



2018 LAW ON RESETTLEMENT AND VOCATION IN LAO PDR

OVERALL CONTEXT

In August 2018, the Law on Resettlement and Vocation was passed in Lao PDR to replace the 2016 Decree 84, “Decree on Compensation and Resettlement Management in Development Projects” on the issue of resettlement management. The law is designed to manage and monitor resettlement to ensure that the affected people are provided with residential and production land and occupation with the wider goal to address illegal relocation, poverty and disrupted livelihoods. Nevertheless, the Law on Resettlement and Vocation contains different provisions that reflect systematic violations of human rights and fundamental freedoms protected under different international human rights treaties, including the International Convention on the Elimination of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the UN declaration on the Rights of Indigenous Peoples (UNDRIP). The significance of these human rights violations questions the effectiveness of this newly implemented framework for resettlement in Lao PDR.

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

During the 2nd cycle of UPR recommendations, the government of Lao PDR received only 4 recommendations indirectly related to the Law on Resettlement and Vocation: since this legal text was passed only in 2018, no recommendation mentions it directly, but rather addresses the issue of resettlement in general. Among the only 4 relevant recommendations, recommendation no. 121.170 (Germany) names clearly the issue of resettlement, calling for the elaboration and implementation of national land policy which would respect the rights of the people affected, “by providing full, adequate and effective compensation for expropriations and by recognizing and protecting customary land rights”. In addition to this, two other recommendations target respectively the protection of indigenous peoples’ rights (recommendation no. 121.191, Estonia) and freedom of expression (recommendation no. 121.136, Canada). Finally, recommendation no. 121.13 (Finland) addresses the need to respect and promote international human rights conventions and harmonize the national legislation accordingly. The government has accepted all recommendations except for the one on indigenous peoples’ rights. However, analysis shows that Lao PDR has failed to implement all of the recommendations related to the field of resettlement, as evident from the decision to pass the new Law on Resettlement and Vocation despite several key concerning provisions, which are hereby developed thanks to the support of an analysis of the law by Mekong Watch.



Challenges

Challenge 1: Objective of the Law (Article 1): Article 1, defining the scope and the objective of the Resettlement Law, specifies that it applies to “Lao multi-ethnic persons only” to solve “illegal relocation problems, reduce poverty and improve livelihoods”. This definition relies on the controversial term “Lao multi-ethnic persons” that leaves ambiguity and gives opportunity to discriminate against and deny the vulnerability of certain ethnic minority groups and indigenous peoples.

Challenge 2: Resettlement Categories (Articles 11-16): these articles explain the application of the law between two categories of resettlement: (i) “general” forms of relocation, meaning the reallocation of persons living in remote or underdeveloped areas at high risk for them to live and make a living, and (ii) “specific” forms of resettlement, related to the resettlement of people affected by development projects. While it is important to define different situations of resettlement, the categories explained in these articles provide potential harm to the people affected by the resettlement.

Challenge 3: Resettlement Areas requirements (Articles 18-19): these articles discuss the requirements to consider when selecting the resettlement areas. This includes labour- needed areas such as industrial areas and sites of development projects like hydropower projects; as well as areas chosen to develop from villages to towns. This series of requirements seem to work against, rather than in favour of protecting the rights and the wellness of the people affected by resettlement programs.

Potential Negative Impacts

Lao PDR policy emphasizes the multi-ethnic nature of the nation, which is significantly controversial. On one side it tries to emphasises that Lao PDR is characterised by a significant number of ethnicities, each with its own traits that must be acknowledged and respected without discrimination. On the other side, the government uses this term to try to push for a localized version of national unity among the people of Lao PDR. The definition of “Lao multi-ethnic persons” is therefore vague and unclear, open to manipulation and different interpretations. The consequences of this is that, by generalising and undermining differences, vulnerabilities of certain ethnic and indigenous groups can be undermined or discriminated.

The category of “general resettlement” reflects denied consideration of cultural/ancestral connections people, in particular indigenous peoples, may have to their land, and of the related consequences of displacement.¹ This article therefore challenges freedom from discrimination in aspects of economic, cultural and social life (ICERD, Art.5) and the right not to be removed from customary lands (UNDRIP, Art. 9-12, 19-29).

Moreover, with the enactment of the law, there is a strong emphasis and acceptance of displacement in favour of development projects, like hydropower projects, mining, infrastructure and special economic zones that undermines the negative effects these may have on the affected people. Finally, both categories follow a top-down approach that allows little space for the people affected to participate in decision-making that concern them and discuss key concerns depending on each context. The right to access effective remedy for all (ICERD, Art. 6) is therefore under question. These fixed structures increase the risk of failing to provide fair and adequate compensation and full restoration of livelihoods for people affected in both general and specific resettlements.

These articles problematically seem to represent the interest of stakeholders in development projects, businesses and the Lao government - including the significant benefit of manpower - against that of the resettled families, such as the right to work in an occupation freely chosen (ICESCR, Art. 6) or the respect for mental and physical health and wellbeing (ICESCR, Art. 12). Moreover, the requirements undermine freedom from discrimination and the right to a dignified life that respects traditions and norms such as urban structures and livelihoods specific to different groups and regions of

¹ Mekong Watch, *Human Rights Concerns Re: Law on Resettlement and Vocation in Lao PDR* (2018), November 2019.



Lao PDR (ICESCR, Art. 15). In addition to this, as suggested by Manushya Foundation's Submission to the UN Special Rapporteur on Extreme Poverty and Human Rights (2019), articles 18 and 19 express top-down and non-transparent procedures, which deepen the issue of lack of consultation for people affected by resettlement and therefore ineffective access to remedy.

Challenge 4: Compensation for Damages caused by Resettlement (Article 22): this article states that in cases of project-induced displacement, compensation for loss of land is considered only for people in possession of lawful property documents, leaving behind indigenous peoples and ethnic groups living on ancestral lands without land titles. This article implies a limited access to compensation for resettled families and individuals, violating fundamentally basic human rights in international human rights standards.

Considering that large families lack formal land titles, especially indigenous peoples living on their ancestral customary lands, the law violates the right to a dignified life and effective remedy and reparation for all (ICERD, Art.6), freedom from discrimination in the aspects of economic, social, cultural and political life (ICERD, Art.5), and the right of indigenous peoples not to be removed from customary lands (UNDRIP, Art. 9-12, 19-29). It further denies the vulnerability of families which have been resettled in the past for other projects and therefore lack official titles.²

This Law increases the risk of human rights violations and environmental exploitation by the government and the private sector during development projects or business plans: by reducing the cost of resettlement programs and increasing the likelihood of land grabbing, Article 22 favours the interests of these stakeholders against the respect to the most significant international human rights treaties and declarations and clearly showcases the intention of the Lao government to put profits over people and nature. Moreover, it further increases the chances of poorly planned resettlement programs, with lack of compensation and loss of livelihood.

Challenge 5: Handover and End of resettlement (Articles 27-28); Vocation (Articles 34-36); Rights of Project Developer (Article 44): these various articles define the guidelines for handover and the end of the resettlement programs, alongside arrangements for infrastructure and selection of suitable vocation for people. Development companies are required to “self-monitor” and “self-inspect” cases of displacement from their development projects until the handover is undertaken and the project developers are relieved from any duties.³ The problem with these articles is that it heavily relies on self-assessment and monitoring of development companies to implement, elaborate and monitor resettlement programmes, which could result in discriminatory and unjust practices.

The reliance on autonomous assessment and monitoring of resettlement programs by the related development companies, paired with the lack of human rights safeguards, including effective grievance mechanisms or independent monitoring bodies, significantly increases the chances of violation of human rights and lack of remedy. Firstly, this can lead to a weak implementation of compensation and restoration for the people affected. Secondly, the right of project developer to be relieved from responsibility at the end of the resettlement increases the long-term vulnerability of the resettled families in cases of poor handover and exit strategies and creates an environment of impunity. The accountability of the project developer is necessary until after the end of resettlement to guarantee fair compensation and sustainable restoration of livelihoods.

² Mekong Watch, 2019.

³ Mekong Watch, 2019.



Challenge 6: Rights, obligations and prohibition for persons receiving resettlement and vocation (Articles 46-49, 53): among the rights and obligations explained in these articles, resettled people have the 'restricted right' to seek consideration on "resolving issues related to the development project", to be invited to participate in consultations and collaborate in the resettlement program only under the circumstance of a submitted written request that is accepted by the project developer. The articles also prohibit resettled persons from engaging in any action that could be seen as obstructing the programme, as well as from returning to their former land or move to a new territory without approval from the government, and from providing "inaccurate information" about their lost assets or causing disagreements among those within their new village.

Under these terms of rights, obligations and prohibitions, people affected by resettlement are subject to several restrictions to their human rights and freedoms. Regarding their given rights, these are restricted to the permission of the project developer, undermining people's freedom of expression and their participation in decision-making regardless of their position in the frontline of resettlement programs. Alongside this, the chosen prohibitions significantly violate freedom of expression and association (ICCPR, Art. 19 and 22), freedom of movement (ICCPR, Art. 12), the Free, Prior and Informed Consent (FPIC) of indigenous peoples (UNDRIP, Art. 32) and the right of ethnic minorities and indigenous peoples to access areas related to their cultural and subsistence activities (ICERD, Art.5) (ICCPR, Art. 2, 12, 17 and 27) (ICESCR, Art. 2, 12, and 5).

Challenge 7: General Prohibitions (Articles 50-52): these articles claim that any individual or organization is prohibited from undertaking actions or provide information that could "disseminate against policy direction, manipulate, incite, threatening, withhold, create obstacles or obstruct the implementation of resettlement displacement program and against the project owner or project developer from performing the project".

Under these terms, freedom of expression and association is restricted for any individual or organization interpreted as "hostile" to the project owner or the government. This reduces the chances of exposing the human rights abuses, implementation issues, including inadequate access to remedy, to which resettled families are subject. The interests and goals of the business stakeholders and the government seems to be favoured over the protection of the affected people and the environment.

Challenge 8: Measures against violators and sanctions (Articles 77-82): these articles discuss the provisions for penalizing the breaking of the Law of Resettlement and Vocation. Depending on the severity of each case, individuals or organizations in violation of the law shall be "educated, punished, fined, sentenced to civil measure or criminal offences".

The phrasing of these measures as "depending on the severity of each case" leaves ambiguity and freedom of manipulation of the judicial system that can be used by the project owners and the companies involved to silence cases that expose human rights violations, justified as protecting the Law on Resettlement and Vocation. Furthermore, the phrasing of these articles may create a chilling effect on affected communities and people who would censor themselves from reporting human rights abuses, unfair compensation and relocation.



RECOMMENDATIONS TO THE GOVERNMENT OF LAO PDR

1. Objective of the Law (Article 1)

1.1. Review the definition of the objective and scope of the Law to avoid ambiguity in applicability, including the controversial and discriminatory use of the law.

2. Resettlement Categories (Articles 11-16)

2.1. In line with the Human Rights Committee's Concluding Observation 6 (2018), review the definition of resettlement categories to ensure that they respect international human rights standards, including the freedom from discrimination, the right to effective remedy and the right not to be removed from customary lands (ICERD Art. 5, UNDRIP Art. 9-12, 19-29).

2.2. Increase the involvement of affected communities in the process of resettlement to guarantee effective remedy and adequate restoration of livelihoods (ICERD, Art.5, UNDRIP Art. 9-12, 19-29). This includes communicating and discussing methodologies involved in the determination of resettlement and compensation.

3. Resettlement Areas requirements (Articles 18-19)

3.1. Increase the involvement of affected communities in the process of selecting resettlement areas to ensure that remedy and restoration of livelihoods are in compliance with international human rights standards (ICESCR Art. 6 and 12; ICERD, Art. 5; UNDRIP, Art. 9-12, 19-29). , including their involvement in communicating and discussing methodologies involved in determination of resettlement and compensation.

4. Compensation for Damages caused by Resettlement (Article 22)

4.1. In line with Article 4 and 6 of ICERD and with articles 9-12 of UNDRIP, remove the restrictions on resettlement for people without official land titles, in order to provide equal access for all, and effective compensation for damages caused by resettlement.

5. Handover and End of resettlement (Articles 27-28); Vocation (Articles 34-36); Rights of Project Developer (Article 44)

5.1. In line with the Human Rights Committee's Concluding Observation 7 (2018), review the legal text to require the establishment of an independent human rights body that can monitor, promote and protect the rights of resettled families, as a precondition for every step of resettlement programmes. This includes an independent evaluation of the project developer's handover and exit strategies before approval.

5.2. Review the project developer's conditions of handover and end of resettlement programs in order to promote accountability and sustainability of the resettlement program in the long term.

6. Rights, obligations and prohibition for persons receiving resettlement and vocation (Articles 46-49, 53)

6.1. In line with the Human Rights Committee's Concluding Observation 6 (2018), the rights, obligations and prohibitions defined by the national law on resettlement management must respect the standards set in international human rights treaties and declarations. This includes primarily the respect for freedom to return to their homeland (ICCPR, Art. 12; UNDRIP, 9-12, 19-29), as well as the respect for freedom of expression (ICCPR, Art. 19).

6.2. Ensure the unrestricted rights to participation, consultation and consent in decision-making for affected communities throughout the different stages of the resettlement programs, to ensure the respect for international human rights standards and promote adequate solutions accordingly.

6.3. In line with the Paris Principles (Art.2), include in the legal text the need to establish an independent grievance mechanism to ensure that the rights of the resettled families are protected in line with international standards.

7. General Prohibitions (Articles 50-52)

7.1. Review the general prohibitions to ensure that they respect international human rights standards, in line with the Human Rights Committee's Concluding Observation 6 (2018). In specific, prohibitions must respect freedom of expression and the right to receive and impart information (ICCPR, Art.19) to ensure that human rights violations in resettlement areas can be freely exposed and shared.

8. Measures against violators and sanctions (Articles 77-82)

8.1. In line with the Human Rights Committee's Concluding Observation 28 (c) (2018) on the principles of legality and proportionality, clarify and provide more structural guidelines to measure the severity of the violations and the related punishments and sanctions.

UPR 2nd CYCLE RECOMMENDATIONS

#	Recommendations	Country	SDGs	Response	Level of Implementation
Theme: Compliance of National legislation with International Human Rights Obligations of Lao PDR					
121.3	Ratify the remaining international human rights conventions and continue without delay to harmonize its national legislation with the international obligations of the Lao People's Democratic Republic's under the respective human rights conventions, and implement them in policy and practice and strengthen its legal complaints system to ensure that most vulnerable groups have effective access to justice.	Finland	16.3	Accepted	Not Implemented
Theme: Indigenous peoples' rights					
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: National land policy and right to adequate living and compensation for affected persons					
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	Accepted	Not Implemented
Theme: Freedom of expression					
121.136	Fully implement its obligations under ICCPR to respect and ensure the right to freedom of expression.	Canada	16.10	Accepted	Not Implemented



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NOTES



MANUSHYA

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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.

CONTACT US:

 5/4 Thanon Sutthisan Winitchai 1, Samsen Nai,
Phayathai, Bangkok 10400, Thailand

 contact@manushyafoundation.org

 +66 (0) 945-811-827

 www.manushyafoundation.org

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