



INDIGENOUS PEOPLES' RIGHTS IN LAO PDR

OVERALL CONTEXT

Lao PDR is the most ethnically diverse country in Southeast Asia with at least 240 subgroups recognized within 50 official ethnic groups, which are divided into 4 main ethno-linguistic groups: Lao Tai, Hmong-Lu Mien, Mon-Khmer, and Sino-Tibetan. Despite this rate of diversity and the high proportion of indigenous peoples (IPs) among the total population (estimated between 35-70 percent), the Lao government does not constitutionally recognize these ethnic groups as “indigenous peoples” and instead claims that all ethnic groups in Lao PDR have the same status. However, the Lao government voted in favour of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. The Lao government’s recent policies, focusing on promoting unity and a multi-ethnic nation, have reinforced the critical human rights situation of indigenous communities in the country, deprived of access to basic social services, health, education and denied meaningful participation in decision-making in the country. Moreover, forced evictions and land grabbing in the name of conservation, development and investments continues its encroachment with impunity. In this context, indigenous peoples’ rights, including the right to Free, Prior and Informed Consent (FPIC) significantly protected under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), are under serious threat currently in the country due to an inadequate legal framework and controversies in investment and development projects.

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

During the 2nd UPR cycle, the Government of Lao PDR received one recommendation from Estonia directly referring to the rights of indigenous peoples, which was to guarantee their rights and fully engage them in decision-making in matters that affect them. The government noted this recommendation. Lao PDR also received three recommendations on land-related rights, calling for the review of land concessions and elaboration of land policies in line with international standards and protecting customary land of persons affected by expropriation. These recommendations have been supported but not implemented. Other recommendations relating to the rights of indigenous peoples included intensifying efforts to promote inclusive growth, especially in rural and mountainous areas; ensuring all ethnic groups are treated equally with equal access to social services, and protecting the culture and language of ethnic groups in Lao PDR. The Government of Lao PDR accepted these recommendations. Analysis shows that Lao PDR has partially implemented the recommendation with respect to equal treatment of ethnic groups and providing equal access to social services to ethnic groups. However, it has failed to implement the recommendation in relation to protecting the economic, cultural and social rights of indigenous peoples.

REALITIES ON THE GROUND

Challenges

Challenge 1: There is a lack of adequate and meaningful consultation with IPs in decision-making processes affecting them:

The government has failed to ensure that IPs are consulted and have a chance to meaningfully participate in decision-making regarding development projects in line with their right of Free, Prior and Informed Consent (FPIC) protected under UNDRIP, the 1995 Mekong Agreement and national laws like the 2019 Decree on Environmental Impact Assessments. Decisions on these projects such as resettlement programmes and environmental impact assessment procedures are made through top-down, non-transparent strategies. As such, often development projects are more detrimental rather than beneficial for indigenous peoples and their lands.

Challenge 2: The domestic laws of Lao PDR do not recognize the customary land rights of IPs:

As per Article 17 of the 2015 Lao PDR Constitution and the 2003 Land Law, all lands in Lao PDR belong to the State. The lack of recognition of the people's rights to own land directly contradicts with the basic principle that the State's power is derived from its citizens.

Challenge 3: Land grabbing and land concessions in indigenous territories for development and investment projects are detrimental to the livelihoods of IPs in the area, resulting in violations to their right to an adequate standard of living:

- Forced eviction from indigenous lands: As IPs' customary land rights are not respected by the government, IPs often lose their lands through concessions granted by the Government to infrastructure development and investment projects like mining, hydropower, railways etc.

- Lack of access to effective remedies and resettlement programs: In the context of these land grabbing for development projects, IPs are denied effective remedies, which are culturally appropriate. They instead have to face different forms of harm including loss of their income and livelihood, threats to food security and health due to loss of fisheries, land degradation and environmental damage, social isolation and psychological trauma. Alongside poor resettlement conditions, compensation is often delayed or not paid at all. These conditions exacerbate IPs' vulnerability to human rights

Cases, Facts, Comments

In 2012, the government granted ancestral lands of the ethnic Nha Huen/Yahern people in the Southern Champasak province to a Lao based subsidiary of Olam International company for setting up of a commercial coffee plantation. Not only the villagers were not consulted and had no say in the grant of this concession but also, in October 2018, the company announced further expansion of its plantation in the province. Lack of consultation with IPs can also have life-risk consequences. In the case of the 2018 dam collapse villagers were not consulted and received no warning from the authorities about the collapse of the dam, resulting in 6,000 immediately affected persons and 30 deaths.

Proposed amendments to the 2003 Land Law illustrate that the government continues to ignore the vulnerability of indigenous peoples to land grabbing. The revision to the law requires all land ownership in Lao PDR to be proved by formal documentation by 2025 and also restricts the use of forest land. These changes would particularly impact indigenous communities that have been residing on customary lands without any formal proof of title. Using this law, the government can legally confiscate indigenous peoples' lands and grant them to investors to pursue development projects.

The construction of the Nam Theun 2 dam in 2010 resulted in the displacement of approximately 6200 persons belonging to indigenous groups. In 2017, as a result of hydropower development plans, 100 families were reported as victims of forced removal from indigenous lands.

In 2018, the collapse of a dam under Xe Pian-Xe Namnoy Hydropower Project displaced more than 4,000 people. The living conditions for about 700 families still living in temporary shelters are reportedly difficult, with the government's daily allowance not sufficient to secure food for displaced families. The project owners have not yet paid compensation for lost houses or land. Health problems exist throughout the camp, such as dengue and malnutrition, and water for daily bathing and drinking is not available. In January 2019, the dam investors informed they would compensate families of each of the 71 dead or missing a total amount of ten thousand dollars, which is considered insufficient and inadequate by the families.

Transboundary Impacts: Negative social and environmental impacts target also neighbouring



violation and extreme poverty. Further barriers to accessing effective remedies include heavy restrictions in Lao PDR on freedom of expression, assembly, association and civic space, which often leads to arrests, detention, ill-treatments and enforced disappearance for those protesting for IPs' rights. Further information can be found in the advocacy factsheet on Effective Remedy.

countries. For example, the Hongsa coal plant and mining project in Xayaburi province of the Northern Lao PDR operating since 2016, not only puts at risk the local population but also Thai communities living in Nan province. A complaint by the Thai community has been submitted to the National Human Rights Commission of Thailand (NHRCT) to investigate the transboundary impacts of the project).

Also, a newly opened hydropower dam in the lower Mekong River in Lao PDR has sparked protests from Thai villagers who claim it detrimental for their own livelihoods and for the environment, as evident by the persisting reduction of the river flow since the dam project began.

For further information, refer to the Business & Human Rights Factsheet and the Access to Effective Remedy Factsheet.

Challenge 4: Indigenous Peoples are discriminated in their enjoyment of economic and social rights, including in the access to adequate health, education, welfare, other social services in Lao PDR. Lao PDR does not have a functioning comprehensive social protection system, and people must often rely on networks based on kinship, village, ethnicity or patronage.

Reasons for IPs' particular vulnerability to poor access include the remoteness and inaccessibility of IPs' villages, language barriers in delivering services, poor infrastructure and long distances to the services, lack of information given to communities about available services and insufficient public expenditure on social services. As such, IPs account for the 93 percent of the poor in the country.

Even though the government has shown efforts to strengthen IPs' enjoyment of economic and social rights through policy and programmes such as the Education for All programmes and the Strategy Plan in Public Health Sector by 2020, in reality the situation on the ground shows access to basic services is still very limited in rural areas where the majority of IPs live.

As the Special Rapporteur on extreme poverty and human rights has argued after his visit in Lao PDR in March 2019, in one district with 78 villages, 22 were unable to access health care facilities in the rainy season due to poor infrastructure and far distances.

Denied access to adequate services is reflected also in the social expenditure of the government budget for 2017 below the targets: about 6.5 percent on health care and 13.4 percent on education instead of the planned 9 percent and 17 percent respectively.

Challenge 5: IPs are deprived of their basic right to preserve and promote their customs and cultures: The attention placed by the government in national development plans and poverty reduction strategies for solving critical economic and social conditions of IPs often outweighs the lack of attention on IPs' cultural needs and rights.

Development policies and commercial resource exploitation, which result in relocation and forest degradation, significantly limit IPs from accessing natural resources and engaging in traditional farming and agricultural activities, which are crucial parts of IPs' traditions and cultures.

The government's educational policy centred on Lao language instruction undermines and discriminates against indigenous languages. While the government justifies this strategy as a way to promote national unity and reduce educational inequalities, limited access to education for indigenous groups is also caused by a lack of teachers and the absence of the provision of education materials in local languages. As the Special Rapporteur on extreme poverty and human rights have pointed out in his 2019 report on Lao PDR that this is not just discriminatory, but it is a significant additional barrier to ethnic children's education.

A decree on better relocation schemes and new methods of production to increase productivity is currently under draft. Nevertheless, the decree fails to recognise the

rights of IPs to their lands, resources and traditional livelihoods, including schooling in their ethnic languages.

Challenge 6: Hmong ethnic group faces systemic discrimination that often leads to extreme violence:

Hmong people continue to experience systematic discrimination and violence from the government following their involvement in the “CIA’s Secret War” during the Vietnam War. Hmong individuals are specifically discriminated against and targeted by the State because the Lao government perceives them as anti-government.

Abuses against Hmong individuals includes acts of extreme violence such as acts such as bombing, extrajudicial killings and torture, as well as use of landmines and chemical weapons and substances that have caused. Recent evidence comes from an attack on 15 October 2018, which developed into three months of extreme suffering for the Hmong ChaoFa. This systematic violence often leads Hmong people to them seeking asylum outside Lao PDR in large numbers, including refugee camps in Thailand. As a result of their continuous displacement and the need for them to remain invisible to the government military forces, they are precluded from establishing permanent agricultural and housing structures, hence enjoying adequate standards of living, facing undernourishment, lack of basic sanitary conditions and extreme poverty.

Challenge 7: Indigenous women face multiple forms of discrimination and are denied special protection:

Indigenous women belong to the most vulnerable sectors of society due to their double marginalisation, being indigenous and women.

Among indigenous women, Hmong women face not only discrimination for their ethnicity and gender, but are also subjected to systematic persecution and severe human rights violations due to tensions between their community and the government.

For more information about indigenous women’s rights refer to UPR Factsheet on women’s rights.



RECOMMENDATIONS TO THE GOVERNMENT OF LAO PDR

- 1. There is a lack of adequate and meaningful consultation with IPs in decision-making processes affecting them.**
 - 1.1.** In line with Human Rights Committee Concluding Observation No. 40 (a) (2018), take all steps necessary to ensure that meaningful consultations are held with communities with a view to respect their Free, Prior and Informed Consent (FPIC) defined in UNDRIP, for development projects with an impact on their livelihood, lifestyle and culture.
- 2. The domestic laws of Lao PDR do not recognize the customary land rights of IPs.**
 - 2.1.** Review the national legal framework with the aim of incorporating provisions of the UN Declaration on the Rights of Indigenous Peoples, especially to the right to lands, territories and resources, to self- governance, and cultural integrity; and repeal/revise laws and policies that violate these collective rights. As recommended in the Joint UPR Submission (2019) by Manushya Foundation and AIPP on the situation in Lao PDR, this should include recognition and protection from the Lao government of indigenous customary land rights.
- 3. Land grabbing and land concessions in indigenous territories for development and investment projects are detrimental to the livelihoods of indigenous peoples in the area.**
 - 3.1.** Ensure that relocation is carried out in accordance with relevant international standards, in particular the principle of non-discrimination, the right to a dignified life as noted in the Human Rights Committee Concluding Observation No. 40 (b) (2018).

3.2. Provide effective remedies for loss of livelihoods, environmental damage and land degradation taking into account IPs' traditional lifestyles, including fair and adequate compensation.

3.3. As suggested in the Report of the Special Rapporteur on extreme poverty and human rights section 32 (2019), ensure that authorities and investors engaging in development projects over indigenous areas focus on assessing whether potential projects are justified on general welfare grounds, taking into consideration both their intended development benefits as well as the anticipated magnitude and impacts of physical and economic displacement that it will cause. This includes engaging in social and environmental impact assessments prior to land concessions and permissions of development projects.

3.4. In line with Germany's UPR recommendation made during the 2nd UPR Cycle (2015), ensure in the elaboration and implementation of the national land policy that economic, social and cultural as well as civil and political rights of all affected persons are fully respected, including by applying international standards such as the guidelines on land tenure and on responsible investment in agriculture of the Food and Agriculture Organization of the United Nations, in particular by providing full, adequate and effective compensation for expropriations and by recognizing and protecting customary land rights.

4. Indigenous Peoples are discriminated in their enjoyment of economic and social rights, including in the access to adequate health, education, welfare, other social services in Lao PDR.

4.1. Promote governments' efforts to ensure respect for economic and social rights for indigenous peoples in accordance with the International Covenant on Economic, Social and Cultural Rights, including the right to access health care, education, welfare and economic opportunities that can secure their traditional livelihoods.

4.2. Increase public spending on health, education and other social services targeted for rural and indigenous ethnic communities and take special measures to overcome language obstacle in delivery of services.

4.3. Ensure the decree on ethnic affairs recognize the rights of ethnic groups, including to their lands and resources and traditional livelihoods in line with applicable international human rights standards such as the UNDRIP.

5. Indigenous peoples are deprived of their basic right to preserve and promote their customs and cultures.

5.1. Respect IPs' cultural rights in line with Article 3 of UNDRIP on IPs' freedom to pursue their form of economic, social and cultural development. As such, their cultural traditions and customs should be not undermined through unsustainable development projects or claims of national unity engaged by the Government. For instance, cultural impact assessments or open dialogues with IPs should be promoted when dealing with development projects and relocation schemes.

5.2. Undertake measures to preserve culture heritage of ethnic groups, including their languages through programmes such as mother-tongue based education.

5.3. Promote use of ethnic languages for education in IPs areas to enhance educational performances and literacy.

6. Hmong ethnic group faces systemic discrimination that often leads to extreme violence.

6.1. Cease the persecution of indigenous peoples, particularly members of the Hmong ethnic group, including their arbitrary arrests and violent attacks, and provide full reparation to victims or their families in accordance with Human Rights Committee Concluding Observation No. 40 (c) (2018).

7. Indigenous women face multiple forms of discrimination and are denied special protection.

7.1. In line with CEDAW Concluding Observation No. 46 (2018) and with its general recommendation No. 34 (2016), ensure that indigenous women receive greater protection and attention, particularly with respect to their vulnerable position within development projects, as well as to the access to information about reproductive and health rights.



UPR 2nd CYCLE RECOMMENDATIONS

#	Recommendations	Country	SDGs	Response	Level of Implementation
Theme: Participation in decision-making that affect indigenous peoples					
121.191	Acknowledge and guarantee the indigenous peoples' rights, including by fully engaging indigenous peoples of the country in decision-making in all the matters that affect them.	Estonia	16.7	Noted	Not Implemented
Theme: Customary Land of Indigenous Peoples and Right to an Adequate Standard of Living					
121.170	Ensure in the elaboration and implementation of the national land policy that economic, social and cultural as well as civil and political rights of all affected persons are fully respected, including by applying international standards such as the guidelines on land tenure and on responsible investment in agriculture of the Food and Agriculture Organization of the United Nations, in particular by providing full, adequate and effective compensation for expropriations and by recognizing and protecting customary land rights.	Germany	1.4 & 2.3	Supported	Not Implemented
121.171	Enforce the moratorium on new land concessions announced by the Government of the Lao People's Democratic Republic in June 2012 and reform the current system for the management of land leases and concessions.	Poland	1.4 & 2.3	Supported	Not Implemented
121.172	Review existing land concessions and cancel or sanction those found to be violating the law.	Sweden	1.4 & 2.3	Supported	Not Implemented
Theme: Racial Discrimination in Indigenous Peoples' enjoyment of economic and social rights, including in the access to adequate health, education, welfare, other social services in Lao PDR					
121.84	Ensure that all ethnic groups are treated equally and have equal access to social services, including health and education.	Ghana	10.3	Supported	Partially Implemented
121.178	Continue the implementation of ongoing national policies to guarantee for the multi-ethnic people to quality education.	Democratic People's Republic of Korea	4	Supported	Not Implemented
Theme: Cultural Rights					
121.187	Increase efforts to promote and protect the cultural rights of the Lao people to preserve the national culture and the cultures and languages of ethnic groups in the Lao People's Democratic Republic	Cambodia	11	Supported	Not Implemented

REFERENCES

Joint-submission to the UPR process for Lao PDRs' Third UPR Cycle by Manushya Foundation and Asia Indigenous Peoples Pact to examine the compliance of the Lao Government with its recommendations related to right to development, to political framework and good governance, to participate in public affairs, to an adequate standard of living and to effective remedy, (July 2019)

The Submission to the UN Special Rapporteur (UNSR) on Extreme Poverty and Human Rights prior to his visit to the Lao People's Democratic Republic, (March 2019)

United Nations, International Covenant on Civil and Political Rights (ICCPR), Human Rights Committee, *Concluding observations on the initial report of the Lao People's Democratic Republic*, CCPR/C/LAO/CO/1, (23 November 2018)

Report of the UNSR on Extreme Poverty and Human Rights, A/HRC/41/39/Add.2 (2019)

United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding observations on the combined eighth and ninth periodic reports of the Lao People's Democratic Republic*, CEDAW/C/LAO/CO/8-9, (2018)

Unrepresented Nations and Peoples Organization (UNPO), *Alternative Report Submitted to the UN Committee on the Elimination of All Forms of Discrimination Against Women Lao People's Democratic Republic*, (October 2018)



NOTES



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About Manushya Foundation


Founded in 2017, Manushya Foundation serves as a bridge to engage, mobilise, and empower agents of change by: connecting humans through inclusive coalition building and; by developing strategies focused at placing local communities' voices in the centre of human rights advocacy and domestic implementation of international human rights obligations and standards.

Manushya Foundation strengthens the solidarity and capacity of communities and grassroots to ensure they can constructively raise their own concerns and provide solutions in order to improve their livelihoods and the human rights situation on the ground.

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