaganda activities against Lao PDR. This sentence was only because she made a Facebook post that was critical of the response of the Lao government to the floods in the Southern provinces of Lao PDR in late August and September 2019. Prior to her trial and sentencing, she was also detained in Champasak provincial prison from the date of her arrest on 12 September 2019, with her family not being allowed to meet her. It is believed that she was made an example to prevent any other individuals from being critical of the government, an action that has proved successful in increasing self-censorship of dissenting opinions. |
| **Challenge 4: Self-Censorship:** new and existing legislations, threatening harsh sentences, have been used to discourage freedom of speech among the population and journalists | There is extensive surveillance of society in Lao PDR all the way down to the village level, creating a chilling effect. The UN Special Rapporteur on extreme poverty and human rights stated in March 2019 that countless people feel they are not able to speak freely and fear reprisal for expressing criticism of Government policies. |
| **Challenge 5: Human rights defenders and activists engaged in peaceful protests or associations face severe repercussions or live in fear of state reprisal:** Article 56 and Article 72 of the Penal Code are often used to restrict freedom of assembly or association and justify actions against human rights defenders and journalists on grounds of social disorder, social damage and national security. Common practices include intimidation and self-censorship but also arbitrary arrests and enforced disappearances. | In February 2016, three activists Lodkham Thammavong, Soukane Chaithad and Somphone Phimmasone were arrested after participating in a peaceful demonstration outside of the Lao PDR Embassy in Bangkok and after expressing concerns on Facebook over the Lao Government's human rights record. They were detained incommunicado for over two months, forced to admit their crimes on national TV. In May 2017, they were convicted for acts of betrayal towards the nation, propaganda against the state, and gatherings aimed at causing social disorder. They were given lengthy prison sentences of 12 years, 18 years and 20 years, respectively. In September 2017, the UN Working Group on Arbitrary Detention declared their detention to be arbitrary.<br><br>In 2017, an activist documented on Facebook the concerns of communities, who had been forcibly relocated to 3 villages because of the construction of the Xe Pian-Xe Namnoy Hydroelectric Power Project in Champasak province. The reports went viral after the collapse of the dam due to the flooding, death and destruction in downstream Attapeu province. The activist was searched by the government and had to flee and live in hiding due to fear of state reprisal.<br><br>In July 2017, in a dispute going on since 2006, 14 residents of Yeub village in Thateng district in Sekong province were arrested by the police for protesting against the cutting down of trees on land granted by the Government to a Vietnamese rubber company. Several of the detainees were allegedly beaten or subjected to |

electric shocks while in custody, and in 2018 one of the 14 villagers, Somsavanh, died in mysterious circumstances while in police custody.

In November 2019, 8 people were arbitrarily detained for attempting to participate in a peaceful pro-democracy demonstration, calling for free speech and condemning land grabs and dam projects. After repeated calls from civil society, and due to a lack of real charges by the police, all have been released by November 19.

Concerns over the abusive treatments of activists are crucial especially in light of the enforced disappearance case of Sombath Somphone in 2012. Despite strong appeals both from the domestic and international human rights community, the Government continues to fail to provide any credible investigation or answers for this case, or any improvement in the recognition of freedom of expression and the protection of human rights defenders.

**Challenge 6: Enforced disappearances:** The disappearance of activists and Human Rights Defenders has resulted in a chilling effect with members of civil society afraid to use the language of 'human rights' in their work. As a result, they constantly fear being monitored by Lao authorities and meeting the same fate as those who have disappeared. Additionally, although having signed the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED), 11 years back in September 2008, it has still to be ratified by the government of Lao PDR. This absence of ratification has been used by the government to justify its failure to recognise enforced disappearance as a crime under domestic law. Further, this legal vacuum also creates an environment of impunity, leaving families of the victims of enforced disappearance without the right to know the truth and without receiving justice.

Seven years after the disappearance of development expert and advocate, Sombath Somphone on 15 December 2012 from Vientiane for his role in questioning land deals negotiated by the Lao government that left a massive number of rural Lao villagers homeless, there is still no information that has been provided on his whereabouts. Despite international pressure and several recommendations made during the 2nd UPR cycle in 2015, and by treaty bodies, urging the government to address the case of Sombath Somphone, so far there has not been much progress made. When questioned, the government while assuring of its commitment to resolve the case, constantly states that they are still investigating the case. However, its commitment to this cause has been brought into question by its refusal to accept any independent international assistance in the investigation and failure to provide information on the progress of the investigation being conducted.

Additionally, other cases which took place in 2019 are of specific concern pointing to an emerging and disturbing trend related to enforced disappearance. This is the disappearance of Lao individuals across borders.

For instance, five critics of the Thai monarchy and its military government, including Ittiphon Sukpaen, Wuthipong Kachathamakul, Surachai Danwattananusorn, Chatcharn Buppawan, and Kraidej Luelert disappeared between June 2016 and December 2018 while they were living in a self-imposed exile in Lao PDR. The mutilated bodies of two of the missing, Chatcharn Buppawan and Kraidej Luelert were found two weeks after their disappearances on the Mekong River, as confirmed in January 2019. A third body identified as being Surachai Danwattananusorn was also found but later disappeared without a trace.

In another cross-border case, Od Sayavong, a Lao worker and activist disappeared from Bangkok on 26 August 2019. It is believed that his public critique of the human rights situation in Lao PDR was responsible for his fate. This includes a meeting between Od Sayavong with UN Special Rapporteur of Extreme Poverty and Human Rights prior to his mission to Lao PDR on 15 March 2019. In a joint statement of 1 October 2019, the UN Working Group on Enforced and Involuntary Disappearances and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on extreme poverty and human rights, expressed serious concern about this case.

# RECOMMENDATIONS TO THE GOVERNMENT OF LAO PDR

**1. Governments' control and restriction over Civil Society Organizations (CSOs) is detrimental to the mission and functioning of both national and international CSOs and actors.**

**1.1.** As recommended in the Human Rights Committee's Concluding Observation 34, 35, 36 (2018) take steps to establish an open and dynamic civil society space through amendments to laws related to CSOs (Decree 238) to allow concerns on development and human rights challenges to be addressed through legitimate means without fear of obstruction of funds or heavy oversight by Lao authorities. This includes greater freedom of action to international CSOs and foreign journalists as well.

**2. Breach to the right to information and control over the media.**

**2.1.** Guarantee to all the population unfettered access to information and freedom of expression as noted in the Human Rights Committee's Concluding Observation 33 (2018) and in the Report of the Special Rapporteur on extreme poverty and human rights section 11 (2019) ; this includes promoting infrastructure and independent media, both traditional and online media, that individuals can rely on, especially in situation of life risk.

**3. Digital Dictatorship: Online speech is criminalised, allowing authorities to neutralize the threat posed by critics and opponents of the Government.**

**3.1.** In line with the Human Rights Committee's Concluding Observation 33 (2018) and section 11 of the Report of the Special Rapporteur on extreme poverty and human rights (2019), decriminalize online speech and emphasise the web as a free space of expression. This includes revising existing legislations, such as the 2016 amendment of the Media Act, Decree No. 327 on Internet-Based Information Control /Management, and the 2015 Law on Prevention and Combating Cyber Crime, and provide clearer definitions of web contents.

**4. Self-censorship: New and existing legislations, threatening with harsh sentences, have been used to discourage freedom of speech among the population and journalists.**

**4.1.** In accordance to the Human Rights Committee's Concluding Observation 33 (2018), modify legislations to provide clearer terms and definitions to ensure human rights defenders and activists, as well as political opponents and critics of the state can fully enjoy their right to free speech without fear of prosecution or self-censorship.

**5. Human rights defenders and activists engaged in free speech, protests or associations face severe repercussions or live in fear of state reprisal.**

**5.1.** Taking into account the Human Rights Committee's Concluding Observation 20 (b) and 28 (2018), release all activists detained for exercising their right to freedom of peaceful assembly and freedom of speech, review their cases to prevent further harassment and conclude the ongoing investigation on Sombath Somphone by providing a truthful explanation.

**5.2.** Begin the process of establishing a human rights institution with a mandate to protect the full range of human rights in fully compliance with the Paris Principles as suggested in the Human Rights Committee concluding observation 8 (2018).

**6. Addressing the Enforced Disappearances of human rights defenders and activists.**

**6.1.** In accordance with the Committee on the Elimination of Discrimination against Women Concluding Observation 57 (2009), the Committee on the Rights of the Child Concluding Observation (2011 and 2018), the Human Rights Committee's Concluding Observation 20 (f) (2018) and UPR recommendations that were accepted during the 1st and 2nd UPR cycles of Lao PDR in 2010 and 2015, the State must act upon its commitment to ratify the ICPPED without delay; and integrate the provisions of this international legislation in domestic law including through its criminalization under the Penal Code as set out in Article 4 of ICPPED.

**6.2.** Establish a new commission tasked with carrying out a prompt, thorough, independent and impartial investigation into the disappearance or whereabouts of human rights defender, Sombath Somphone and others; in line with the Human Rights Committee's Concluding Observation 20 (b) (2018) and UPR Recommendations made during the 1st and 2nd UPR cycles of Lao PDR.

**6.3.** In line with the Preamble and Articles 18, 19, 20 and 24 of the ICPPED and the Human Rights Committee's Concluding Observation 20 (c) (2018), ensure that victims and their families are regularly informed of the progress and results of an investigation through official administrative documents and that they are provided with rehabilitation including rehabilitation, adequate compensation and guarantees of non-repetition.

**6.4.** Ensure that perpetrators are prosecuted and if convicted, they are punished in accordance with the penalties that are commensurate with the gravity of the crime, as provided in Articles 6, 7 and 11 of the ICPPED and the Human Rights Committee's Concluding Observation 20 (d) (2018).

# UPR 2nd CYCLE RECOMMENDATIONS

| # | Recommendations | Country | SDGs | Response | Level of Implementation |
|---|---|---|---|---|---|
| **Theme: Compliance of National Legislations with International Human Rights Obligations of Lao PDR** | | | | | |
| 121.136 | Fully implement its obligations under ICCPR to respect and ensure the right to freedom of expression. | Canada | 16.3 & 16.10 | Supported | Not Implemented |
| 121.138 | Guarantee freedom of expression, the press, assembly and association, as well as freedom of religion and belief in accordance with the International Covenant on Civil and Political Rights. | Uruguay | 16.3 & 16.10 | Supported | Not Implemented |
| 121.129 | Ensure de jure and de facto protection of fundamental freedoms in order to be in conformity with ICCPR that has been ratified by the Lao People's Democratic Republic. Regarding freedom of expression; lift the restrictions to freedom of press, ensure the independence and pluralism of media, and a safe environment for the work of journalists. Regarding freedom of association, facilitate unhindered action for human rights defenders and NGOs, notably through a reform of their registration system. | France | 16.3 & 16.10 | Noted | Not Implemented |
| **Theme: Civil society and the rights to freedom of expression, assembly and association** | | | | | |
| 121.146 | Guarantee the effective exercise of freedom of expression, assembly and association by reforming its legislation particularly in order not to undermine the legitimate work of NGOs and human rights defenders. | Luxembourg | 16.10 | Noted | Not Implemented |
| 121.147 | Reverse the approval of the Prime Minister's Decree on International Non-Governmental Organizations and implement the mechanisms necessary to accelerate the process of legalizing NGOs. | Spain | 16.10 | Noted | Not Implemented |
| 121.148 | Refrain from undue restrictions, such as the prohibition to engage in the promotion and protection of human rights, in the elaboration of legislation on civil society organizations, and facilitate the registration of international NGOs. | Germany | 16.10 | Noted | Partially Implemented |
| 121.149 | Enable independent local and international NGOs, including international human rights organizations, to freely register and to operate in accordance with international law and standards. | Norway | 16.3 & 16.10 | Noted | Not Implemented |
| 121.150 | Remove all restrictions in law and practice which infringe upon the work of civil societies and to ensure that all legal provisions on the rights to freedom of expression, association and peaceful assembly are in line with international human rights standards. | Poland | 16.3 & 16.10 | Noted | Not Implemented |
| 121.152 | Reconsider decrees and guidelines that are overly burdensome on domestic and international civil society organizations through lengthy and opaque registration requirements, taxation and other means. | United States of America | 16.10 | Supported | Not Implemented |
| 121.153 | Facilitate an environment for local and international civil society organizations to fulfil their role. | Australia | 16.10 | Supported | Partially Implemented |
| 121.154 | Fully enable civil society and NGO groups to conduct their activities. | New Zealand | 16.10 | Supported | Partially Implemented |
| 121.155 | Create a framework where civil society, including active human rights NGOs, can be included in the follow-up to the UPR without any fear of retaliation. | Belgium | 16.10 | Noted | Not Implemented |

| # | Recommendations | Country | SDGs | Response | Level of Implementation |
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| **Theme: Enforced disappearance of human rights defenders and civil society, including the case of Sombath Somphone** | | | | | |
| 121.151 | Fully implement its international obligations to ensure the protection of human rights defenders and other civil society actors while exercising their human rights, including the freedom of expression, association and assembly, and remove all restrictions in law and practice which infringe on their work. The Government of the Lao People's Democratic Republic should establish without delay a new independent commission to undertake an impartial and thorough investigation into the enforced disappearance of Sombath Somphone. | Finland | 16.3, 16.6 & 16.10 | Noted | Not Implemented |
| 121.94 | Carry out without further delay an independent, credible investigation into the unexplained disappearance of a human rights defender, Sombath Somphone, which occurred on 15 December 2012 in Vientiane. | Luxembourg | 16.3 & 16.6 | Noted | Not Implemented |
| 121.95 | Carry out a prompt, independent and impartial investigation aimed at determining the fate or whereabouts of Sombath Somphone. | Poland | 16.3 & 16.6 | Noted | Not Implemented |
| 121.96 | Undertake a thorough investigation, consistent with international practices and standards, into the disappearance of Sombath Somphone. | Portugal | 16.3 & 16.6 | Supported | Not Implemented |
| 121.97 | Intensify the investigation into the disappearance of Sombath Somphone and accept external assistance in the investigation and make the results publicly known, and investigate in a transparent and credible manner all cases of enforced disappearances. | Sweden | 16.3 & 16.6 | Noted | Not Implemented |
| 121.98 | Intensify the investigation into the disappearance of Sombath Somphone and accept external assistance in the investigation and make the results publicly known, and investigate in a transparent and credible manner all cases of enforced disappearances. | Switzerland | 16.3 & 16.6 | Supported | Not Implemented |
| 121.99 | Establish a thorough, transparent and impartial investigation into Sombath Somphone's disappearance, as recommended by the United Nations Special Rapporteurs. | United Kingdom | 16.3 & 16.6 | Supported | Not Implemented |
| 121.100 | Conduct an urgent and credible police investigation into the disappearance of Sombath Somphone, and communicate the findings, including to address any suspicions of government involvement in his abduction. | Australia | 16.3 & 16.6 | Supported | Not Implemented |
| 121.101 | Undertake a thorough and credible investigation into the disappearance of Sombath Somphone and other cases of purported enforced disappearances. | Canada | 16.3 & 16.6 | Noted | Not Implemented |
| 121.102 | Conduct a thorough and credible investigation into all and any unresolved cases of disappearances of civil society workers in the Lao People's Democratic Republic. | New Zealand | 16.3 & 16.6 | Noted | Not Implemented |
| **Theme: Protection of the freedom of expression online, including restrictions placed on media through law and policy** | | | | | |
| 121.37 | Revise the Penal Code to make all new laws conform with international human rights standards, and repeal provisions of the law on media and the new decree on the Internet that criminalize basic human rights and subordinate individual rights to the interests of the state. | Sweden | 16.3 & 16.10 | Noted | Not Implemented |
| 121.135 | Decriminalize defamation and misinformation and remove all undue restrictions on freedom of expression from the Penal Code, the Law on Publications and the newly adopted Internet law in conformity with the country's international human rights obligations. | Latvia | 16.3 & 16.10 | Noted | Not Implemented |

| # | Recommendations | Country | SDGs | Response | Level of Implementation |
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| 121.139 | Ensure that the right to freedom of expression and its other international human rights commitments are upheld in any move to adopt a cyber law. | United Kingdom | 16.3 & 16.10 | Supported | Not Implemented |
| 121.140 | Review its decree on Internet-based information control and management to ensure citizens' rights to information and expression are respected. | Australia | 16.10 | Noted | Not Implemented |
| 121.141 | Ensure freedom of expression and media freedom, including Internet freedom by bringing its national legislation fully in line with international standards, including by decriminalizing defamation, misinformation and related offences in relevant national laws. | Estonia | 16.3 & 16.10 | Noted | Not Implemented |
| 121.142 | Re-examine recent legislation that limits dissemination of certain information via the Internet, including through social media. | New Zealand | 16.10 | Supported | Not Implemented |
| 121.143 | Promote the development of a free and open Internet by amending the Prime Minister's Decree, which appears to unduly limit the right to freedom of expression online. | United States of America | 16.10 | Noted | Not Implemented |
| 121.144 | Take measures to ensure that all the legislation, especially on press and media, including digital media, is fully aligned with its international human rights obligations. | Costa Rica | 16.3 & 16.10 | Supported | Not Implemented |
| 121.145 | Continue efforts to improve and facilitate access to the Internet and refrain from any restrictions on content other than permitted under international human rights law, in particular ICCPR. | Germany | 16.3 & 16.10 | Supported | Not Implemented |

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