



# BUSINESS AND HUMAN RIGHTS IN LAO PDR



## OVERALL CONTEXT

Lao PDR is the most ethnically diverse country in Southeast Asia with at least 240 subgroups recognized within 49 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 2<sup>nd</sup> 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 2005 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

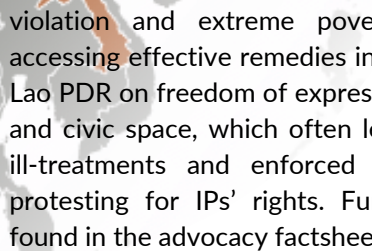
In 2012, the government granted ancestral lands of the ethnic Nha Huen/Yahern people in the Southern Champasak province to a Lao based subsidiary of Olam International company for setting up of a commercial coffee plantation. Not only the villagers were not consulted and had no say in the grant of this 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. Corruption and its contribution to increasing inequality.

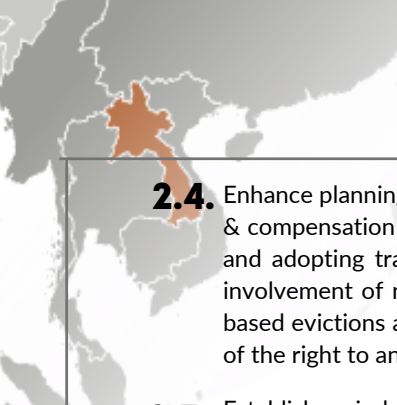
**1.1.** In line with observation no. 70 of the UN Special Rapporteur on extreme poverty and human rights (2019), corruption must be tackled systematically at all levels of government. This includes providing full disclosure of existing tax and tariff exemptions provided to investors, as well as full disclosure of public debt and ensure transparency of information, including up-to-date social and economic statistics, budgetary information, hydropower contracts, and land concessions, in order to achieve good governance and informed policy-making.

### 2. Infrastructure development projects increase inequality, and are damaging to the human rights of local communities, further putting them in situation of poverty.

**2.1.** Amend the 8th National Socio-Economic Development Plan to reduce heavy reliance on hydropower, large infrastructure and land concessions so as to re-evaluate the country’s hydropower strategy and diversify investments for local development and employment opportunities, in line with recommendations in the report of the UN Special Rapporteur on extreme poverty and human rights on his visit to the Lao People’s Democratic Republic.

**2.2.** Develop a National Action Plan on Business and Human Rights, to implement the UN Guiding Principles on Business & Human Rights (UNGPs) on the ground in Lao PDR, in order to regulate corporate activity and reduce their negative incidence on poverty.

**2.3.** Ensure redistribution of development benefits, particularly to those affected by development projects through a shared value approach, to ensure that the success of the activities of enterprises is linked to the value it produces for society by addressing the challenges it faces in accordance with the right to equality and the right to development as enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the Declaration on the Right to Development.

- 
- 2.4.** Enhance planning for development and investment projects to refrain from forced displacement and improve resettlement & compensation plans for land expropriation by providing effective access to information to the concerned communities, and adopting transparent and equitable approach to determine resettlement and compensation in a fair manner with involvement of neutral third parties as needed, in accordance with the Basic principles and guidelines on development-based evictions and displacement as set out in the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living.
  - 2.5.** Establish an independent monitoring body for social, environmental & human rights impacts of development projects and investments, including for people subjected to involuntary resettlement and loss of lands, in line with recommendation 90 (e) in the report of the UN Special Rapporteur on extreme poverty and human rights (2019) on his visit to the Lao People's Democratic Republic.
- 3. Lack of access to information & failure to meaningfully consult with affected communities on decisions related to development projects that affect them.**
- 3.1.** In line with recommendation 40 (a) of the Human Rights Committee (2018), Lao PDR should take all steps necessary to ensure that meaningful consultations are held with communities with a view to obtaining their free, prior and informed consent for development projects with an impact on their livelihood, lifestyle and culture.
  - 3.2.** Ensure that communities participate in any process concerning their relocation, that such relocation is carried out in accordance with relevant international standards, in particular the principle of non-discrimination, the rights to be informed and consulted, to an effective remedy and to the provision of adequate relocation sites that take due account of their traditional lifestyle and, where applicable, their right to ancestral land; and provide adequate compensation when relocation is not possible.
  - 3.3.** Improve process for identification, design, impact assessments and impact mitigation measures of development and investment projects to ensure transparency, participation and consent of and accountability to local communities in line with international human rights standards.
- 4. Unsustainable development in the country has serious environmental impacts.**
- 4.1.** In line with recommendation 90 (e) of the UN Special Rapporteur on extreme poverty and human rights (2019) on his visit to the Lao People's Democratic Republic, promote the establishment of an independent monitoring body to assess, monitor and regulate the environmental impacts of natural resource-related and development infrastructure projects, such as hydropower projects. As suggested by the UN special Rapporteur in observation no. 39 (a) (2019), this includes a cumulative assessment of the environmental, ecological and human rights impacts, including on livelihood and food security for affected people and areas.
- 5. Unsustainable development in the country has serious environmental impacts.**
- 5.1.** In line with observation 94 of the UN Special Rapporteur on extreme poverty and human rights (2019), ensure that the revised land law protects customary land tenure, including for those relying on communal lands and provide for greater ownership of rural women such as through a customary land titling program (covering forest lands as well) undertaken in conjunction with the concerned communities, particularly women.
  - 5.2.** Strictly enforce the moratorium on new land concessions until review of the existing concessions through a public and transparent process with meaningful participation of the concerned communities is undertaken to terminate or bring into compliance improperly executed or corrupt concessions.
  - 5.3.** Cease works on ongoing and new large-scale hydropower projects until a comprehensive review of those projects are undertaken for safety, impacts vis-à-vis benefits, including to local communities, and respect of rights and environmental protection.
  - 5.4.** In line with observation no. 35 of the UN Special Rapporteur (2019), improve resettlement planning for development and investment projects to refrain from involuntary resettlement and improve land valuation methods for expropriated lands by communicating methodologies involved in determination of resettlement and compensation, and undertaking those in a fair manner through the involvement of neutral third parties.
- 6. Effective remedies for harms suffered from development projects.**
- 6.1.** In line with the UPR recommendation made by Germany and supported by the Lao government during its 2nd UPR cycle in January 2015, aimed to ensure that 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.
- 7. International Finance institutions and foreign Governments provide funds for large-scale infrastructure projects without undertaking a proper assessment of the social, environmental and human rights impact of these projects.**
- 7.1.** According to the recommendations in the report of the UN Special Rapporteur on extreme poverty and human rights (2019), development partners should reckon with their own responsibilities for the lack of progress in relation to poverty elimination and human rights. Multilateral and bilateral lenders should give more consideration to the harms caused by foreign investment and ensure that projects bring greater benefit to the Lao people.



## UPR 2<sup>nd</sup> CYCLE RECOMMENDATIONS

#	Recommendations	Country	SDGs	Response	Level of Implementation
<b>Theme: Participation in decision-making that affect indigenous peoples</b>					
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
<b>Theme: Customary Land of Indigenous Peoples and Right to an Adequate Standard of Living</b>					
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
<b>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</b>					
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
<b>Theme: Cultural Rights</b>					
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

---



# MANUSHYA

Empowering Communities | Advancing Social Justice

## 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](mailto:contact@manushyafoundation.org)

 +66 (0) 945-811-827

 [www.manushyafoundation.org](http://www.manushyafoundation.org)

 [facebook.com/ManushyaFdn](https://facebook.com/ManushyaFdn)

 [twitter.com/ManushyaFdn](https://twitter.com/ManushyaFdn)