

A silhouette of a person wearing a cap and sitting in a long, narrow boat on a body of water. The background is a bright, hazy sunset or sunrise over a distant shoreline with trees. The entire image has a red color overlay.

**VOICES SILENCED:**  
THE IMPACT OF  
FOREIGN INVESTMENTS  
ON HUMAN RIGHTS  
IN LAOS

**REPORT**  
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# Executive Summary

While Lao People's Democratic Republic's (PDR) authoritarian neighbors China and Vietnam have attracted ample and rightfully-deserved criticism for their human rights abuses, Laos has long been overlooked by international media outlets for perpetrating similar abuses. Authoritarianism in Laos allows government corruption, media censorship, and repressive practices toward civil society and dissent to persist.

The landlocked country's economy primarily relies on farming, agriculture, and its proximity to the Mekong River and its natural resources. Due to these dependencies, coupled with the authoritarian one-party state's corruption and strong desire to maintain control, many development and infrastructural projects in Laos — funded by foreign countries such as China, Vietnam, and South Korea — have resulted in mass displacements, illegal land grabs, and land grievances. Although these ventures impact millions of people, individuals and civil society groups who openly criticize the Lao government's actions are often threatened by the state, and face grave punishment including imprisonment and enforced disappearances.

Several notable cases include the abduction of civil society leader Sombath Somphone in 2012; the imprisonment of human rights activists Somphone Phimmason, Soukan Chaithad, Lodkham Thammavong in 2016; Lao migrant Phetphouthon Philachane's enforced disappearance in 2019; and the arbitrary detention of human

rights defender and environmental advocate Houayheuang “Muay” Xayabouly in 2019. The cases of these individuals all emphasize how the lack of freedoms in Laos have resulted in a highly repressive atmosphere in the country for dissidents and activists. Yet due to a weak legal system, the absence of accountability mechanisms, and lack of international awareness about Laos, the human rights violations that occur within the country are often overlooked by the global community.

As business interests in the country grow, these abuses should no longer be ignored. In particular, the way the government has handled the extensive damming projects in the Mekong Region not only illustrates the regime's disregard for international legal standards on business and human rights, but also presents dramatic and concerning implications for the millions of people — both within Laos and abroad — who live near and rely on the river for their livelihoods.

There are several international legal standards and frameworks that stakeholders conducting business in Laos should refer to in order to ensure they remain cognizant about the human rights dimension of their work. In accordance with the United Nations (UN) Guiding Principles on Business and Human Rights, international business stakeholders have a responsibility to respect the fundamental human rights enshrined in both the Universal Declaration of Human Rights (UDHR) and the International Covenant

on Civil and Political Rights (ICCPR). These Guiding Principles serve as the core foundation to how companies should uphold human rights and remain aware of the social impacts their corporate practices may have on local communities. In addition to adhering to internationally-recognized human rights frameworks, companies should also include corporate responsibility and economic, social, and governance (ESG) factors while considering business operations within Laos. Stakeholders and companies have an obligation to respect human rights and to avoid complicity under international law.

The Human Rights Foundation (HRF) recommends that international business stakeholders in Laos play a bigger role in ensuring that human rights are respected by calling for the creation of a publicly available database of existing land concessions in order to help increase transparency. They should also urge for a robust accountability policy from the Lao government before committing to investing within the country. As a ground-up approach, HRF also recommends international business stakeholders to call for direct input from local communities and conduct proper due diligence of the civil and political atmosphere without the authoritarian government's oversight and interference. Lastly, since there is a lack of understanding about the formal legal system and legal resources in Laos, stakeholders should advocate for increasing public knowledge about existing legal mechanisms, and consult international standards on protecting human rights throughout their business.

# Introduction

In order to provide a holistic understanding about the human rights violations occurring within Laos, HRF's *Voices Silenced: The Impact of Foreign Investments on Human Rights in Laos* report is divided into six sections.

Section I presents an overview of Laos, including background about the country's political regime type, judiciary, and media landscape. Built on this foundational backdrop, the section ends with an examination of Lao PDR's civil society, grassroots activism, and the government's crackdown on dissent.

Section II highlights the pervasiveness of land grievances within Laos and how issues of land ownership have resulted in an increasing number of land grabs.

Section III encompasses how the damming of the Mekong River — its implications vis-a-vis the economy and the environment — and the government's response have further exacerbated land grievances and human rights abuses in Laos.

Section IV explores international legal frameworks. This section lays out international standards such as the UN Guiding Principles on Business and Human Rights, and other relevant factors that should be considered by international corporations, such as corporate responsibility and ESG considerations.

Section V concludes how rampant corruption within Lao PDR's political system, along with ongoing land grievances and increasing development projects in the Mekong Region, have repeatedly resulted in human rights violations,

including enforced disappearances and arbitrary politically-motivated arrests of activists and dissidents.

In Section VI, the last section of the report, HRF provides recommendations for international actors on how to uphold fundamental human rights and increase transparency while conducting business along the Mekong River in Laos.

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# I. OVERVIEW



## I. OVERVIEW



### GENERAL BACKGROUND

With a population of approximately 7 million, Laos is a landlocked Southeast Asian country on the Indochina Peninsula flanked by Vietnam to the east, China to the north, Burma to the northwest, Thailand to the west, and Cambodia to the south. Approximately 70% of the country is covered in mountains. Most of the population lives along the Mekong River, which runs across the length of Laos, including along portions of its western borders with Burma and Thailand. Laos is also Southeast Asia's most ethnically diverse country, with 49 official ethnic groups.<sup>1</sup>

Although Laos has experienced strong GDP growth every year since 1989, its GDP per capita was only \$2,535 as of 2019.<sup>2</sup> The United Nations has categorized Laos as a Least Developed Country since 1971 when the designation was created,<sup>3</sup> meaning that for decades Laos has been one of “the poorest and weakest” countries in the world.<sup>4</sup> Lao PDR's economy relies heavily on exporting capital-intensive natural resources, including hydropower, precious metals, timber, and mining. Farming is a common occupation in the country. In 2019, according to the World Bank, approximately 62% of Lao PDR's labor force was employed in agriculture, and subsistence farming is the norm.<sup>5</sup>

### POLITICAL REGIME TYPE

Between 1959 and 1975, a civil war raged on between the communist, north Vietnam-backed Pathet Lao and the US-backed Royal Lao government. By 1975, Pathet Lao emerged victorious and established the Lao People's Dem-

<sup>1</sup> *Ethnic Minorities and Indigenous People, Open Development Laos (ODL) of the Open Development Network (Jun. 3, 2019), <https://laos.opendevopmentmekong.net/topics/ethnic-minorities-and-indigenous-people/>*

<sup>2</sup> *GDP Per Capita (Current US\$) - Lao PDR, World Bank, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=LA&start=1989>*

<sup>3</sup> *Least Developed Country Category: Lao People's Democratic Republic Profile, Data from the 2018 Triennial Review, United Nations Department of Economic and Social Affairs - Economic Analysis, <https://www.un.org/development/desa/dpad/least-developed-country-category-lao-peoples-democratic-republic.html>*

<sup>4</sup> *About LDCs, United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS), <https://unohrrls.org/about-ldcs/>*

<sup>5</sup> *Employment in Agriculture (% of Total Employment) (Modeled ILO Estimate) - Lao PDR, World Bank (Jun. 21, 2020), <https://data.worldbank.org/indicator/SL.AGR.EMPL.ZS?locations=LA>*



## I. OVERVIEW

ocratic Republic.<sup>6</sup> Today, the Lao People’s Democratic Republic is a fully authoritarian, one-party regime ruled by the Lao People’s Revolutionary Party (LPRP). The LPRP enjoys a close relationship with the Vietnamese government based on the 1977 Lao-Vietnamese Treaty of Friendship and Cooperation, in which Lao officials consult with Vietnamese advisors and borrow military support.

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<sup>6</sup> *Laos Profile - Timeline*, BBC (Jan. 9, 2018), <https://www.bbc.com/news/world-asia-pacific-15355605>

## LPRP PARTY STRUCTURE & PARTY CONGRESS

The LPRP is the only legal party per the constitution. Because the LPRP is the only legitimate political party in Laos and the “leading nucleus” of the country’s political system according to the constitution, elections for LPRP leadership are often more significant for the trajectory of Lao PDR’s policies than the National Assembly elections. Thus, understanding the LPRP’s party structure is essential in understanding Lao PDR’s politics.

### A. Overview of the LPRP

The LPRP has total control of all matters within Lao PDR’s political system. Given LPRP’s immense dominance in the political sphere, LPRP and its party members have direct power over all aspects of daily life in Laos — ranging from drafting official narratives for the country, molding the media landscape, and structuring the educational system. The LPRP’s desire to maintain power is a driving reason as to why the government remains the main perpetrator of ongoing human rights violations within the country.

#### i. Key Party Positions

The party leader of the LPRP Party Central Committee, known as the general secretary, is considered the highest-ranking official in the country. It is common for the general secretary to also be appointed (or already to have served) as either the president (as head of state), or the prime minister (as head of government), at some point in their political careers.

### B. Party Congress

Every five years, the LPRP holds a party congress, a multi-day forum where a group of hundreds of LPRP party delegates representing all LPRP members in Laos convene to discuss the LPRP’s future strategy and rubber-stamp party policies. Delegates to the party congress are selected through a two-stage process that takes place over two years: first, district party committees hold elections to choose delegates to attend higher-level

meetings, after which province- and ministry-level party committees hold elections to choose delegates to attend the party congress.<sup>7</sup>

During the most recent 11th party congress in January 2021, 768 delegates were in attendance for three days.<sup>8</sup> At this congress session, the party elected Prime Minister Thongloun Sisoulith to assume the position of general secretary. Sisoulith is to serve in this position for a five-year term. It is expected that Sisoulith will also be elected as president in the next National Assembly.<sup>9</sup>

### i. Party Committee

At the party congress, delegates elect the central committee, formally known as the Party Central Committee (PCC). The PCC is the government body that usually leads high-level, national administrative duties in between party congress sessions. In other words, the central committee acts on behalf of and with the same authority as the party congress outside of a few days every five years when the party congress is held. It is composed of LPRP party elites who occupy the country's most important government posts. The central committee is also tasked with selecting Lao PDR's president and prime minister.

Following the most recent party congress in 2021, the PCC now has 71 members.<sup>10</sup> The central committee results from the 2021 Party Congress indicate a slight increase compared to the results from the 2016 Party Congress, where 69 members were selected.<sup>11</sup>

### ii. Politburo

The PCC also elects its leadership, the politburo, from amongst its members. As the leadership that sits at the very top of the LPRP's party hierarchy, the politburo guides the direction of the country's government policies. Any action the politburo takes is on behalf of both the central committee and, by extension, the party congress. The highest official in the politburo is also the leader of the central committee, the party's general secretary.

At the 11th Party Congress, 13 politburo members were selected<sup>12</sup> whereas at the 10th Party Congress in 2016, 11 were selected.<sup>13</sup>

### iii. The National Assembly & Elections

The National Assembly serves as the legislative branch of the state, consisting of 149 members. According to Chapter V of the Constitution

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<sup>7</sup> Simon Creak & Soulatha Sayalath, *Regime Renewal in Laos: The Tenth Congress of the Lao People's Revolutionary Party*, Southeast Asian Affairs (2017), 179-200, <https://minerva-access.unimelb.edu.au/handle/11343/191260>

<sup>8</sup> *Lao Communist Party Elects Thongloun as New General Secretary*, Xinhua (Jan. 15, 2021), [http://www.xinhuanet.com/english/2021-01/15/c\\_139670561.htm](http://www.xinhuanet.com/english/2021-01/15/c_139670561.htm)

<sup>9</sup> At the time of writing this report, the 2021 National Assembly elections have not taken place yet.

<sup>10</sup> Reuters, *Laos Names PM Thongloun as New Party Leader*, Bangkok Post (Jan. 15, 2021), <https://www.bangkokpost.com/world/2051647/laos-names-pm-thongloun-as-new-party-leader>

<sup>11</sup> *Lao Communist Party Convenes 11th Congress in Vientiane*, Xinhua (Jan. 13, 2021), [http://www.xinhuanet.com/english/2021-01/13/c\\_139663549.htm](http://www.xinhuanet.com/english/2021-01/13/c_139663549.htm)

<sup>12</sup> Eugene Whong, *Lao Prime Minister Thongloun Sisoulith Elected Secretary General*, Radio Free Asia (Jan. 15, 2021), <https://www.rfa.org/english/news/laos/sisoulith-01152021165022.html>

<sup>13</sup> *Lao Communist Party Convenes 11th Congress in Vientiane*, Xinhua (Jan. 13, 2021), [http://www.xinhuanet.com/english/2021-01/13/c\\_139663549.htm](http://www.xinhuanet.com/english/2021-01/13/c_139663549.htm)

of the Lao People’s Democratic Republic, the mandate of the Assembly includes duties of overseeing laws, electing and removing the president and prime minister of the state, as well as reviewing and monitoring “strategic plans for socio-economic development.”<sup>14</sup> It is one of the highest authorities in the country that is able to amend laws and the constitution. However, in practice, National Assembly members only rubber-stamp decisions that the LPRP — specifically the LPRP’s leadership, the central committee and the politburo — have already made. The decisions made at the National Assembly impact the lives of millions of citizens. Yet, the general public are only allowed minimal political input at the local level.

Elections in Laos, held every five years, are not free and fair. Candidates for the National Assembly are only allowed to run for election after being vetted by the National Election Committee (NEC), a 17-member body composed of solely high-level LPRP members. All members of the NEC are selected by the country’s president from a list provided by the National Assembly.<sup>15</sup>

The nature of this process of handpicking members of the NEC and approving candidates for the National Assembly has resulted in very little space for civil society to participate in politics. Although Article 36 of the constitution enshrines that all citizens aged 20 years and above “have the right to be elected,”<sup>16</sup> individuals outside the ranks of the LPRP who wish to get involved in the political sphere have few realistic pathways toward inclusion on ballots and do not have the opportunity to meaningfully compete in elections. Ever since the first National Assembly elections in 1992, only LPRP members and LPRP-approved candidates won the majority of seats, dominating the Assembly. There have never been more than five non-LPRP members elected in any given legislative election in the National Assembly’s history.<sup>17</sup>

### a. 2016 Elections

In 2016, the sixth legislative election took place. 210 candidates — all vetted and approved by the LPRP — ran for the allotted 149 seats within the National Assembly. Leading up to the elections, there was a short three to four weeks campaign period. The NEC played a prominent role in campaigning by approving campaign slogans and distributing vetted curriculum vitae of the candidates.<sup>18</sup> Many of the candidates were already government officials involved in various ministries and agencies of the state.

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<sup>14</sup> *Lao People’s Democratic Republic’s Constitution of 1991 with Amendments through 2003*, Constitute Project (Feb. 28, 2020), [https://www.constituteproject.org/constitution/Laos\\_2003.pdf?lang=en](https://www.constituteproject.org/constitution/Laos_2003.pdf?lang=en)

<sup>15</sup> *Briefing Paper, Laos: Sham Election Cements One-Party Rule*, FIDH - International Federation for Human Rights, Lao Movement for Human Rights (LMHR) (Mar. 17, 2016), [https://www.fidh.org/IMG/pdf/20160317\\_laos\\_briefer\\_en.pdf](https://www.fidh.org/IMG/pdf/20160317_laos_briefer_en.pdf)

<sup>16</sup> *Lao People’s Democratic Republic’s Constitution of 1991 with Amendments through 2003*, Constitute Project, [https://www.constituteproject.org/constitution/Laos\\_2003.pdf?lang=en](https://www.constituteproject.org/constitution/Laos_2003.pdf?lang=en)

<sup>17</sup> *Supra* note 15.

<sup>18</sup> *Supra* note 15.

LPRP party members won 144 out of 149 National Assembly seats, with the remainder being party-approved independents.<sup>19</sup>

The Lao government claims that voter turnouts for elections are “close to 100%.”<sup>20</sup> However, such a statistic is unable to be verified and is highly improbable since the government has full control over the media, and both international and civil society monitoring groups were only allowed to visit polling stations approved by the government.<sup>21</sup>

### b. 2021 Elections

Since the LPRP does not allow for the creation of an opposition party nor provide space for civil society to openly engage in politics, the 2021 National Assembly elections are expected to be similarly not free and fair. An open and transparent campaigning period is non-existent, as all collateral — including slogans and messaging — must be pre-approved by the NEC. Therefore, it is likely that faithful sycophants of the party would be elected again in order to maintain tight control over the country.<sup>22</sup>

## PATRON-CLIENT RELATIONS AND GOVERNMENT CORRUPTION

The internal politics of the LPRP and its intra-party conflicts are intentionally opaque and shrouded in secrecy. With that said, it appears that an integral part of the intra-party electoral process is patron-client relations, where higher-level LPRP members identify potential future leadership, or “targets for building” (*pao mai sang*), and help grow and promote them.

For aspiring Lao politicians, having such a patron is important to rising through the ranks — admittance into the Central Committee, for instance, requires having a backer. As a result, approximately 25% of LPRP members elected to the Central Committee at the 10th party congress in 2016 were allegedly connected to the families of Lao PDR's famous revolutionary families either through marriage or by blood.<sup>23</sup>

Patron-client relations also seem to result in less contentious intra-party elections, as patronage networks and interference from incumbent leadership helps determine most of the Central Committee and politburo members beforehand, rendering elections mostly a formality. For example, 685 delegates attended the 10th party congress in 2016. Of the 77 individuals nominated for full membership and 11 for substitute or alternate positions, 69 were confirmed as full members and eight as substitutes, indicating

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<sup>19</sup> Laos, *Freedom in the World 2020*, Freedom House, <https://freedomhouse.org/country/laos/freedom-world/2020>

<sup>20</sup> *Supra* note 17.

<sup>21</sup> *Country Reports on Human Rights Practices for 2016, Laos 2016 Human Rights Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor, <https://www.state.gov/wp-content/uploads/2019/01/Laos-1.pdf>

<sup>22</sup> At the time of writing this report, the 2021 National Assembly elections have not yet taken place.

that for the most part, only those who were almost certainly going to be confirmed received nominations.<sup>24</sup>

True political power in Laos, then, is concentrated within the hands of a small group of party elites that gain power through opaque, intra-party politics, rather than being chosen by the people.

Given how common patronage networks are in the highest echelons of Lao politics, it is unsurprising that corruption runs rampant across all layers of the Laos government, from the local level to the most senior LPRP members. Lao PDR's own government has confirmed that corruption is a serious issue. Bounthong Chitmany, the head of the Government Inspection Authority, reported that between 2012 and 2014 alone, more than 1.2 trillion kip (USD \$149 million) of government funds were lost due to corruption, with most of the money lost due to embezzlement schemes and officials cheaply selling state-owned land for kickbacks.<sup>25</sup>

Meanwhile, enforcement of anti-corruption legislation is weak. Transparency International's 2019 Corruption Perception Index ranked Laos 130 out of 180 countries for perceived corruption,<sup>26</sup> making it comparable to Mali and Burma — which were also ranked 130 — for perceived corruption.

### STATUS OF THE JUDICIARY AND RULE OF LAW

Laos, a country ruled by a fully authoritarian regime, did not have a constitution from 1975 to 1991, relying instead on government decrees to form its legal framework. Today, while a legal framework exists, laws and regulations are frequently vague and subject to abuse by the authoritarian government. For instance, though import duties and tax exemptions are supposedly guaranteed to foreign investors, they are not mentioned in customs or tax law.<sup>27</sup> Likewise, criminal charges are often broadly applied to silence critics.

The legal system in Laos lacks proper implementation and enforcement. There are relatively few lawyers, and few judges are formally trained and experienced. According to a 2019 U.S. State Department Investment Climate Statement on Laos, foreign investors claim contracts in Laos are considered to be “a framework for negotiation” instead of a binding agreement.<sup>28</sup>

**While a legal framework exists, laws and regulations are frequently vague and subject to abuse by the authoritarian government.**

<sup>23</sup> Simon Creak & Keith Barney, *Conceptualising Party-State Governance and Rule in Laos*, 48 *Journal of Contemporary Asia* 5, 48:5, 693-716, <https://www.tandfonline.com/doi/full/10.1080/00472336.2018.1494849?scroll=top&need=true>

<sup>24</sup> *Supra* note 7, at 179-200.

<sup>25</sup> Argee Abadines, Edited by Holly Reeves, *Why Laos Needs to Get Serious About Tackling Corruption*, ASEAN Today (Feb. 18, 2017), <https://www.aseantoday.com/2017/02/why-laos-needs-to-get-serious-about-tackling-corruption/>

<sup>26</sup> 2019 *Corruption Perceptions Index: Laos*, Transparency International (2019), <https://www.transparency.org/en/countries/laos#>

<sup>27</sup> Pemasiri J. Gunawardana & Somkala Sisombat, *An Overview of Foreign Investment Laws and Regulations of Lao PDR*, *International Journal of Business and Management*, Vol. 3, No.5 (May 2008), <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.665.7888=rep1&type=pdf>

<sup>28</sup> 2019 *Investment Climate Statements: Laos*, United States Department of State (2019), [https://www.state.gov/reports/2019-investment-climate-statements/laos/#report-toc\\_section-1](https://www.state.gov/reports/2019-investment-climate-statements/laos/#report-toc_section-1)

Although the judiciary is technically independent from the other government branches according to the constitution, in practice, checks and balances are nonexistent. The judiciary must comply with the wishes of LPRP leadership. Most senior-level members of the judiciary are LPRP members, and corruption is common within the judiciary, as with the other sectors of the Lao government. Patronage networks, political connections, bribes, and political interference from LPRP officials can sway court rulings and void business contracts.

The absence of rule of law in Laos presents obstacles for Lao citizens to seek justice, creating a lack of trust in the legal system. The judiciary's subservience to the LPRP and lack of due process in courts results in implausibly short trials and undeservedly harsh punishments for activists who dare speak out against the regime. Defendants are often presumed guilty, cases can be indefinitely delayed if bribes are not paid, and appeals are routinely delayed or denied. Suspects can be arbitrarily arrested and searched without a warrant, and denied due process; authorities often use enforced disappearances to silence critics.

### MEDIA LANDSCAPE

Laos has one of the least free media environments in the world. Reporters Without Borders's 2020 World Press Freedom Index ranked Laos 172nd out of 180 countries in press freedom, making its press less free than that of Saudi Arabia, Cuba, Yemen, Libya, and Somalia, all of which are ruled by fully authoritarian regimes. Only eight countries — Iran, Syria, Vietnam, Djibouti, China, Eritrea, Turkmenistan, and North Korea — have more repressive presses.<sup>29</sup>

The LPRP has complete control over the mainstream TV and radio outlets. Foreign news organizations are only allowed in the country if they submit their content to be reviewed for censorship by government officials. So far, only China's Xinhua and Vietnam's Nhan Dan — both of which are state-owned media companies — have opened bureaus in Laos.<sup>30</sup> Like Laos, China and Vietnam are ruled by fully authoritarian regimes, have some of the least free presses in the world, and are known for media censorship. The LPRP considers certain issues, such as environmental issues and large investment projects involving countries like China, Vietnam, and Thailand, taboo to discuss, opting instead to censor them out of mainstream media.

Government officials also routinely monitor online and social media content for government criticism and punish those who make posts that are critical of the government. Under the 2014 Decree No. 327 on Information Management on the Internet, individuals must use their government-registered

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<sup>29</sup> 2020 World Press Freedom Index, Reporters Sans Frontières (RSF), <https://rsf.org/en/ranking>

names online and those who “disseminate false information”<sup>31</sup> about the LPRP and government can face heavy penalties, ranging from three months in prison to life imprisonment, capital punishment, and fines up to 200 million kip (USD \$22,000).



Houayheuang “Muay” Xayabouly, Lao activist.

Officials have taken advantage of this law to quash critics. In 2016, Lao citizens Somphone Phimmasone, Soukan Chaithad, and Lodkham Thammavong, who stayed as migrant workers abroad in Thailand and participated in peaceful protests in 2015 outside the Lao embassy in Thailand, were arrested after returning to Laos for making Facebook posts critical of government corruption and the LPRP’s track record on human rights and environmental issues. Somphone was sentenced to 20 years in jail, Soukan was sentenced to 18 years in jail, and Lodkham was sentenced to 12 years in jail.<sup>32</sup>

Similarly, in 2019, Houayheuang “Muay” Xayabouly was sentenced to five years in jail and fined 20 million kip (\$2,200) for making online posts critical of government corruption and its response to flooding in the Champassak and Salavan Provinces.<sup>33</sup>

### CIVIL SOCIETY AND GRASSROOTS ACTIVISM

If anything, since the mid-2000s, the traditionally heavily aid-dependent Laos has become less reliant on Western donors and investors, whose money typically comes with human rights and civil society stipulations attached, as foreign investment and aid has poured in from authoritarian regimes like those in Vietnam and China, which have no such stipulations and notoriously poor human rights records. This shift in revenue has only fueled the LPRP’s repression of dissent and civil society.<sup>34</sup>

Protests are rare in Laos, in large part because the LPRP generally has little tolerance for the few protests that do arise. In November 2019, police placed a group of people who planned to participate in a pro-democracy protest in Lao PDR’s capital, Vientiane, under state surveillance, forcing organizers to cancel the demonstration.<sup>35</sup> The police then detained eight activists merely for planning the protest, even though the protest never occurred. Although six were eventually released, the family of one of the activists, who was later murdered on June 15 and previously released, was forced not to speak to the public.

<sup>30</sup> Laos: World Press Freedom Index, Reporters Sans Frontières (RSF), <https://rsf.org/en/laos>

<sup>31</sup> Decree Information Management on the Internet - No.327, Official Website: Lao Services Portal (Sept. 16, 2014), <http://www.laoservicesportal.com/index.php?r=site%2Fdisplaylegal&id=56#a27>

<sup>32</sup> Urgent Action - Three Activists Sentenced to Prison in Secret Trial, Amnesty International, Index Number: ASA 26/6270/2017 (May 17, 2017), <https://www.amnesty.org/download/Documents/ASA2662702017ENGLISH.pdf>

<sup>33</sup> Eugene Whong, Lao Woman Gets Five Years on Criticizing Government on Facebook, Radio Free Asia (Nov. 25, 2019), <https://www.rfa.org/english/news/laos/mouay-sentence-11252019151738.html>

<sup>34</sup> *Supra* note 23, 693-716.

<sup>35</sup> Laos: Democracy Activists Arrested, Human Rights Watch (Nov. 16, 2019), <https://www.hrw.org/news/2019/11/16/laos-democracy-activists-arrested>

## A. Crackdown on Dissent

The LPRP strictly controls civil society, suppressing dissidents and harshly restricting civil liberties like freedom of association and freedom of assembly. Party officials have openly expressed their belief that civil society organizations (CSOs) pose a threat to the LPRP — in 2013, former president Choummaly Sayasone told high-level LPRP officials to “strictly control actions” of CSOs “because they could destroy our country through nonviolent means.”<sup>36</sup> For that reason, CSOs in Laos tend to be government-organized NGOs (GONGOs) or are dependent on the government and/or party.

In 2017, the LPRP took steps to cripple CSOs, passing the Decree on Associations No. 238 to replace a 2009 decree. Before its passage, CSOs were already required to provide a broad summary of funding sources and activities to the government. The new decree passed sweeping restrictions, including banning the formation of political and religious groups; requiring government approval to accept any donations, interact with international organizations, and pursue other initiatives; and requiring the government to approve a CSO’s candidates for membership, charter, and board members before any CSO can be established. Organizations that attempt to “divide national, local solidarity” or “support or carry out activities that threaten national security, social order, individual freedom. . . and tradition” — all vaguely defined terms subject to abuse — may be “disciplined.”<sup>37</sup>

Even if funding or CSO projects are ultimately approved, introducing slow-paced bureaucracy detracts from limited CSO resources, deters donors and partners, particularly foreign ones, and significantly delays CSOs’ access to funding, in some cases even forcing CSOs to shut down or change themselves into small businesses to stay alive.

## B. Enforced Disappearances



*Sombath Somphone, Lao activist who was disappeared in 2012*

The LPRP also has a long history of swiftly and harshly punishing individuals who dissent, leading to an almost complete lack of grassroots activism, such as labor or student activism. As mentioned earlier, one method of suppression is through enforced disappearances.

Sombath Somphone, an internationally lauded civil society leader and

<sup>36</sup> Joshua Lipes, *Civil Society Groups in Laos Delayed Funding, Forced to Disband Under New Law*, Radio Free Asia (Jan. 24, 2018), <https://www.rfa.org/english/news/laos/csos-01242018122715.html>

<sup>37</sup> *Joint Letter to the Lao Government Re: Decree on Associations - Repeal of Decree on Associations No. 238 of 2017*, Human Rights Watch (Dec. 17, 2017), <https://www.hrw.org/news/2017/12/18/joint-letter-lao-government-re-decree-associations#>



sustainable development advocate, criticized the Lao government for land grabs that forced thousands from their homes without adequate compensation. In 2012, Sombath was caught on CCTV footage being abducted into a vehicle at a police checkpoint while on his way home. In spite of video evidence to the contrary, the government has refused to acknowledge the enforced disappearance, triggering international outcry from a wide range of governments, civil society organizations, and private citizens,<sup>38</sup> including the Office of the UN High Commissioner for Human Rights,<sup>39</sup> a coalition of 62 Asian NGOs,<sup>40</sup> and U.S. Secretaries of State Hillary Clinton<sup>41</sup> and John Kerry.<sup>42</sup> His family is still looking for him, but Somphone remains missing.<sup>43</sup>

Somphone is not the only activist who has been disappeared by the government. Phetphouthon Philachan from Laos lived in Thailand and participated in several demonstrations that criticized the Laos government, including a protest promoting human rights and democracy in front of the Lao Embassy in Thailand. In 2019, Philachane disappeared after he returned to Laos to visit relatives.<sup>44</sup> He later resurfaced in police detention.

Enforced disappearances are often exacerbated by land grievances and land grabs, as local communities are uprooted from their homes and forced to relocate without fair compensation from the Lao government.

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<sup>38</sup> *Laos: Seven Years On, The Enforced Disappearance of Sombath Somphone Remains Unresolved*, International Commission of Jurists (ICJ) (Dec. 15, 2019), <https://www.icj.org/laos-seven-years-on-the-enforced-disappearance-of-sombath-somphone-remains-unresolved/>

<sup>39</sup> *Laos: UN Urges Government to Ensure Safe Return of Missing Human Rights Defender*, United Nations News (Dec. 21, 2012), <https://news.un.org/en/story/2012/12/428952>

<sup>40</sup> *Sombath Somphone One Year On: 62 NGOs Call for a New Investigation into His Enforced Disappearance*, International Federation for Human Rights (FIDH) (Dec. 13, 2013), <https://www.fidh.org/en/region/asia/laos/14385-sombath-somphone-one-year-on-62-ngos-call-for-a-new-investigation-into-his>

<sup>41</sup> Press Release, *Disappearance of Lao Civil Society Leader Sombath Somphone*, United States Department of State (Jan. 16, 2013), <https://2009-2017.state.gov/secretary/20092013clinton/rm/2013/01/202202.htm>

<sup>42</sup> Press Release, *100 Days Since the Disappearance of Lao Civil Society Leader Sombath Somphone*, United States Department of State (Mar. 24, 2013), <https://2009-2017.state.gov/secretary/remarks/2013/03/206599.htm>

<sup>43</sup> Oslo Freedom Forum, *Shui-Meng Ng | Laos: Where Dissidents Disappear* | 2016, Human Rights Foundation (Jun. 15, 2016), <https://www.youtube.com/watch?v=tYkzJLX19rU>

<sup>44</sup> Eugene Whong, *Lao Migrant Goes Missing, Friends Suspect Government Abduction*, Radio Free Asia (Dec. 9, 2019), <https://www.rfa.org/english/news/laos/phetphouthon-philachane-12092019161409.html>

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## II. LAND GRIEVANCES



## II. LAND GRIEVANCES

As indicated in the previous section, within the context of authoritarianism in Laos, investments in land may produce a number of grievances, which, according to the Columbia Center on Sustainable Investment, encompasses such wide-ranging issues as negative environmental externalities; displacement and displacement-related challenges like adequate compensation; corruption; and failure to realize promised benefits from projects, like economic development.<sup>45</sup>

Today, land grievances are some of the most sensitive issues in Laos. It is an area that has led to repeated accusations of government corruption in the administration of land and resettling of displaced populations.

### LAND OWNERSHIP

According to the 2003 Land Law, all land in Laos is “under the ownership of the national community,” and the government is in charge of managing, allocating, and granting leases and concessions of the land.<sup>46</sup> In other words, Lao citizens cannot own land because technically all land belongs to the government.

Instead, Lao citizens lease land from the state and can gain permanent land use rights for up to 30 years, after which they can extend their lease. Foreign entities that wish to use land in Laos can either lease land through a Lao citizen or through gaining temporary land use rights via a land concession, which the government defines as “an authorization for concessions granted . . . by giving the right to use the land for a specific purpose based on the conditions and term specified in the legal contract.”<sup>47</sup> After an individual or organization receives a land title, they have permanent land use rights, which include the rights to protect, use, and transfer land.

However, because the government technically owns all land in Laos, it can also take land back. According to a 2017 party resolution, the state may re-take land use rights for state purposes “by allocating to such persons a new land or compensating them with a reasonable price.” It can also “withdraw the granting for transfer, lease or concession when it deems that the land is not actually used or used for wrong purposes.”<sup>48</sup>

However, formal laws are complicated by customary tenure systems. According to a report co-authored by the Food and Agriculture Organization of the United Nations (FAO), customary tenure is the system of “local rules, institutions, and practices governing land, fisheries, and forests that, over time and use, gain social legitimacy and become embedded in the fabric of society.”<sup>49</sup> Customary rules may not be written down or enshrined in official legal documents, but they are common amongst villages of different

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<sup>45</sup> Kaitlin Y. Cordes, Lise Johnson & Sam Szoke-Burke, *Land Deals and the Law: Grievances, Human Rights, and Investor Protections*, Columbia Center on Sustainable Investment (Mar. 2016), [http://ccsi.columbia.edu/files/2016/03/CCSI\\_Land-deals-and-the-law\\_Briefing.pdf](http://ccsi.columbia.edu/files/2016/03/CCSI_Land-deals-and-the-law_Briefing.pdf)

<sup>46</sup> Decree of the President of the Lao People's Democratic Republic on the Promulgation of the Amended Land Law (Nov. 5, 2003), <http://extwprlegs1.fao.org/docs/pdf/lao77471.pdf>

<sup>47</sup> [Lao PDR] Decree on the Implementation of the Land Law No.88/PM, Open Development Laos (ODL) of the Open Development Network (2008), <https://data.laos.opendevlopmentmekong.net/en/dataset/lao-pdr-decree-on-the-implementation-of-the-land-law-no-88-pm>

<sup>48</sup> *Resolution of the Party's Central Committee on the Enhancement of Land Management and Development in New Period* (Mar. 08, 2017), <https://data.laos.opendevlopmentmekong.net/en/dataset/18187c8d-3eff-487c-bd4e-4970e96c8d5e>

<sup>49</sup> *Challenges and Opportunities of Recognizing and Protecting Customary Tenure Systems in the Lao People's Democratic Republic*, Food and Agriculture Organization of the United Nations (FAO) and Mekong Region Land Governance (MRLG), License: CC BY-NC-SA 3.0 IGO (2019), <http://www.fao.org/3/CA1035EN/ca1035en.pdf>

## II. LAND GRIEVANCES

ethnicities and rural regions across Laos. Though the specifics of customary rules may vary across ethnic groups and villages, most rural villages have a system where individual families own plots of land where they live, while the community owns communal property, such as forests and pastures.<sup>50</sup>

In Lao PDR's law, customary tenure is recognized to some extent, but suffers from weak provisions, poor implementation, and abuse. The 2003 Land Law does not reference customary tenure systems. However, the 2008 Decree on the Implementation of the Land Law No. 88, which helps implement the 2003 Land Law, states that customary land use rights occur when land has been developed “in a regular, continued and long-term manner until the present time without any documents certifying the land use rights,”<sup>51</sup> and the Politburo Resolution on the Enhancement of Land Management and Development in the New Period of 2017 lists that land customary rights grant the rights to protect, use, transfer, and inherit land.<sup>52</sup>

It is important to point out that though formal law requires individuals to register ownership of their land, much of the land in Laos is untitled.<sup>53</sup> The majority of Lao PDR's rural population lacks official documentation and instead operates under the rules of their customary tenure systems. Many of these populations are not aware of their land rights and responsibilities granted by evolving government legislation.<sup>54</sup>

### LAND GRABS

Large-scale land concessions, or “land grabs,” occur when government officials confiscate land from villagers to be used for development projects, which are frequently headed by wealthy business people with government connections. The land is often taken illegally or without due process, consultation, consent, and/or adequate compensation for the villagers. Customary land rights are often ignored. Land grabs disproportionately affect ethnic minorities and indigenous populations, and they seriously disrupt the livelihoods of rural populations, who often rely on farming to survive.<sup>55</sup>

Beginning in 2006 during the 8th Party Congress, the LPRP has turned to granting land concessions to private corporations to use in mining, hydropower, agricultural, and forestry projects as part of an economic development strategy called “turning land into capital” (TLIC).<sup>56</sup> Though the government has created neither a comprehensive legal framework nor an official definition for TLIC, it is broadly understood to be a strategy where the government pursues strategies to use state-owned land in ways that generate wealth.<sup>57</sup>

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<sup>50</sup> *Gender and Land Rights Database: Laos*, Food and Agriculture Organization of the United Nations (FAO), [http://www.fao.org/gender-landrights-database/country-profiles/countries-list/land-tenure-and-related-institutions/en/?country\\_iso3=LAO](http://www.fao.org/gender-landrights-database/country-profiles/countries-list/land-tenure-and-related-institutions/en/?country_iso3=LAO)

<sup>51</sup> *Supra* note 47.

<sup>52</sup> *Supra* note 48.

<sup>53</sup> Rina Chandran, *New Laos Land Law Could Block Customary Rights, Women's Titles: Analysts*, Reuters (Oct. 19, 2018), <https://www.reuters.com/article/us-laos-landrights-lawmaking/new-laos-land-law-could-block-customary-rights-womens-titles-analysts-idUSKCN1MT173>

<sup>54</sup> Jeremy Ironside, *The Recognition of Customary Tenure in Lao PDR*, Mekong Region Land Governance (MRLG) Thematic Study Series #8, Vientiane (Oct. 2017), [https://www.mrlg.org/wp-content/uploads/2019/06/The-Recognition-of-Customary-Tenure-in-Lao-PDR\\_FINAL.pdf](https://www.mrlg.org/wp-content/uploads/2019/06/The-Recognition-of-Customary-Tenure-in-Lao-PDR_FINAL.pdf)

<sup>55</sup> Ban Houythaio, *Laos “Land Grabs” Drive Subsistence Farmers into Deeper Poverty*, The New Humanitarian (May 22, 2014), <https://www.thenewhumanitarian.org/analysis/2014/05/22/laos-land-grabs-drive-subsistence-farmers-deeper-poverty>

<sup>56</sup> *Laos Country Report 2020*, Bertelsmann Stiftung (BTI) Transformation Index (2020).

<sup>57</sup> Miles Kenney-Lazar, *Turning Land into Capital for Whom? Crises and Alternatives of Land Commodification in Laos*, Kyoto Review of Southeast Asia, <https://kyotoreview.org/issue-25/land-into-capital-for-whom-land-commodification-in-laos/>

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As a part of TLIC, the amount of land the government has turned over to the private sector, particularly foreign firms, has boomed. From 2010 to 2014 alone, the LPRP officially reported being involved in approximately 2,600 land concessions deals that have handed 1.1 million hectares (2.7 million acres), or 5% of the country's arable land, to large-scale development initiatives, largely in the forestry, mining, and hydropower sectors. Activists suspect the actual amount could be as much as three times higher than that.<sup>58</sup> Approximately 72% of these land deals involved foreign firms, mostly from Vietnam and China.<sup>59</sup>

However, many of these land concessions to investors are granted on land already claimed under customary tenure systems, leading to disputes and conflicts over land.

In 2013, for example, international NGO Global Witness published a report detailing how two Vietnamese rubber companies linked to Deutsche Bank and the International Finance Corporation — the World Bank's sister organization — were involved in land grabs in Laos and Cambodia totaling nearly 200,000 hectares (500,000 acres) of land. Although government-authorized, most of this land was sold by the government to these companies without the villagers' consent or knowledge, forcibly displacing residents while offering either zero or minimal compensation.<sup>60</sup> The report prompted Deutsche Bank to divest its more than \$4 million shares in one of the Vietnamese companies.<sup>61</sup>

The issue of land grabs is exacerbated by corruption, which as previously mentioned, is common amongst government officials. Land deals lack transparency, and officials have frequently been accused of abusing their powers to award land concessions to companies in order to receive kickbacks, thus turning a blind eye to illegal land grabs, and hiding information about existing regulations providing compensation and resettlement for land expropriations.<sup>62</sup> The lack of accurate and publicly available information about granted land concessions and the government's ineffectiveness at monitoring concessions make it even harder to hold corrupt government officials accountable.

Seeking justice for land grabs is also complicated by Lao PDR's weak judiciary. Land disputes are the most common type of legal cases in Laos and most common type of citizen-submitted petition to the National Assembly.<sup>63</sup> Yet because the judiciary is not independent and has weak judicial capacity, many high-profile cases remain unresolved and courts are seen as more of a platform to negotiate rather than carry out law.

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<sup>58</sup> Ban Houytha, *Laos "Land Grabs" Drive Subsistence Farmers into Deeper Poverty*, *The New Humanitarian* (May 22, 2014), <https://www.thenewhumanitarian.org/analysis/2014/05/22/laos-land-grabs-drive-subsistence-farmers-deeper-poverty>

<sup>59</sup> Andreas Heinemann & Peter Messerli, *Coping with a Land-Grab World: Lessons from Laos*, International Geosphere-Biosphere Programme (IGBP), IGBP's Global Change magazine, Issue 80 (April 2013), <http://web.archive.org/web/20150927145812/http://www.igbp.net/news/features/features/copingwithalandgrabworldlessonsfromlaos>

<sup>60</sup> *Rubber Barons*, Global Witness, (May 13, 2013), <https://www.globalwitness.org/en/campaigns/land-deals/rubberbarons/>

<sup>61</sup> Robert Carmichael, *Deutsche Bank Sells Fund's Stake in Controversial Vietnamese Company*, *Voice of America*, (Dec. 3, 2013), <https://www.voanews.com/europe/deutsche-bank-sells-funds-stake-controversial-vietnamese-company>

<sup>62</sup> Roseanne Gerin, *Laos Officials Not Doing Enough to Enforce Land Concession Regulations*, *Radio Free Asia* (May 4, 2017), <https://www.rfa.org/english/news/laos/lao-officials-not-doing-enough-to-enforce-land-concession-regulations-05042017153447.html>

<sup>63</sup> *Introduction to Lao Land Issues - Managing Land, Forests and Natural Resources - Growing Inequity or Growing Inequity?*, Land Issues Working Group (LIWG) (2012), <https://laolandinfo.org/wp-content/uploads/2019/09/NEW-Introduction-to-Lao-Land-Issues-2012-ENG-updated-05-2013.pdf>

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Other forms of seeking justice, such as protests, are potentially dangerous because the LPRP is intolerant to dissent. Publicly visible opposition to land grabs is scant because the government swiftly and harshly represses dissidents. Villagers who resist having their land taken away from them risk being arrested and facing long jail sentences.

For instance, after being detained in 2011 along with 22 other Dane Nhai villagers who protested land confiscated and given to a Vietnamese company, protest leader Sy Phong died in jail in 2019.<sup>64</sup> In 2017, 15 Xékong Province villagers who protested against land confiscated and given to a Vietnamese company were arrested and tortured with beatings, inadequate food, and electric shocks during their detention. Nine of the protestors were detained for two years before receiving two- to six-year prison sentences, and one died in jail in 2018 in what police claim to be suicide. Five of them remain imprisoned today.<sup>65</sup>

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<sup>64</sup> Richard Finney, *Lao Villager Dies After 8 Years in Jail Over Land Grab Protest*, Radio Free Asia (May 20, 2019), <https://www.rfa.org/english/news/laos/villager-05202019154307.html>

<sup>65</sup> Richard Finney, *Lao Protest Villagers Held Since 2017 Have Been Sentenced*, Radio Free Asia (Aug. 06, 2019), <https://www.rfa.org/english/news/laos/sentenced-08062019170758.html>

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# III. DAMMING ON THE MEKONG RIVER

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### III. DAMMING ON THE MEKONG RIVER

One significant source of land grievances in Laos has been the hydropower projects.

As previously discussed, the LPRP has been able to get away with institutionalizing patron-client networks, permitting corruption to run rampant, harshly repressing even the smallest hints of dissent, and shrouding its decision-making processes in secrecy because domestic institutions within Laos are not strong enough to hold the party accountable for its abuses.

In the LPRP's single-minded quest to use large hydropower projects on the Mekong River to boost Lao PDR's economy, the LPRP has ignored criticisms about the economics, environmental implications, and government mismanagement surrounding the projects. The LPRP's attempts to dam the Mekong River exemplify the ways in which the country's authoritarian regime can get away with ignoring legitimate grievances from citizens and harming the quality of life for millions.

#### BACKGROUND

The Mekong River, the longest river in Southeast Asia, begins in southeast China and flows through Burma, Laos, Thailand, Cambodia, and Vietnam before finally draining into the South China Sea.



*A section of the Theun-Hinboun Dam © Laurence McGrath, 2005 | Source: Wikimedia Commons.*

Home to one of the world's largest inland fisheries and frequently referred to as Vietnam's "rice bowl," the Mekong River basin supports the livelihoods of more than 60 million people. Lao PDR's capital, Vientiane, and Cambodia's capital, Phnom Penh, are located along the Mekong's banks. 97% of Lao PDR's population lives within the Mekong River basin, and

the approximately 62% of Lao PDR's force that is involved in agriculture relies on the Mekong to grow their crops.

Recently, the LPRP has pinned its hopes for economic development on the Mekong River and its tributaries. It has set out a grand vision for Laos: it hopes that by selling the electricity harnessed from the river to neighboring Asian countries, hydropower will become Lao PDR's greatest revenue generator by 2025 and consolidate Laos' position of being "the battery of



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Southeast Asia.” Since hydropower is generated through using dams to turn water into stores of energy, Laos has begun a massive number of damming initiatives in pursuit of this hydropower dream.

The concept of damming the Mekong is not new. In the 1990s, China began damming in the Upper Mekong. In the mid-2000s, groups of Chinese, Vietnamese, Thai, and Malaysian companies came up with plans to create 11 major hydropower dams on the mainstream of the Lower Mekong River, including nine in Laos.

Construction on the first dam of the nine planned hydropower dams, the Xayaburi Dam, began in 2012 and concluded when the dam went into operation in 2019. The 1285 megawatt dam was funded by Thai banks, and 95% of the electricity generated from this dam goes to a Thai utility company.<sup>66</sup> Similarly, the 260 megawatt Don Sahong Dam, the only other completed dam of the nine planned dams,



Xayaburi Mainstream Mekong Dam | Source: Wikimedia Commons.

was developed by a Malaysian firm.<sup>67</sup> As of 2020, Laos was gearing up to begin construction on the sixth planned dam, the \$2 billion Sanakham hydropower project, which is funded by a state-owned Chinese firm.<sup>68</sup> Located in western Laos bordering Thailand, this project aspires to help Laos boost its economy and live up to its “battery of Southeast Asia” ambitions by exporting generated power to Thailand. However, as of January 2021, the Sanakham hydropower project is clouded with controversy and uncertainty as the Thai government has voiced discontent about the project due to its lack of attention paid to the resulting environmental impacts.<sup>69</sup>

While the largest hydropower projects like the Xayaburi Dam are located directly on the Mekong River, most dams in Laos are on tributaries of the Mekong. By 2016, 40 dams had already been built,<sup>70</sup> and as of late 2019, the government has approved a total of around 140 dam projects. Laos relies heavily on China to fund these dams. For example, of the dam operators and builders that have been made public, approximately half of the firms of dam operators and builders that have been made public are connected to China’s Belt and Road Initiative.<sup>71</sup> There are also other dam projects on the upper Mekong in China that have been ignorant of their impact on neighboring countries in the south; these projects have at times dried out the

<sup>66</sup> Xayaburi Dam, EarthRights International, <https://earthrights.org/what-we-do/mega-projects/xayaburi-dam/>

<sup>67</sup> Don Sahong Dam, EarthRights International, <https://earthrights.org/case/don-sahong-dam/>

<sup>68</sup> Laos Pushes Ahead with Sixth Mekong River Dam Project, Reuters (May 11, 2020), <https://www.reuters.com/article/us-mekong-river-dam/laos-pushes-ahead-with-sixth-mekong-river-dam-project-idUSKBN22N2HK>

<sup>69</sup> Sebastian Strangio, “Not Sufficient”: Thailand Rejects Report on Lao Hydropower Dam, The Diplomat (Jan. 26, 2021), <https://thediplomat.com/2021/01/not-sufficient-thailand-rejects-report-on-lao-hydropower-dam/>

<sup>70</sup> Laos and its Dams: Southeast Asia’s Battery, Built by China, Radio Free Asia (2019), <https://www.rfa.org/english/news/special/china-build-laos-dams/>

<sup>71</sup> *Id.*

river and caused extreme floods. The geopolitical and social implications of these projects are striking and reverberate globally. Given that China, a country ruled by a fully authoritarian regime, provides monetary and infrastructural assistance to Laos, Laos, in return, willingly supports and amplifies China's narratives and stances in international institutions such as the United Nations.

## CRITICISMS OF DAMMING

The Laos government has received substantial criticism, both domestically and abroad, about its damming initiatives. These critiques include environmental, economic, and government mismanagement concerns.

### A. Environmental

Some of the biggest criticisms of Lao PDR's hydropower projects are of the detrimental impacts of damming on the Mekong River's delicate ecosystem. Damming rivers disrupts fish spawning patterns and blocks fish migration, potentially killing millions of fish that people rely on for food and driving certain fish species extinct.

Damming also exacerbates the effects of droughts and floods and holds back sediment flow, which contain nutrients vital to the health of the river ecosystem. According to a study by the Mekong River Commission (MRC) — an organization composed of representatives from Cambodia, Laos, Thailand, and Vietnam that was established in 1995 to promote cross-border cooperation on issues involving sharing the Mekong River — if all the planned dams are implemented, 97% of sediment that drains into the sea could be blocked by 2040, which would impact the natural flow of nutrients into the water and fish migration.<sup>72</sup> These environmental issues pose a serious threat to food security for the millions of people who live in the region.

The negative environmental impacts of damming the Mekong do not only affect the Lao people — the LPRP's decisions impact the livelihoods of millions of Vietnamese and Cambodians downstream from Laos who depend on the river, many of whom are not even aware that the gradual changes in the environment they see can be attributed to damming.

Unfortunately, there are no international bodies that have been able to keep Laos accountable or successfully pressure Laos into considering cross-border environmental impacts.<sup>73</sup> Although the MRC is intended to promote international cooperation, in practice it lacks enforcement power.<sup>74</sup> Its provisions are not binding and it cannot veto projects, meaning

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<sup>72</sup> Short Technical Note, *Mekong Sediment from the Mekong River Commission Study*, Mekong River Commission, <https://mrcmekong.org/assets/Publications/Mekong-sediment-from-the-MRC-Council-Study-Technical-notedocx.pdf>. The MRC, in collaboration with the United States government, launched a Mekong Dam Monitor in December 2020 to survey water data and facilitate best practices. Available at <https://www.state.gov/launch-of-the-mekong-dam-monitor/>

<sup>73</sup> While the United Nations Human Rights Council appoints a Special Rapporteur on human rights and the environment, the Special Rapporteur has, to date, not addressed human rights issues related to environmental development in Laos specifically. See <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/DavidBoyd.aspx>

<sup>74</sup> Factbook, *Dam Projects and Disputes in the Mekong River Basin*, ECC Platform, <https://factbook.ecc-platform.org/conflicts/mekong-river-basin-contemporary-dam-disputes#:~:text=The%20Mekong%20River%20Commission's%20lack%20of%20enforcement%20powers&text=One%20of%20the%20main%20reasons,shared%20resources%20in%20the%20basin>

there is a lack of internationally agreed-upon requirements or standards that the LPRP must meet.

## B. Economic

In addition to the environmental concerns that these damming projects present, the actual economic benefit of these projects to the Lao people have been called into question. In the early 2000s, the MRC estimated that the 11-part damming project would generate \$30 billion for Cambodia, Laos, Vietnam, and Thailand.

However, recent findings in 2018 by the MRC came to the opposite conclusion, finding that Laos actually stands to lose \$9 billion if damming projects proceed as planned.<sup>75</sup> Some scientists question whether there is even sufficient demand from neighboring countries to use up all the electricity these damming projects generate, as Thailand, which has a glut of electricity, repeatedly delays signing deals to purchase hydropower.<sup>76</sup>

Additionally, although large-scale development projects like dam-building might produce GDP growth, it is unclear whether it also translates to poverty reduction or increasing citizens' quality of life. In 2019, the UN Human Rights Council noted concerns that because Laos leans heavily on large resource development projects to turbo-charge GDP growth without implementing social protection programs or strengthening investing environments, its ratio of poverty reduction per unit of gross domestic product growth is low.<sup>77</sup>

Dam-building, then, may not actually materially improve the average citizens' quality of life. If anything, dam-building projects may exacerbate income inequality as elites profit while villagers, bearing the brunt of the negative consequences, are displaced or suffer from food insecurity.

## C. Government Management: Land Grabs, Displacement, and Dam Failures

Beyond environmental and economic concerns, there are also implications for the management of these projects. Hydropower projects — which are notorious for opaque bidding processes — have ample room for government mismanagement, especially for a country with serious corruption issues such as Laos.

As previously mentioned, land concessions have increased dramatically in recent years, including to hydropower projects, resulting in increased land

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<sup>75</sup> 3rd MRC International Conference - Enhancing Joint Efforts and Partnerships Towards Achievements of the Sustainable Development Goals in the Mekong River Basin, Mekong River Commission Summit, Siem Reap, Cambodia (Apr 2018), [https://mrcmekong.org/assets/Publications/International-conference-proceedings\\_1Apr19\\_v1-L-RES.pdf](https://mrcmekong.org/assets/Publications/International-conference-proceedings_1Apr19_v1-L-RES.pdf)

<sup>76</sup> Hannah Beech, 'Our River Was Like a God': How Dams and China's Might Imperil the Mekong, N.Y. Times (Oct. 12, 2019), <https://www.nytimes.com/2019/10/12/world/asia/mekong-river-dams-china.html>

<sup>77</sup> Visit to the Lao People's Democratic Republic: Report of the Special Rapporteur on Extreme Poverty and Human Rights, United Nations Human Rights Council, A/HRC/41/39/Add.2 (Jun. 20, 2019), [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A\\_HRC\\_41\\_39\\_Add.2.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_39_Add.2.docx)

expropriations as well. On average, each dam results in about 868 people being forced to resettle.<sup>78</sup>

One way in which the government has mishandled issues related to hydropower projects is resettlement following land grabs.

For instance, in 2005, the World Bank, Asian Development Bank, and European Investment Bank helped finance the \$1.45 billion Nam Theun 2 (NT2), a hydroelectric project that began operating in 2010.<sup>79</sup> The project forced more than 6,000 people to be involuntarily resettled and resulted in at least 110,000 people downstream to suffer problems such as lower fishing yields and increased flooding risks.<sup>80</sup> In its 2015 report to the World Bank, the international panel of experts (PoE) tasked with monitoring NT2 found that “a substantial proportion of the Resettlement Objectives and Provisions has not been fully achieved yet.”<sup>81</sup>

Similarly, when the Xayaburi Dam was built, villagers who were forced to resettle received inadequate compensation and poor treatment from the government. Some of the more than 2,000 resettled villagers were given only a year of assistance<sup>82</sup> even though the government itself estimated it would require around five years to resettle, while villagers from other resettlement sites suffered from “unemploy[ment] and hav[ing] no land to farm, making it difficult to earn a living,”<sup>83</sup> received only \$15 to cover transportation costs to their new homes, and failed to receive compensation for lost sources of food and income, such as fisheries, fruit and vegetable gardens, and gold panning. The approximately 200,000 people downstream from the dam who rely on the river to survive received no compensation for its construction, nor did the millions of people whose food security was threatened.

Furthermore, the government has mismanaged its response to hydropower project failures. On July 23, 2018, following heavy rains, a dam that was part of the foreign-funded Xe Pian Xe Namnoy hydropower project collapsed, resulting in the worst flash floods in Laos in decades. More than 7,000 were displaced after their homes were destroyed, forcing them to take refuge on land that still had land mines from the Vietnam War.

Though government officials received reports ahead of the collapse that the dam was in “very dangerous condition” and villagers should evacuate, they failed to evacuate all the villages that would be potentially impacted.<sup>84</sup> Following the collapse, the LPRP forbade international relief-providing organizations, including the Red Cross and Save the Children, from making media statements;<sup>85</sup> impeded reporters and film crews from accessing certain ar-

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<sup>78</sup> Submission to the UN Special Rapporteur on Extreme Poverty and Human Rights on the Situation in Lao People's Democratic Republic (PDR), Manushya Foundation (Mar. 2019), <https://www.ohchr.org/Documents/Issues/EPoverty/Lao/ManushyaFoundation.pdf>.

<sup>79</sup> *Nam Theun 2 Project Overview and Description*, World Bank (Dec. 9, 2010), <https://www.worldbank.org/en/news/feature/2010/12/09/project-overview-and-description>.

<sup>80</sup> IRN's Nam Theun 2 Campaign, International Rivers Network (IRN) Linking Human Rights and Environmental Protection, <https://www.irn.org/namtheun/>

<sup>81</sup> David K. McDowell, Thayer Scudder & Lee M. Talbot, *Lao People's Democratic Republic Nam Theun 2 Multipurpose Project: Twenty-Fourth Report of the International Environmental and Social Panel of Experts*, World Bank (Oct. 23, 2015).

<sup>81</sup> Rachel Vandenbrink, *Assistance for Villagers Resettled by Xayaburi Dam to Last One Year*, Radio Free Asia (Jun. 18, 2013), <https://www.rfa.org/english/news/laos/xayaburi-06182013164824.html>

<sup>82</sup> Rachel Vandenbrink, *Assistance for Villagers Resettled by Xayaburi Dam to Last One Year*, Radio Free Asia (Jun. 18, 2013), <https://www.rfa.org/english/news/laos/xayaburi-06182013164824.html>

<sup>83</sup> Joshua Lipes, *Dark Days for Villagers Relocated Make Way for Xayaburi Dam*, Radio Free Asia (Jul. 01, 2013), <https://www.rfa.org/english/news/laos/xayaburi-07012013182231.html>

reas; stopped rescue teams from searching for missing people for days;<sup>86</sup> and suppressed domestic media coverage, forcing affected individuals to rely on foreign reporting they received on their phones for information.

Later, the government repeatedly changed its death counts.<sup>87</sup> The government officially settled on 43 confirmed deaths, though that number is disputed by on-the-ground rescue teams. Some civil society groups peg the actual death count to be as high as 800,<sup>88</sup> but state-owned media accused all alternative counts of being “fake news.”

Eventually, the government blamed the collapse on poor construction by the South Korean company SK Engineering & Construction (SK E&C) that saw the company using dirt instead of cement to build the dam.<sup>89</sup> Reports have also emerged that SK E&C made modifications that incentivized faster completion and altered the dam’s format, material’s slope, and height in order to save \$19 million.<sup>90</sup>

Though the LPRP attempted to shift the blame, it is by no means innocent. The government, which owned 25% of the project, had regulatory oversight on the planning and construction of the dam.<sup>91</sup> The LPRP has faced accusations that corruption within the government led to the disaster through project mismanagement and that it prioritizes foreign investment over regulations and its own citizens’ lives.

## LPRP’S RESPONSE

Given this wide array of serious problems, Lao citizens have spoken out against dam-building on the Mekong River. In response, the LPRP has responded in the same way it does to all forms of dissent: by harshly punishing those who raise their voices and creating a repressive environment to prevent others from doing the same.

For instance, the LPRP used environmental and women’s rights activist Houayheuang “Muay” Xayabouly to send a warning to other activists that speaking out against the government is forbidden. Muay raised awareness on issues such as the excessive tolling between the Laos-Thailand border by an international business, the buying and selling of government offices, and the buying and selling of degrees.<sup>92</sup>

Her activism was not without cost. Government officials visited her and issued her multiple warnings for her criticisms, issued a press release warning that spreading allegedly false information was punishable by law, and pressured her employers into firing her as a tour guide. When Muay attempted to

<sup>84</sup> Mike Ives, *A Day Before Laos Dam Failed, Builders Saw Trouble*, N.Y. Times (Jul. 26, 2018), <https://www.nytimes.com/2018/07/26/world/asia/laos-dam-collapse.html>

<sup>85</sup> Hannah Ellis-Petersen, *Laos Dam Collapse: Work Continues on Huge Projects Despite Promised Halt*, The Guardian (Aug. 20, 2018), <https://www.theguardian.com/world/2018/aug/21/laos-dam-collapse-work-continues-on-huge-projects-despite-promised-halt>

<sup>86</sup> Luke Hunt, *Laos Dam Collapse Brings Flood of Questions*, The Diplomat (Jul. 31, 2018), <https://thediplomat.com/2018/07/laos-dam-collapse-brings-flood-of-questions/>

<sup>87</sup> Mike Ives, *‘I Think All Those People are Dead’: Laos Dam Survivors Seek Word of Neighbors*, N.Y. Times (Jul 27, 2018), <https://www.nytimes.com/2018/07/27/world/asia/laos-dam-survivors.html>

<sup>88</sup> Stella-maris Ewudolu, *Lao Gov Sits on Dam Collapse Report Waiting on Seoul’s Approval on What to Say* \*Updated, AEC News Today (May 20, 2019), <https://aecnewstoday.com/2019/lao-gov-sits-on-dam-collapse-report-waiting-on-seouls-approval-on-what-to-say/>

<sup>89</sup> Richard Finney, *Laos Dam Collapse Blamed on Substandard Construction*, Radio Free Asia (May 15, 2019), <https://www.rfa.org/english/news/laos/collapse-05152019161026.html>

<sup>90</sup> Seo Young-Ji, *SK E&C’s Attempts to Cut Costs Led to Design Changes that Resulted in Collapse of Dam in Laos*, Hankyoreh (Oct. 15, 2018), [http://english.hani.co.kr/arti/PRINT/865895.html?fbclid=IwAR2puC7VaFTLh tonMFRehJjardML90LHrU\\_51T t2mEcGZ53WREiAVTqHqW](http://english.hani.co.kr/arti/PRINT/865895.html?fbclid=IwAR2puC7VaFTLh tonMFRehJjardML90LHrU_51T t2mEcGZ53WREiAVTqHqW)

### III. DAMMING ON THE MEKONG RIVER

fundraise to build a school in 2018 by selling t-shirts that read “I don’t want to buy government positions”<sup>93</sup> and organizing a concert, police shut down the concert and arrested people wearing her t-shirts. Undeterred, Muay continued her activism and continued speaking up against international investors that squeezed out Lao businesses and gained land concessions for infrastructure projects, dams, and railways at the expense of the Lao people.

On September 5, 2019, Muay posted a Facebook video where she criticized the government’s ineffective response to the 2018 collapse of a dam that was a part of the Xe-Pian Xe-Namnoy hydropower project. The video received more than 170,000 views. In retaliation, a few days later on September 12, she was arrested. She was denied bail, forbidden from choosing her own lawyer, and forced into making a confession. Following a pre-trial detention and summary trial where she did not receive due process, she was punished with a five year prison sentence and a 20 million kip (\$2,200) fine for allegedly “spreading propaganda against the Lao People’s Democratic Republic” and “trying to overthrow the Party, state and government.” She was also denied the ability to appeal the verdict.

## TAKEAWAYS

In the past, HRF has found a correlation between global crises and authoritarianism, such as between human trafficking and authoritarianism.<sup>94</sup> This trend also holds true in Laos.

These hydropower projects on the Mekong River are a recipe for disaster, plain and simple.

They pose not only an environmental threat, but also a human rights one. Large influxes of opaque, foreign money are flowing into a country wracked by corruption. Villagers are being torn away from their homes and livelihoods without their consent or any compensation. The very officials who dispossess them of their land often stand to gain from doing so, and the weak judiciary makes access to justice difficult.

Unfortunately, under Lao PDR’s authoritarian regime, it is incredibly difficult to hold officials accountable for legitimate grievances. There are no free and fair elections, meaning discontented villagers have no way of voting officials out of office. The state-controlled media censors coverage of large foreign investment projects and conceals project failures, making it difficult to disseminate critical information about these projects. Individuals who do publicly dissent — such as Houayheuung “Muay” Xayabouly — risk harassment, intimidation, fines, and imprisonment.

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<sup>91</sup> Mike Ives, *Laos Dam Failure Exposes Cracks in a Secretive Government’s Agenda*, N.Y. Times (Jul. 29, 2018), <https://www.nytimes.com/2018/07/29/world/asia/laos-dam-response-government.html>

<sup>92</sup> #FreeMuay from Jail in Laos, Manushya Foundation, <https://www.manushyafoundation.org/free-muay-from-jail-in-laos>

<sup>93</sup> Mandates of the Special Rapporteur on the Situation of Human Rights Defenders; the Working Group on Arbitrary Detention; the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises; the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Express; the Special Rapporteur on Extreme Poverty and Human Rights; the Special Rapporteur on Violence Against Women, Its Causes and Consequences and the Working Group on Discrimination Against Women and Girls, AL LAO 2/2020 (Jul. 13 2020), <https://spcommreports.ohchr.org/TMResultsBase/>

<sup>94</sup> Prachi Vidwans & Malaak Jamal, *Authoritarianism and Trafficking in Persons*, Human Rights Foundation (Jul. 27, 2018), <http://hrf.org/wp-content/uploads/2019/05/HRF-policy-memo-2.pdf>

### III. DAMMING ON THE MEKONG RIVER

Within this context, a small group of LPRP elites have been able to determine the fate of the nation and plow ahead with their destructive plans at the expense of Lao PDR's citizens. Even with good management, it is unclear how economically advisable these hydropower projects would even be after accounting for the environmental damage they would cause. However, the LPRP's concerted efforts to stamp out civil society and harshly punish activists who speak out make it difficult to monitor corruption and the projects' profits and progress.

Because of a lack of domestic mechanisms for accountability and the LPRP's repression of domestic protests, the LPRP has continued pursuing its plan to develop hydropower projects on the Mekong, either denying or wholesale ignoring criticisms about the initiatives along the way. In order to prevent the LPRP from causing irreversible damage both to the environment and to the millions of people who rely on the Mekong River, more international attention must be paid to this issue in order to hold the LPRP accountable.

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IV. CORPORATE  
CONSIDERATIONS  
FOR INVESTMENT  
IN LAO PEOPLE'S  
DEMOCRATIC  
REPUBLIC

An aerial photograph of the National Assembly of Laos, a large, multi-story building with a prominent portico supported by four columns. The building has a red-tiled roof and a central emblem. The text 'ສຳນັກງານ ນາຍົກລັດຖະມົນຕີ' is visible on the portico. The entire image is overlaid with a semi-transparent red color.

ສຳນັກງານ ນາຍົກລັດຖະມົນຕີ

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#### IV. CORPORATE CONSIDERATIONS FOR INVESTMENT

Because of rampant corruption and human rights abuses, foreign companies must take social impact into serious account when investing in Laos. Although Laos is a member state of the United Nations and through its membership is obligated to uphold the Universal Declaration of Human Rights (UDHR), the government of Laos remains to be one of the worst abusers of human rights in the world. Freedom House's Global Freedom Scores rates Laos a mere 2 out of 40 for political rights, and the country is categorized as "Not Free."<sup>95</sup>

On hydropower projects on the Mekong River alone, the government of Laos has violated the right to freedom of expression by silencing activists who spoke out against the development projects, violated the right to freedom of assembly and association by preventing gathering to protest, violated the right to a fair trial by convicting activists to prison in kangaroo courts, and violated the right to property by conducting land grabs from private citizens.<sup>96</sup>

In a 2019 report from the Special Rapporteur on extreme poverty and human rights, the Special Rapporteur noted that Lao PDR ranks 132nd out of 180 on Transparency International's corruption index.<sup>97</sup> Access to justice is severely impaired, especially for the poor.<sup>98</sup> The Special Rapporteur also observed systematic oppression that deters civil society activism in the country.<sup>99</sup> Notably, the Special Rapporteur specifically criticized the corporate sector in the country for failing to properly assess social and human rights impact of investments, and urged greater transparency and communication with local communities prior to conducting business activities.<sup>100</sup>

Within that context, investors should be aware that land grievances have been and continue to be a major concern for Lao citizens. Given trends around the government's land and natural resource-based economic development strategy and its increased granting of land concessions, land grabs will likely be an ongoing issue as well. Recourse for Lao citizens will continue to be challenging, as the authoritarian government in Laos lacks judicial independence and accountability.

As Laos lacks local regulation and guarantees of human rights when it comes to land rights, environmental impact, and international investment, stakeholders must look to established international standards when investing in projects in Laos that would impact citizens locally, including international human rights law, international investment law, domestic law, and contracts between the investor and the government, before pursuing a project in the country.

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<sup>95</sup> Global Freedom Scores, Freedom House, <https://freedomhouse.org/countries/freedom-world/scores>

<sup>96</sup> Compilation on the Lao People's Democratic Republic, A/HRC/WG.6/35/LAO/2, <https://undocs.org/A/HRC/WG.6/35/LAO/2>

<sup>97</sup> *Supra* note 77.

<sup>98</sup> *Id.* para 71

<sup>99</sup> *Id.* para 72

<sup>100</sup> *Id.* at 71

### OBLIGATION TO RESPECT HUMAN RIGHTS UNDER INTERNATIONAL LAW

Private stakeholders looking to learn about protecting human rights in foreign investment projects should refer to the UDHR and the International Covenant on Civil and Political Rights (ICCPR) as their starting point. The UDHR and ICCPR serve as the foundation of today's global human rights framework and remain to be the starting point in any discussion of human rights protections.

Another source that caters more specifically to business investments is the Guiding Principles on Business and Human Rights,<sup>101</sup> which lays out three core elements for businesses to protect human rights: (1) The need for states to respect, protect, and fulfill human rights; (2) the need for businesses to comply with laws and respect human rights; and (3) the need for breaches of rights to be matched with appropriate remedies. Foundational and operational principles for businesses include the following:

- Respecting internationally recognized human rights — which involves addressing adverse human rights impacts and avoiding infringing on human rights — regardless of the size, sector, operational context, or ownership of the firm;
- Having policy commitments, due diligence processes, and remediation processes dedicated to respecting human rights;
- Identifying the actual and potential risks of their business activities causing negative human rights impacts;
- Effectively integrating human rights impact assessments across internal functions and processes;
- Tracking human rights impact response effectiveness; and
- Communicating human rights impacts to stakeholders.

If the stakeholder is from a member state of the Organisation for Economic Co-operation and Development (OECD), the stakeholder should also consult the Declaration on International Investment and Multinational Enterprises,<sup>102</sup> which states that businesses should:

- Respect human rights and address adverse human rights impact;
- Avoid contributing to adverse human rights impact;

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<sup>101</sup> Guiding Principles on Business and Human Rights, United Nations, HR/PUB/11/04 (2011).

- Mitigate any negative human rights impact;
- Incorporate the respect for human rights in its policy practice;
- Conduct sufficient human rights due diligence; and
- Remedy any negative human rights impact.

The World Bank offers further guidelines to investing in fragile and conflict-affected situations (FCS). It recommends a diligent assessment of social impact that takes into account the local political situation, and to reject pursuing projects that “the public will not support and the government does not have the capacity to effectively administer and regulate.”<sup>103</sup>

### OBLIGATION TO AVOID COMPLICITY UNDER INTERNATIONAL LAW

In their compliance with international standards on business and human rights, stakeholders should consider the local political and human rights landscape, especially in countries ruled by authoritarian regimes like Laos, where business dealings likely must go through multiple stages of government approval and cooperation. Particularly in the case of Laos, stakeholders should review the government’s track record in human rights violations, corruption, and accountability to ensure that they are not complicit in further rights violations.

According to the April 2008 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, “companies can avoid complicity by employing . . . due diligence processes . . . not only to their own activities but also to the relationships connected with them.”<sup>104</sup>

**It is imperative that both the state and businesses remain cognizant of the human rights impact of their work.**

It is imperative that both the state and businesses remain cognizant of the human rights impact of their work. However, when the state is itself a human rights abuser, businesses should still seek to uphold human rights principles instead of construing the state’s poor human rights record as a pass to sanction human rights abuses in the country. As such, engagement with civil society should be welcomed; such engagement can help play a role in crafting comprehensive solutions towards more accountability.

<sup>102</sup> Declaration on International Investment and Multinational Enterprises, Organisation for Economic Co-operation and Development, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0144#mainText>

<sup>103</sup> Robert Whyte & Carlos Griffin, *Investment Climate in Practice: Promoting Foreign Investment in Fragile and Conflict-Affected Situations*, <https://openknowledge.worldbank.org/bitstream/handle/10986/20432/911900BRI0Box30D0VC0KNOWLEDGE0N0TES.pdf>

<sup>104</sup> John Ruggie, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/8/5, para. 81 (Apr. 7, 2008), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/128/61/PDF/G0812861.pdf?OpenElement>

### ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG) CONSIDERATIONS

In recent years, the growing prominence of environmental, social, and corporate governance (ESG) indices have fueled new conversations about ethical investment from a human rights perspective. Under the ESG framework, transnational companies now take social and environmental impact into greater consideration, whether it be pre-investment impact assessments or ongoing assessments of the business's development in the country.<sup>105</sup> However, these evaluations are often conducted through examining the bilateral relationship between the business investor and the local community only, neglecting pertinent local political context that may affect business decision making and recourse to address human rights abuse in the country. In authoritarian countries like Laos, the existing relationship between the government and the local community must also be taken into consideration in order to ensure more robust protections for human rights and avoidance of complicity in government-perpetrated human rights abuses.

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<sup>105</sup> (ESG) Environmental, Social and Governance, Corporate Finance Institute, <https://corporatefinanceinstitute.com/resources/knowledge/other/esg-environmental-social-governance/>

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# V. CONCLUSION



## V. CONCLUSION

Laos has largely managed to escape international media scrutiny for its egregious human rights abuses, far more so than some of its more economically prominent authoritarian neighbors. Due to the tight control of LPRP, independent civil society organizations are promptly stamped out and disbanded, and activists are put in prison or forcibly disappeared. However, just because human rights abuses in the country are not highly visible globally does not mean they cease to exist, or can be ignored.

As the only legal party in the country according to the constitution, the LPRP has complete control of all matters within the government. Due to the severe lack of free and fair elections, LPRP members and party-approved individuals dominate the political system. Such an atmosphere offers little to zero room for civil society and the general populace of Laos to provide direct input on important decisions made by the government that impact their everyday lives. Individuals who do openly criticize the government's actions — whether that be in regards to forced displacements, land concessions, or even infrastructural initiatives such as hydropower projects and dams — are often harshly punished and subject to grave human rights abuses committed by the state.

The LPRP's handling of Lao PDR's hydropower projects on the Mekong River exemplifies why democratic values and institutions that keep governments accountable and allow dissent are so important. These damming projects are opaque, lack accountability, and have already directly harmed thousands of Laos citizens with the potential to hurt many more. However, the government has been able to continue these projects by quashing all sources of opposition as soon as they arise. The Chinese, Vietnamese, and Thai companies that fund these projects are complicit in propping up a corrupt, autocratic regime — companies whose countries are also ruled by authoritarian regimes.

China not only has funded hydropower projects on the Mekong River. Another major infrastructural project which also presents human rights implications — the China-Laos Railway — is scheduled to be complete in December 2021. As a part of China's signature foreign policy, the Belt and Road Initiative, this railway is to connect China with Vientiane, the capital of Laos located in the southern part of the country, with multiple stops along the way.<sup>106</sup> Construction and development of the railway has been ongoing since December 2016,<sup>107</sup> which has involved the creation of several new bridges and tunnels and resulted in displacements of local communities throughout the country.<sup>108</sup>

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<sup>106</sup> Skylar Lindsay, *China-Laos Railway Marred by Compensation Issues and Pollution*, ASEAN Today (Jun. 11, 2019), <https://www.aseantoday.com/2019/06/china-laos-railway-marred-by-compensation-issues-and-pollution/>

<sup>107</sup> Huaxia, *View of China-Laos Railway*, Xinhua (Aug. 23, 2020), [http://www.xinhuanet.com/english/2020-08/23/c\\_139312071.htm](http://www.xinhuanet.com/english/2020-08/23/c_139312071.htm)

<sup>108</sup> Skylar Lindsay, *China-Laos Railway Marred by Compensation Issues and Pollution*, ASEAN Today (Jun. 11), 2019, <https://www.aseantoday.com/2019/06/china-laos-railway-marred-by-compensation-issues-and-pollution/>

## V. CONCLUSION

The lack of media attention toward Laos so far has only enabled its government to continue stomping out opposition, making it more important to highlight the abuses going on within

Laos. Because the LPRP has made it extremely difficult for domestic institutions and individuals to hold the LPRP accountable, it is imperative that those investing in the country take extra steps to ensure human rights protections are in place.

**It is imperative that those investing in the country take extra steps to ensure human rights protections are in place.**

The international community must start paying closer attention to enforced disappearances and politically-motivated arrests, speaking out against land grabs and pressuring the government to give dispossessed villagers adequate compensation, and bolstering the voices and stories of Lao dissidents. The livelihoods of millions of people who indirectly and directly rely on the Mekong River are at stake.

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# VI. RECOMMENDATIONS FOR INTERNATIONAL BUSINESS STAKEHOLDERS





## VI. RECOMMENDATIONS

Based on the findings presented in this report, the following are a series of recommendations for international business stakeholders:

**1. Call for the creation of a publicly available database of existing land concessions by collaborating with existing dam monitors.**

A database would increase transparency and allow non-government entities to monitor for illegal land grabs, to better document hydrological data and to track impact on local communities.

**2. Call for the strengthening of governmental redress and conflict resolution mechanisms.**

Stakeholders should request a robust accountability policy from the government before committing to investing.

**3. Conduct proper due diligence on the civil and political conditions in Laos.**

Any risk analysis and evaluation of investments in the country should include an assessment of the local civil society and political condition. Stakeholders should involve input from the local communities without government interference as much as possible, and must balance these considerations to uphold human rights.

**4. Consult international standards on protecting human rights.**

Stakeholders should consult sources from intergovernmental organizations and civil society organizations to ensure social impact is properly addressed.

**5. Increase local public knowledge of rights and legal resources.**

Knowledge about the formal legal system and legal resources is still lacking in Laos, especially amongst rural populations. As part of the social impact assessment, efforts should be made to increase villagers' knowledge about the formal legal system, obtaining land titles, and their rights under government decrees to receive compensation for expropriations.

**6. Support local civil society groups,**

Particularly those that focus on the human rights impact of environmental development, by providing financial assistance and/or increasing international awareness about the human rights abuses within the country.