

SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS

ON THE SITUATION
IN LAO PEOPLE'S
DEMOCRATIC
REPUBLIC (PDR)



MARCH 2019



MANUSHYA

Empowering Communities | Advancing Social Justice



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Citation:

**Submission to the UN
Special Rapporteur on Extreme
Poverty and Human Rights on the
situation in Lao People's Democratic
Republic (PDR), for his official country
visit from 18 to 28 March 2019, (March 2019)**



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SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS ON THE SITUATION IN LAO PEOPLE'S DEMOCRATIC REPUBLIC (PDR)¹

POPULATION: 6.86 million¹

GDP PER CAPITA: 2,457.4²

POPULATION BELOW THE POVERTY LINE: 23%³

HUMAN DEVELOPMENT INDEX: 0.601⁴

GENDER INEQUALITY INDEX: 0.461⁵

ETHNIC BREAKDOWN: there are 49 official ethnic groups⁶, divided into four main ethnic groups, "Lao-Tai, Hmong-Lu Mien, Mon-Khmer and Chine-Tibetan", amounting to approx. 34% of the population⁷

POPULATION DEMOGRAPHIC WITH HIGHEST INCIDENCE OF POVERTY: Indigenous peoples who make up 93% of the poor in the country⁸

POPULATION THAT DEPENDS ON AGRICULTURE AS MAIN SOURCE OF INCOME: 72%⁹

LEVEL OF FREEDOM IN THE COUNTRY: 12 out of a score of 100¹⁰

CORRUPTION PERCEPTION INDEX: Lao PDR ranks 132 out of 180 countries¹¹

1. INTRODUCTION

According to the Lao government, '*Lao PDR is a poor, landlocked and one of the least developed countries*', which economy depends heavily on investments.¹² With growth rate at 6.7 percent in 2017,¹³ the Lao People's Democratic Republic (PDR) has seen tremendous economic expansion over the years. In 2018, Lao PDR fulfilled the eligibility criteria to graduate from Least Developed Country (LDC) status and could be removed from the list in 2024, if it meets the eligibility criteria again in 2021.¹⁴ Despite the impressive growth seen in the economy, there is an inequality in income with it being directed towards a small percentage of the population.¹⁵ This inequality is seen not just in the distribution of wealth, but also as a result of inequality in opportunity and access to welfare measures. Statistically, this translates into an inequality of income at 20.3 percent, an inequality of life expectancy at 23.1 percent, and an inequality of education at 34.1 percent.¹⁶ The poorest population in the country lives in remote areas with no public infrastructure facilities and little access through transportation.¹⁷ There is also very little done to improve these facilities, with government investing more on military expenditure than on public services, such as health which is only 2.8 percent of the GDP.¹⁸ There also exists a higher level of poverty amongst the rural population, with disparities faced by certain populations including indigenous peoples, women, and children.¹⁹ As a result of poor access to basic facilities and public services these groups have fewer opportunities, translating into a lack of involvement in the civil and political space of society.

¹ This submission is made by Manushya Foundation for the Special Rapporteur's country visit to Lao PDR in March 2019 based on its engagement with civil society activists and advocates in country and desk review.



2. DEFINITION OF POVERTY IN LAOS

According to government data, Lao PDR has seen a reduction in the population living below the poverty line from 46 percent in 1992 to 23 percent in 2015.²⁰ Nevertheless, poverty remains a problem with the biggest hurdle being the method of calculation of those below the poverty line. In 2017, the poverty line was revised by the government of Lao PDR from the standards set in the 2013 Prime Ministerial Decree to extend beyond an analysis only of the income of persons; to analyse the ability to afford food, clothing, shelter, healthcare, access to basic education and other public services.²¹ **However, this ignores the multidimensional nature of poverty that goes beyond income and access to basic resources and services, without taking into consideration socio-cultural differences and qualitative aspects such as discrimination, stigma, isolation and powerlessness that may contribute to poverty, in the country.**²² These factors must be taken into consideration, while determining the poverty line in Lao PDR.

3. INTERNATIONAL & NATIONAL LEGAL AND POLICY FRAMEWORKS

3.1. International Human Rights Standards

Lao PDR has ratified seven of the nine core international human rights instruments²³:

- Convention on the Elimination of All Forms of Racial Discrimination (1969) – ratified on 22 February 1974
- Convention on the Elimination of All Forms of Discrimination Against Women (1979) – ratified on 14 August 1981
- Convention on the Rights of the Child (1989) – ratified on 8 May 1991
- Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts (2000) – ratified on 20 September 2006
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000) – ratified on 20 September 2006
- International Covenant on Economic, Social and Cultural Rights (1966) – ratified on 13 February 2007
- International Covenant on Civil and Political Rights (1966) – ratified on 25 September 2009
- Convention on the Rights of Persons with Disabilities – ratified on 25 September 2009
- Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment – ratified on 26 September 2012
- International Convention for the Protection of all Persons from Enforced Disappearance (ICPED) – signed on 29 September 2008
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) – not ratified by Lao PDR

3.2. National Legal & Policy Framework

3.2.1. Political context

Lao PDR is a one party communist republic led by the Lao People's Revolutionary Party (LPRP). The President, Mr. Bounngang Vorachit, is the head of state, General-Secretary of the LPRP, and leader of the country. According to the 2015 Amended Constitution, the National Assembly (NA) is the highest organisation of state power with control over fundamental issues such as law-making. However, the elected National Assembly generally espouses the will of the one State political party. Elected by Lao citizens, NA members, in turn, elect the President to five-year term. The NA also has the procedural duty of appointing and dismissing the posts of Vice President, Prime Minister, Deputy Prime Minister, President of the People's Supreme Court (the highest court in Lao PDR), and President of the Office of the Public Prosecutor (OPP). As the main actor in development, the government led by the Prime Minister, Mr. Thongloun Sisoulith, defines the country's economic orientation, strategies, and policies, with very little input from civil society and NPAs (non-profit associations).



3.2.2. Constitutional provisions and laws protecting human rights in Lao PDR

Chapter IV of the 2015 Lao Constitution²⁴ provides for the fundamental rights of Lao citizen, with article 34 stipulating that the '*State recognizes respects, protects and guarantees human rights and fundamental rights of the Lao citizens in accordance with the law*', and article 35 providing for equality before the law. The Chapter IV also guarantees the right to vote and right to be elected (article 36), equal rights in the political, economic, cultural and social fields and in family affairs (article 37) between both genders, right to education (article 38), right to work (article 39), freedom of movement (article 40) and freedom of speech, press and assembly (article 44), and the right to file complaints and petitions (article 41), among other fundamental rights.

Further, the legal and policy framework provides for protective laws and policies, including the following most relevant ones in the context of tackling poverty²⁵:

- Law on Anti-Trafficking in Persons (2016)
- The Law on Preventing and Combatting Violence against Women and Children (2015)
- Amended Labour Law (2014)
- Law on Protection of the Rights and Interests of Children (2006)
- Law on Development and Protection of Women (2004)
- 8th National Socio-Economic Development Plan (2016-2020)²⁶
- Decree 112/PM on Environmental Impact Assessments (2010)²⁷, in particular article 7 providing for the '*rights and duties of project affected people, and of other stakeholders*'; and article 8 guaranteeing their right to participation at different stages of the EIA.

However, these protective laws are poorly enforced and implemented on the ground, leading to the marginalization and exclusion of rural communities and indigenous peoples, already living in poverty.

3.2.3. Constitutional provisions and laws restricting human rights in Lao PDR, exacerbating poverty

2015 Lao Constitution: While the Constitution guarantees the realization of fundamental rights, it does so as long as Lao citizen, who have the obligation to respect the Constitution and the laws of the country, "*observe labour discipline, [and to comply with] the regulations relating to social life and public order*" (article 47). Further, article 44 related to the right to freedom of speech, press and assembly, is guaranteed as long as these rights are not exercised in contraction with the laws of the country.

The new article 17 of the 2015 Lao Constitution²⁸, related to land ownership, is also of great concern as it gives full control to the State to own all the lands in Lao PDR, ignoring customary lands of local communities and ancestral lands of indigenous peoples: "*The State protects the property rights (such as the rights of possession, use, usufruct and disposition) and the inheritance rights of organisations and individuals. All lands, minerals, water sources, atmospheres, forests, natural products, aquatic and wild animals, and other natural resources are a national heritage, and the State ensures the rights to use, transfer and inherit it in accordance with the laws.*" This provision has also resulted in cases of land concessions and the establishment of special economic zones in profit of companies and investments, negatively impacting rural and local companies, left with inadequate, unfair or no compensation at all.

National Land Law (2003)²⁹ currently being revised: The objectives of the Land Law are to "*determine the regime on the management, protection and use of land in order to ensure efficiency and conformity with [land-use] objectives' and with laws and regulations[,] and to contribute to national socio-economic development as well as to the protection of the environment and national borders of the Lao People's Democratic Republic.*" The Land Law has been going through revisions since 2016, to propose a new Land Law which would not recognize customary land tenure rights as it



would require all land of the country to be titled by 2025 and would also restrict rights to use forest land. However, in Lao PDR, much of the land is untitled, with individuals and communities living on customary lands without formal documentation. According to the Land Information Working Group (LIWG), the revised Land Law would put local communities at greater risk of losing their land or not receiving fair compensation in case of acquisition, leading to poverty and food insecurity.³⁰

On a positive note, the National Assembly did not approve the new Land Law during its first reading in December 2018. The land law is currently undergoing additional revisions and would be tabled in the National Assembly for a second reading in March 2019.

The Decree No. 238 on Associations (2017)³¹ imposes restrictions on non-profit associations (NPAs) by giving arbitrary power to government officials to arbitrarily forbid activities undertaken by NPAs which are considered to threaten national security and social orders. Further, Decree 238 also gives power to Lao authorities to monitor and regulate NPAs' access to funds. The Decree 238 has negatively impacted the work of NPAs, limiting their actions by fear of not securing an MOU with the Lao government and not being able to support rural and local communities in different Lao provinces. The Decree 238 further undermines the work of NPAs to actively engage in development efforts of the country and to contribute to the achievement of SDG 1 related to poverty eradication.

The Penal Law (2005)³² is Lao PDR's domestic criminal law. Under article 65, "Any person conducting propaganda activities against and slandering the Lao People's Democratic Republic, or distorting the guidelines of the Party and policies of the government, or circulating false rumours causing disorder by words, in writing, through print, newspapers, motion pictures, videos, photographs, documents or other media which are detrimental to the Lao People's Democratic Republic or are for the purpose of undermining or weakening State authority shall be punished by one to five years of imprisonment and shall be fined from 500,000 Kip to 10,000,000 Kip". This article has been used together with the **Law on Prevention and Combating Cyber Crime (2015)**³³ to criminalise vaguely defined web content, providing power to government authorities to control the critics arbitrarily and silence poor communities and individuals voicing injustice in the face of land concessions.

It is critical that the right to freedom of expression be guaranteed to empower the poor to voice concerns and impart opinions and solutions in relation to poverty eradication through writing, printing, or online media and to participate in decision-making related to the formulation, implementation and monitoring of poverty eradication strategies.

4. INCIDENCE OF POVERTY AMONG POPULATIONS

4.1. Indigenous Peoples

Indigenous peoples, who the government deny official recognition and protection as per applicable international human rights standards³⁴ by only addressing them as ethnic groups under the National Assembly Official Agreement (N213) of 2008³⁵ account for 93 percent of the poor in the country.³⁶ This is compounded by their residence in remote mountainous or forested areas where the government has not developed infrastructure, and the distance of which limits access to economic opportunities, employment and government facilities such as health and education.³⁷

4.2. Women and Girls

With the gender inequality index at 0.461³⁸, women in Lao PDR face inequality, discrimination and violence due to existing power structures³⁹ and gender stereotypes that exist in both the public and private spheres.⁴⁰ With their continued financial dependence⁴¹ owing to 61 percent of women still involved in unpaid care work, they are disproportionately affected by the incidence of poverty. At only 5 percent representation in decision making bodies, with 27.5 percent representation at the



parliament⁴² and only 2.6 percent at community levels⁴³, it is impossible for them to influence any change in policy that formalises gender discrimination and the skewed power structures that exist.

4.3. People living in rural areas

Low income groups in rural areas, particularly those affected by land distribution⁴⁴ are more likely to be poor with 29 percent of the population below the poverty line. This is primarily because of the lack of sufficient means for livelihood, the presence of very less remaining cultivable land, the unpredictable nature of the quality and period of availability of resources they have access to,⁴⁵ inadequate access to government services and poor infrastructural support in the form of roads and electricity.⁴⁶

5. IMPACTS OF POVERTY ON HUMAN RIGHTS

Poverty is not necessarily associated with human rights. However, it is important to understand poverty by looking at its effect on human rights, as it results in an analysis not just of the symptoms of poverty but also of its causes and consequences. These are both structural and functional causes and consequences that arise as a result of government action or inaction towards those experiencing poverty.

5.1. Impacts on Economic, Social and Cultural rights

Inequality, social exclusion and poor infrastructures result in poverty contributing foremost to the violation of the economic, social and cultural rights of individuals. In Lao PDR, these are primarily as a result of the priority placed on profit and economic growth over the rights of people, with benefits being retained by a select few.

5.1.1. Absence of an adequate standard of living

In Lao PDR, there is a poor payment of wages particularly amongst indigenous peoples and women, proven by the fact that 77.2 percent of the population below the poverty line are employed.⁴⁷ This income also remains at risk due to the high dependence on agricultural activities, which is being increasingly restricted in favour of development projects. As a result of this, individuals are unable to achieve the minimum food, clothing and housing levels they are entitled to at a minimum.

5.1.2. Limitations to the achievement of a high standard of health

Knowledge of basic health issues is very poor, particularly in remote villages in Lao PDR.⁴⁸ Accessing healthcare is also very difficult and remains expensive for those with little to no means, including those from certain ethnicities.⁴⁹ There is also little to no knowledge on the assistance available to access these services. These along with the absence of adequate food, poor hygiene and sanitation as a result of low wage earning, often related to socioeconomic status⁵⁰ and the level of education⁵¹ of the parents, affect children disproportionately resulting in malnutrition and stunting in 44.2 percent of children below five.⁵² In addition, this also contributes to situations where poorer children are four times more likely to die under the age of five⁵³, with the mortality rate amongst children remains at a high⁵⁴ of 64 in every 1000 babies.⁵⁵

5.1.3. Illiteracy and associated risks

Access to education is limited amongst indigenous groups and those from rural areas due to the lack of teachers and absence of instruction in the local language.^{56,57} Illiteracy is also rampant amongst girls due to views held on their safety, the economic contributions they can make, and their role in taking care of the household⁵⁸, resulting in an overall decrease in household outputs that are often managed by women. Rural and indigenous women without an education are also at a higher risk of other harms caused by sexual abuse, unwanted pregnancy and unsafe abortions.⁵⁹



5.1.4. Rejection of land ownership and non-recognition of ancestral lands of indigenous peoples

According to article 17 of the 2015 Lao Constitution and the 2003 Land Law, all land is considered as belonging to the State and individuals have to register their ownership, a practice that is often not followed by rural communities and indigenous peoples⁶⁰ negating their ownership over land. This proves to be difficult for the 72 percent of the population in Lao PDR that depends on agriculture as their only source of income.⁶¹ The government also does not recognise or protect the customary land and titles of indigenous peoples and local communities.⁶² As a result, they lose their land to concessions and development projects by domestic and foreign enterprises.⁶³ This results in forced relocation, displacement⁶⁴, loss of agricultural livelihood⁶⁵, lack of sufficient compensation to purchase new land⁶⁶, environmental degradation, inability to access natural resources, absence of food security⁶⁷, and consequently increased levels of poverty.⁶⁸

Representative is the case of commercial coffee plantation expansion into indigenous ancestral lands in the famous Bolaven plateau, in Champasak Province, Southern Lao PDR. Since 2012, indigenous peoples from the Nha Huen/Yahern group, have contested the fact that their ancestral land has been conceded by the government to the Singapore-based agribusiness giant Olam International, whose Lao-based subsidiary Outspan Bolovens Limited, had taken indigenous lands for a monoculture coffee plantation. In 2012, it was reported that in one village, eight families could no longer secure their right to food as their cultivable land and rice fields were destroyed.⁶⁹ As of today, indigenous farmers are still experiencing the negative impacts of Outspan on their livelihoods. In October 2018, the company announced the expansion of its coffee plantation in the Champasak Province⁷⁰, worrying indigenous farmers.

5.1.5. Failure to protect cultural rights of communities and indigenous peoples

With policies that force migration to lowlands, there is a threat posed to indigenous peoples' right to the preservation of their cultural rights and traditional ways.⁷¹ This is as a result of insufficient measures to protect their traditional language, absence of the provision of government services in the local language, forced assimilation of other cultural practices, and failure to recognise the ties of indigenous peoples and local communities to their lands⁷² (see the case of the Nha Huen/Yahern indigenous group presented above).

5.1.6. Barriers to citizenship undermining access to social services

Registration of the birth of a child is necessary to enforce laws and to access social services.⁷³ However, only 75 percent of children below the age of five have been registered in Laos⁷⁴, with only 33 percent of those registered having obtained a birth certificate.⁷⁵ Barriers to registrations include the costs associated⁷⁶, poor literacy amongst parents, poor accessibility by road to offices for registration, and the inadequacy of the system in remote areas.⁷⁷ This prevents access to public services, such as formal education for children⁷⁸, resulting in the loss of economic opportunities and the occurrence of exploitative practices such as child labour with 12.3 percent employed in hazardous circumstances.⁷⁹

5.1.7. Discriminatory beliefs and practices

Article 176 of the Criminal Code and other non-discrimination laws and provisions though provide protection against discrimination do not cover all elements of racial discrimination and fails to address situations of direct and indirect discrimination.⁸⁰ This often results in the implementation of policies in a manner that is discriminatory, often even resulting in the incitement of violence.⁸¹ For example, indigenous peoples in Lao PDR are also discriminated as they are paid less for similar work, provided with fewer economic opportunities and lesser welfare measures, which results in higher poverty being compounded by the fact that they have larger households they support.⁸²



Further, in practice, owing to discriminatory viewpoints in the form of gender stereotypes, women and girls are specifically discriminated against⁸³ and provided limited access to education⁸⁴, reducing economic opportunities for them and putting them in a situation of poverty.⁸⁵ Discrimination also occurs in employment, with overrepresentation of women in the informal sector where they are often subject to exploitation⁸⁶, long working hours, and lesser pay.⁸⁷ Amongst indigenous peoples and in rural areas, tradition prevents women from having an equal say in decision-making⁸⁸ and procedurally they have difficulty in owning land,⁸⁹ increasing their financial dependence.⁹⁰

5.2. Impacts on Civil and Political Rights

The full enjoyment of economic, social and cultural rights is not possible without the guarantee of civil and political rights to individuals. Poverty, its causes, its consequences and solutions can only be fully understood by determining the manner in which the absence of economic, social and cultural rights has affected the civil and political rights of those below the poverty line.

5.2.1. Restrictions to freedoms of expression and assembly silencing the poor to voice concerns and resulting in arbitrary arrests

Although freedom of expression and assembly are guaranteed in Article 44 of the Constitution, in practice these rights are limited as a result of the strict government control over society.⁹¹ Protests against government policies, practices and projects even when violating the rights of people, are prohibited and any opposition results in arrest.⁹² With heavy monitoring of activities of NGOs and persons advocating for the rights of people, there have been cases of enforced disappearances, such as in the case of Sombath Somphone.⁹³ As a result, there is widespread fear among NGOs, NPAs and activists to raise concerns against rights violations even through legitimate means.

Regarding media freedom, the UN Human Rights Committee, in its 2018 conclusions related to Lao PDR's review of its compliance with ICCPR, urged the government to promote plurality of opinions in the media and to guarantee their operations are free from "undue state interference".⁹⁴ After the dam collapse at the Xe-Pian Xe-Namnoy hydropower project in July 2018, the local communities and others on the ground revealed the truth of the situation and their struggles through social media; their voices and stories being further shared by international news outlets.⁹⁵ However, the Lao authorities attempted to conceal information related to the dam collapse, through the Prime Minister letter warning Lao citizens to be conscious about veracity of the news of the collapse and suggesting to follow state-owned media and to disregard misinformation on social and foreign media.⁹⁶

Furthermore, as stressed by the UN Human Rights Committee during Lao PDR's review of its compliance with the ICCPR, more concerning are the reprisals against poor villagers and their arbitrary arrests when protesting against unfair land confiscations by the government to lease the land to private companies.⁹⁷ The case of the 14 villagers of Yeup Village in Thateng district of Sekong Province is representative of it. On 25 July 2017, after Lao authorities failed to systematically address the villagers' complaint in relation to the lease of their land by the government to a Vietnamese rubber company, the police arbitrarily detained 14 of them, including a boy and girl, both aged 15, for cutting down rubber trees on land that was leased to the Lao-Vietnam Friendship Rubber Company. While four villagers have been released, including the teenagers, ten remain under custody without trial.⁹⁸ According to recent media report, two of the villagers detained, named Souvanh and Nay, are seriously ill in jail, due to the very difficult prison conditions.⁹⁹

5.2.2. Lack of Political Participation in decision-making processes to reduce poverty

There is a lack of political participation due to underrepresentation, particularly amongst indigenous peoples and women¹⁰⁰ that occurs as a result of lack of education or discrimination faced in the political system.¹⁰¹ This negates their ability to participate meaningfully in decision-making that



affects their rights, resulting in a perpetuation of practices that contribute to their poverty or that ineffectively aim to address poverty-alleviation.

5.2.3. Failure to protect against exploitation, violence and abuse putting women and indigenous peoples in unsafe situations

Under pressure to earn an income and with limited opportunities available to do so, a vast majority of youth particularly girls from rural areas, resettled villages and belonging to indigenous groups are trafficked.¹⁰² Uneducated and unaware of the risks of trafficking and coming from situations of poverty, these persons often fall victim to traffickers.¹⁰³ Discrimination also occurs based on race in Lao PDR that remaining unaddressed, results in violence against persons, such as the Hmong who while fleeing, hide in the jungles thus having limited access to food, resulting in malnutrition, poor health and even death.¹⁰⁴

5.2.4. Mitigation of the violation of rights and Lack of Access to Remedies

Although article 41 of the Constitution guarantees the fundamental right to file complaints and petitions, most individuals in Lao PDR are unaware of their rights and the process to submit complaints to the the National Steering Committee on Human Rights, housed under the National Assembly. It shall be noted that Lao PDR does not count any national human rights institution complying with the Paris Principles. Further, in relation to the judicial system, long procedural delays, the presumption of guilt, biases towards powerful parties, corruption and the inability of the rural population and indigenous peoples to access the statutory systems makes it ineffective to redress the violation of rights.¹⁰⁵ The only option here is the customary justice system and village mediation units¹⁰⁶, where the neutrality of the adjudicator can come into question.

6. THE ROLE OF INFRASTRUCTURE PROJECTS AND (UN)SUSTAINABLE DEVELOPMENT

6.1. Lao Government's strategy to promote investment in the hydropower sector to eradicate poverty

The Lao government has indicated that the *"Lao economy depends largely on investments, including in the hydropower sector. In order to graduate the country from the LCD status, the GOL has identified hydropower development as one of the primary drivers of economic development and poverty eradication given the country's plentiful water resources and mountainous terrain. Hydropower resources development greatly contributes to the national socio-economic development and poverty reduction, while the GOL is committed to developing hydropower resources responsibly and sustainably"*.¹⁰⁷ The 8th National Socio-Economic Development Plan (2016-2020)¹⁰⁸ also reaffirms Lao PDR's strategy to further develop the hydropower sector to alleviate poverty by indicating that it will: *"Focus on hydropower development, thermal electric power, solar energy and industrial plants energy in order to turn the power sector into a sustainable income-generating sector to support various productions and to solve the people's poverty"*.

However, investment in development and infrastructure projects on mining, hydropower¹⁰⁹, and agribusiness¹¹⁰ has often been environmentally and socially damaging, resulting in an increase in the poverty levels due to forced resettlement and other impacts.

6.2. Lack of Access to Information, Participation and Consultation of Affected Communities

The Lao Government voted in favour of and adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007¹¹¹, which requires States to obtain indigenous peoples free, prior and informed consent (FPIC) before any of the following actions are taken: 1. the adoption of legislation or administrative policies that affect indigenous peoples (article 19); and 2. the undertaking of projects that affect indigenous peoples' rights to land, territory and resources, including mining and other utilization or exploitation of resources (article 32). Further, as a member of the Mekong River Commission, Lao PDR has the duty to respect the Procedures for Prior Notification, Prior



Consultation and Agreement (PNPCA) under the 1995 Mekong Agreement.¹¹² However, contrary to the UNDRIP, the 1995 Mekong Agreement and to articles 7 and 8 of the Decree 112 on environmental impact assessments (EIAs), development projects undertaken in Lao PDR are often accompanied by an absence of access to information, with the projects being undertaken without obtaining the free, prior and informed consent (FPIC) of affected communities.¹¹³

This has been illustrated by the well-known cases of the Don Sahong dam project in Champasak Province, Southern region¹¹⁴ and the Nam Ou 2 dam in Luang Prabang Province, in the Northern region.¹¹⁵ Failures in development projects are also concealed through the control of the media by the State failing to provide information in a timely and effective manner, often intensifying the damage caused by these failures.¹¹⁶ Decisions on these projects such as resettlement programmes¹¹⁷ and environmental impact assessment procedures¹¹⁸ are also made without public consultations or the participation of those affected by them, through top-down, non-transparent procedures of those affected by them. Far too often, environmental impact assessments (EIAs) and social impact assessments are conducted by private consulting firms not experienced in working with local communities and not involving affected communities throughout the different stages of the assessments.

6.3. Negative social and environmental impacts

The lack of respect to FPIC leads to decisions that result in environmental trade-offs with ecosystems compromised and their contribution to maintaining watersheds and enhancing biodiversity¹¹⁹, which local populations and indigenous communities rely on¹²⁰, also being affected. Further, in the case of the overall Nam Ou Dams, the International Finance Corporation of the World Bank Group (IFC), concluded in its Cumulative Impact Assessment of the Nam Ou hydropower cascade in Lao PDR¹²¹, that the construction of the dams during phase 2 will produce negative social and environmental impacts, with considerable livelihood impacts (loss of agricultural land, reduction in fish catches, increase in demand and prices of fish, pressure on wildlife), increased risks of contamination of water supplies and increase in easily transmissible diseases (TB, STDs, HIV). In November 2017, a news outlet¹²² highlighted the economic loss faced by villagers depending on river cruises as a living, as the construction of the Nam Ou Dam 3 eliminated the cruises. The closing of the river, would have impacted tourism and businesses, with the economy in surrounding villages likely to suffer and further putting affected communities in situation of poverty.

6.4. Forced resettlements, poor living conditions and inadequate/unfair compensation

In terms of forced resettlements, about 868 persons are being resettled on average per dam.¹²³ This is often carried out without compensation, through poorly planned resettlement programmes¹²⁴, resulting in a loss of livelihood, particularly traditional livelihoods and cultural systems, an increasing threat to food security¹²⁵, and harm to the natural ecosystem.¹²⁶ These communities are also responsible for the protection of their natural environment, which their forced relocation undermines.¹²⁷ For instance, in its latest 2018 field research in relation to the impacts of the Nam Theun 2 Dam, International Rivers and Mekong Watch reported¹²⁸ that resettled communities have not been able to enjoy the full restoration of their livelihoods due to unresolved issues, such as land degradation and decrease in fish catch seriously undermining their food security.

International financial institutions and external governments ignore the implications of the development projects while financing them, as seen in the financing of the Nam Theun 2 Dam by the World Bank¹²⁹ and by the Chinese government, which has become Lao PDR's biggest donor since 2012, towards advancing the One Belt one road initiative.¹³⁰

The unfair compensation and lack of full restoration of livelihood of affected communities in the Champasak Province in relation to the Xe Pian-Xe Namnoy dam, demonstrate the poor living conditions relocated families are forced to face. In 2017, a young lao humanist visited three villages



– *Baan Hua Xoi, Baan Xe Namnoy, Baan Nam Leng* – to amplify the voices of villagers and share their concerns related to the lack of appropriate compensation promised by the local government and the hydropower company, PNPC, in relation to their forced relocation. Not only the financial compensation is not sufficient but the land offered for resettlement would not fully restore their livelihood.¹³¹ As of today, the majority of families have been forcibly relocated to *Baan Mai* with very few still standing strong against forced relocation.

One year later, in July 2018, the dam in question collapsed affecting communities located in Sanamxay district, Attapeu Province. The Xe Pian-Xe Namnoy dam collapse, which displaced more than 4,000 people¹³², is an illustrative case of forced resettlements in temporary shelters' and poor camps' conditions due to a man-made disaster.¹³³ The living conditions are reported difficult, with the government's daily allowance not sufficient to secure food for displaced families.¹³⁴ Victims are also facing difficult health conditions, such as dengue and malnutrition.¹³⁵ In February 2019, few families, of up to four people, were able to relocate in temporary residences, but were concerned that the land on which is built their new 'house' would lack water needed for agriculture¹³⁶ – making it impossible for them to restore their loss livelihood. In terms of compensation, 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 being considered insufficient and inadequate by the families.¹³⁷

6.5. Transboundary impacts of Lao development projects impacting on the livelihoods of neighbouring communities, putting them at risk of poverty

Development projects located in Lao PDR can have negative social and environmental impacts in ASEAN neighbouring countries, on the environment and affected communities, such as the:

- The Xayaburi hydropower Dam in Xayaboury, Northern region.¹³⁸
- The Pak Beng Dam located in Oudomsay, Northern region.¹³⁹
- The Hongsa coal plant and mining project located in Xayaboury Province, Northern Laos, would negatively impact the health of Thai communities living in Nan province, who have submitted a complaint to the National Human Rights Commission of Thailand (NHRCT) to investigate the transboundary impacts of the project.¹⁴⁰

7. GOOD PRACTICES

Fortunately, there are some examples of good practices for promotion and protection of human rights in course of tackling poverty in Laos. For example, some indigenous communities have benefited from 'Collective Land Titling', whereby groups and communities have exclusive rights to manage resources. In 2012, communal land has been granted to seventeen 'ethnic minority groups' in Sangthong. Collective Land Titling has the potential to build upon local communities' skills and knowledge in order to reduce poverty and secure resources and livelihoods.¹⁴¹

Further, in relation to access to remedy, in 2014, the National Assembly established the 'National Assembly Hotline' which allows local communities to voice their concerns and communicate directly with leaders. Families who were affected by a development project and had not received compensation made use of the Hotline. Their cases have been investigated by the National Assembly and the National Assembly Standing Committee ordered provincial authorities and investors to compensate for the lost land. Investors improved road access and set up an electricity transmission line while local authorities built a village school and facilitated clean water into the village. The Hotline addressed disputes effectively and strengthened the voice of local communities.¹⁴² Finally, in relation to development projects, a Chinese New Vang Vieng City development project of 7000 Ha in Vang Vieng, has recently been suspended indefinitely after pushback from local villagers and merchants for its impacts, in March 2019.¹⁴³



8. RECOMMENDATIONS

With respect to the structural and functional barriers of poverty resulting in a higher incidence of human rights violation in the case of certain individuals or groups of individuals, Manushya Foundation urges the Special Rapporteur to consider making the following recommendations to the Government of Lao PDR during his official visit:

With regards to equality and non-discrimination principles to tackle poverty:

- 8.1. Take effective steps for poverty reduction through inclusive multi-dimensional approach that address economic, socio-cultural and environmental issues, including aspects such as discrimination and exclusion at different levels from the household to local and national levels;
- 8.2. Formulate and implement policies and programmes to address marginalization and exclusion of groups such as women and rural populations so as to ensure their access to resources and opportunities with guarantee of not only equality of opportunity but also in outcomes;
- 8.3. Carry out a comprehensive assessment of disproportionate impacts of poverty on women and girls such as trafficking, including due to discriminatory practices and take effective steps to address those impacts through measures such as affirmative actions in employment and financial and social services;
- 8.4. Undertake a comprehensive study of existing laws, policies and practices to determine their effectiveness in addressing and/or contributions to fostering inequality in relation to poverty;
- 8.5. Undertake a study to understand and identify measures to tackle differential impacts of poverty and development interventions on different population groups and implement those measures with effective participation of those groups along the processes;
- 8.6. In line with the 2018 Concluding Observations of the Human Rights Committee, para. 16, *'take measures, including considering adopting a comprehensive anti-discrimination law, to ensure that the relevant legal framework provides adequate and effective substantive and procedural protection against all forms of discrimination, including in the private sphere, on all the prohibited grounds under the Covenant, and access to effective and appropriate remedies for all victims of discrimination'*;

With regards to economic, social and cultural rights:

- 8.7. Take immediate steps for provision of basic facilities, such as food, clothing, housing and sanitation to people facing poverty, along with long-term policy provisions including the development of equitable income generating opportunities;
- 8.8. Ensure removal of barriers to access social services through provision of education and awareness raising in the local languages, establishment of social services and development of transportation infrastructure in remote and rural areas;
- 8.9. Ensure women, including migrant women, women living in poverty and women in unpaid work or working in the agricultural or informal sectors, have access to social protection or social security, in line with 2018 concluding observations of the CEDAW Committee;
- 8.10. Adopt and implement laws and policies for formal recognition of customary land ownership titles and communal land usage and regulation of land use at local levels with consent of local communities;
- 8.11. Implement the UPR recommendation made by Germany and supported by the Lao government during its 2nd UPR, in January 2015, aiming to *'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’;

- 8.12. Impose protective measures to prevent over-exploitation of natural resources and to guarantee access and control to those resources for groups such as women, rural communities and indigenous communities that depend on them;
- 8.13. Formulate and execute laws for protections of the rights of indigenous ethnic groups to their lands and resources, traditional livelihoods and cultures in line with international human rights standards;

With regards to civil and political rights:

- 8.14. Reform existing laws and policies, such as the Penal Law 2005 art. 65 and Penal Code 2018, as well as adopt necessary measures to ensure individuals can fully enjoy their right to freedom of speech, press and assembly, in line with international human rights standards enshrined in the UDHR and the ICCPR;
- 8.15. Guarantee the right to freedom of expression and right to public participation to empower the poor to voice concerns and impart opinions and solutions in relation to poverty eradication through writing, printing, or online media and to participate in decision-making related to the formulation, implementation and monitoring of poverty eradication strategies;
- 8.16. Amend existing laws and regulations or enact new ones to ensure promotion and protection of fundamental freedoms and human rights of individuals or groups of individuals, particularly those defending their rights, in line with international standards;
- 8.17. Take steps to establish open and dynamic civil society space, including through amendments to laws related to associations, including the NPA Decree 238, so as to allow raising concerns on development and human rights challenges of communities through legitimate means without fear and to ensure non-profit associations can effectively contribute to development efforts and the eradication of poverty, without heavy oversight and monitoring by Lao authorities;
- 8.18. Ensure protection against violence in all forms by State or non-State actors with attention to specific groups such as defenders and community leaders that susceptible to such violence and accountability through effective mechanisms to redress violence as it occurs;
- 8.19. Implement further measures to ensure access to effective remedies through transparent, equitable and timely procedures, particularly for marginalized groups by ensuring access to free legal aid and interpretation services, in line with the 2018 concluding observations of the CEDAW Committee;

With regards to development projects:

- 8.20. Amend development and investment policies and plans to shift from dependency on environmentally and socially adverse development and business projects and prioritise and implement community-led development and investment planning and initiatives;
- 8.21. Amend the 8th National Socio-Economic Development Plan (2016-2020) to reduce investments on hydropower projects to ensure the energy sector focus on renewable energy respecting and protecting the rights of local communities;
- 8.22. Promote implementation of responsible investment and development practices with increased co-operation between the private sector, local communities and civil society through multi-stakeholder efforts in the planning and implementation stage, including through provision of information to those affected and prior consultation on long-term risks;
- 8.23. Develop a national action plan on business and human rights to implement the UNGPs in Lao PDR to regulate corporate activities in order to reduce their negative incidence on poverty;



- 8.24. 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;
- 8.25. Develop a mandatory policy for companies to exercise human rights due diligence throughout their supply chains and to undertake human rights, social and environmental impact assessments, including a gender impact assessment and transboundary impact assessments, in consultation with affected communities throughout the assessment phase, and provide the necessary interpretation services and translation of information in local languages;
- 8.26. 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;
- 8.27. 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.



ENDNOTES

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MANUSHYA

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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.