

ASIA PACIFIC CENTRE - RESPONSIBILITY TO PROTECT

# ATROCITY CRIMES RISK ASSESSMENT SERIES

LAO PEOPLE'S DEMOCRATIC REPUBLIC'S





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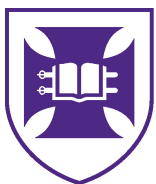
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## INTRODUCTION

The following risk assessment for the Lao People's Democratic Republic (Lao PDR) uses the Framework of Analysis for Mass Atrocity Crimes (2014) developed by the United Nations Special Advisers on the Prevention of Genocide and on the Responsibility to Protect (hereafter referred to as 'the Framework'). As such, the risk factors, indicators and numerical references used throughout this assessment correspond with those set out within the Framework.

The following assessment refers only to the risk factors deemed relevant to the current situation in Lao PDR. Failure to discuss certain risk factors does not mean they are of objectively lesser importance, merely that they are inapplicable to the country profile of Lao PDR. It is also of note that Lao PDR is politically opaque, meaning that recent data is not always available. The information and statistics cited in this report reflect the most current data available.

This report finds a low-medium level of atrocity crime risk in Lao PDR over the short-to-mid-term. Land-locked Laos (Lao People's Democratic Republic) is bordered by some of the most influential economic and political powers in the Asia-Pacific; China, Thailand, Cambodia and Vietnam. To its north-west lies Myanmar, a country rife with its own political and ethnic struggles. Under-researched by the international community, Lao PDR currently exhibits a low-medium risk of atrocity crimes. Nevertheless, there are several areas of concern that warrant continual monitoring and, if neglected, could result in elevated risk. The situation in Lao PDR is characterised by economic instability, weak regulatory and governance structures, human rights violations and the systematic infringement of civil and political rights. As such, Common Risk Factors 1 (situations of armed conflict or other forms of instability), 2 (record of serious violations of international human rights or humanitarian law), 3 (weakness of state structure), 4 (motives or incentives), and 6 (absence of mitigating factors), were evident. Additionally, the treatment of the ethnic Hmong tribe by the government of Lao PDR (henceforth referred to as the GoL or 'Laotian government') appears to satisfy numerous indicators of Special Risk Factor 9. Continuing discrimination against the Hmong ethnic tribe is of particular concern. The report delivers a number of recommendations for the overall prevention of atrocity crimes, relevant to both the GoL and the international community. These recommendations include ratification of additional international law treaties, easing of restrictions placed upon national media and non-government organisations and finally, the implementation of an early warning and information management system to strengthen disaster capabilities. On the part of the international community, it is recommended that increased support is granted to Lao PDR in the clearing of unexploded ordnance, that increased capacity-building assistance is given by ASEAN and finally, that the World Bank grants due consideration to the impact of hydropower projects upon communities and integrates this into their periodic Lao PDR Economic Monitor Report.

# MAP LAO PEOPLE'S DEMOCRATIC REPUBLIC



Map acknowledgement United Nations Cartographic Section

## Abbreviations

- Association of Southeast Asian Nations (ASEAN)
- Disaster Risk Reduction (DRR)
- Government of Lao PDR (GoL)
- Lao People's Democratic Republic (Lao PDR/Laos)
- Lao People's Revolutionary Party (LPRP)
- Office of the High Commissioner for Human Rights (OHCHR)
- Unexploded Ordnance (UXO)
- United Nations (UN)
- United Nations Development Program (UNDP)
- United Nations Children's Fund (UNICEF) United States of America (US)
- Universal Periodic Review (UPR)

## THE FRAMEWORK OF ANALYSIS

The Framework of Analysis is comprised of 14 Risk Factors of atrocity crimes. Each Risk Factor has an accompanying set of Indicators. Risk Factors are conditions that increase susceptibility to the commission of, or potential for, atrocity crimes. Indicators are “manifestations of each Risk Factor”. The Framework should be employed "to guide the collection and assessment of information" regarding the potential for atrocity crimes.

The Risk Factors are separated into two different groups. The Common Risk Factors do not specify crimes committed, but identify the overall potential for atrocity crime commission. For instance, weak state structures. The Specific Risk Factors are further disaggregated into the risks associated with genocide, crimes against humanity, and war crimes. The more Risk Factors and Indicators that are present, the greater degree of risk that atrocity crimes may be committed. However, not all Risk Factors must be present to represent a significant risk. The Risk Factors and Indicators are not ranked because the relative importance of each is dependent upon context. Risk Factors and Indicators should be considered in relation to a country's politics, history, and culture.

COMMON RISK FACTORS		
Risk Factor	1	Situations of armed conflict or other forms of instability
Risk Factor	2	Record of serious violations of international human rights and humanitarian
Risk Factor	3	Weakness of State structures
Risk Factor	4	Motives or incentives
Risk Factor	5	Capacity to commit atrocity crimes
Risk Factor	6	Absence of mitigating factors
Risk Factor	7	Enabling circumstances or preparatory action
Risk Factor	8	Triggering factors
SPECIFIC RISK FACTORS		
<b>Genocide</b>		
Risk Factor	9	Inter group tensions or patterns of discrimination against protected groups
Risk Factor	10	Signs of an intent to destroy in whole or in part a protected group
<b>Crimes Against Humanity</b>		
Risk Factor	11	Signs of a widespread or systematic attack against any civilian population
Risk Factor	12	Signs of a plan or policy to attack any civilian population
<b>War Crimes</b>		
Risk Factor	13	Serious threats to those protected under international humanitarian law
Risk Factor	14	Serious threats to humanitarian or peacekeeping operations

Each of these Risk Factors are accompanied by 6-18 more specific Indicators, which can be used to more precisely identify and analyse the risks of atrocity crimes. These Indicators and further information on the full UN Framework of Analysis for Atrocity Crimes <sup>1</sup>can be found by visiting the UN website at [www.un.org](http://www.un.org).

# COMMON RISK FACTORS

## RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

The first risk factor relates to the ‘situations that place a State under stress and generate an environment conducive to atrocity crimes’. While atrocity crimes ordinarily take place within an already developed or developing context of armed conflict, a State’s propensity to commit atrocity crimes can also be influenced by other forms of instability.<sup>1</sup> In the case of Lao PDR, there is little evidence to suggest that an armed conflict (Indicator 1.1) or a security crisis (Indicator 1.2) are impending or occurring. However, other indicators related to Risk Factor 1 are found to be present in Lao PDR; insecurity from humanitarian crisis, political tension caused by civic repression and economic instability.

### Insecurity from Humanitarian Crisis

**Indicator 1.3** relates to a ‘humanitarian crisis or emergency, including those caused by natural disasters or epidemics’. Lao PDR is both highly susceptible to natural disasters and undertakes activities that exacerbate their risk of occurrence. Lao PDR suffers frequent natural disasters, most commonly floods and droughts. This susceptibility is further exacerbated by climate change, which increases the prevalence and severity of prolonged droughts, extreme flooding and severe storms.<sup>2</sup> The impact of drought-flood cycles are particularly debilitating and raise food scarcity concerns given the country’s reliance on rice harvesting for sustenance.<sup>3</sup> Flash flooding and monsoon rains in 2013, for instance, depleted 50% of crop production nationally.<sup>4</sup>

Lao PDR also undertakes hydroelectric projects that exacerbate natural disaster risk. In recent years, the GoL has invested heavily in hydropower and seeks to become the “battery of South East Asia”.<sup>5</sup> Lao PDR anticipates that hydroelectricity will be its main source of revenue by 2025.<sup>6</sup> In July 2018, a wall of the Xe-Pian Xe-Namnoy dam fractured and an estimated 16,000 people were affected,<sup>7</sup> 6000 displaced and at least 40 killed in Attapeu and the neighbouring province of Champassak.<sup>8</sup> Similar hydroelectricity projects in the region pose significant risks for rural and remote communities.<sup>9</sup> While Prime Minister Thongloun Sisoulith has pledged to review new and existing hydroelectricity projects, the legitimacy of this claim has been questioned.<sup>10</sup> In the wake of the collapse, Lao PDR progressed the consultation process for the Xayaburi province Pak Lay dam, a multi-billion dollar venture and the fourth largest hydropower project on the Mekong.<sup>11</sup> Multiple rights groups, including Oxfam, have argued that without a systemic review into the safety procedures of large-scale hydropower processes, the risk of humanitarian crisis remains significant.<sup>12</sup> The impact of hydroelectric projects on the duration and severity of natural disasters is discussed further in Indicator 1.7.

The most prevalent cause of death and illness within Laos is that caused by infectious diseases.<sup>13</sup> Lack of adequate sanitation (37%) and access to clean drinking water (52%) contribute greatly to the spread of illnesses such as influenza. Malnutrition is widespread, particularly among children, which increases susceptibility to disease epidemics.<sup>14</sup> Despite vulnerabilities, early response to the 2019-2020 global COVID-19 pandemic, caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), prevented widespread infection.<sup>15</sup> There have been no recorded fatalities in relation to COVID-19. In their disaster management capacity and adaptability, GoL do continue to make commendable progress through the planning of a disaster management protocol, in collaboration with international disaster management partners.<sup>16</sup> The GoL acknowledge that disaster risk reduction (DRR) is a national priority and currently have a National Strategic Plan for Disaster Risk, alongside a current Action Plan (2010 – 2012).<sup>17</sup> However, Laos lacks an effective early warning system and information management system implemented at the local level.<sup>18</sup> Furthermore, the Centre for Excellence in Disaster Management & Humanitarian Assistance (2017) notes that there is no standardised protocol for accessing emergency funds, which results in disaster response time delays.<sup>19</sup>

### Political Situation

**Indicator 1.6** pertains to ‘political tension caused by autocratic regimes or severe political repression’. Lao PDR operates under a one-party state ruled by the communist Lao People’s Revolutionary Party (LPRP).<sup>20</sup> Polity IV indicators state that Lao PDR is an autocratic regime, with a Polity IV score in 2018 of -7.<sup>21</sup> The Economist has claimed that “Laos has what may be the world’s most closed political system after North Korea”.<sup>22</sup> The LPRP



## RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OTHER FORMS OF INSTABILITY

holds National Assembly elections once every five years, yet these remain uncontested because other parties are deemed illegal in the constitution.<sup>23</sup> All candidates for election to the National Assembly are vetted by the LPRP.<sup>24</sup> It is widely acknowledged that they are neither fair nor free.<sup>25</sup> The autocratic regime has existed for four decades with a high degree of stability. As such, that **Indicator 1.4** regarding abrupt or irregular regime changes is not applicable.

Political opposition is prohibited, and evidence suggests that where anti-government insurgency has occurred it has been stifled by military force.<sup>26</sup> While there have been sporadic instances of political dissent,<sup>27</sup> on the whole, even small public protests are suppressed and their organisers often disappear. While extreme repression can increase the likelihood of political dissent, there is little evidence to suggest the Laotian authorities have met significant bouts of civil resistance. It is worth noting that the transmission of accurate information from within Lao PDR is limited. Nevertheless, from the available evidence, the current regime appears to have left little possibility for ‘disputes over power or growing nationalist, armed or radical opposition movements’ (**Indicator 1.5**).<sup>28</sup>

Lao PDR is both repressive and politically opaque, although this receives little international coverage. One instance of repression that received international attention was the 2012 ‘enforced disappearance’ of political activist Sombath Somphone.<sup>29</sup> Sombath was an acclaimed development leader who campaigned for sustainable farming practices and the increased participation of rural citizens in civil society.<sup>30</sup> CCTV video emerged depicting the police stopping Sombath’s vehicle, removing him from it and taking him to a police post before an unidentified vehicle arrived to transport him away.<sup>31</sup> Government involvement in the events has grown more likely, as the international community continue to call for Sombath’s safe return, without answers.<sup>32</sup> In December 2019, 87 organisations and 11 individuals demanded new investigations.<sup>33</sup> A similar case occurred in 2007, in which ecotourism entrepreneur Sompawn Khantissouk was taken in near identical fashion and remains to be found.<sup>34</sup> Such instances are in evident violation of the International Convention for the Protection of All Persons from Enforced Disappearances. Enforced disappearances may also fall under the remit of Risk Factor 2: “record of serious violations of international human rights and humanitarian law”. These events are considered indicative of restrictions on freedom of political expression in Lao PDR.<sup>35</sup>

While the suspicious disappearance of individual political activists is cause for concern, there is no evidence of coordinated action from the GoL or oppositional political activism that would indicate widespread political tension is rife. While these sporadic incidents are evidence of an underlying political tension, the GoL swiftly quells political dissent and opposition. Given the heavy restrictions on media and the operation of international NGOs, as discussed in Risk Factor 6, it is also difficult to evaluate the likelihood of future political uprisings.

### Economic Instability

**Indicator 1.7** addresses ‘economic instability caused by scarcity of resources or disputes over their use or exploitation’. Despite unprecedented economic growth rates, Lao PDR remains one of the world’s ‘least developed’ states.<sup>36</sup> The Laotian economy relies heavily on the commodification of natural resources, primarily through mining and hydropower projects.<sup>37</sup> In 2005 the country experienced a ‘mining boom’ based upon copper and gold mines.<sup>38</sup> The unsustainability of this growth basis became evident, however, when the 2007-2008 financial crisis ensued.<sup>39</sup> Today, the GoL’s National Socio-Economic Development Plan (2016-2020) suggests it is seeking to pivot away from reliance on natural resource exploitation, towards developing agriculture, tourism and manufacturing sectors.<sup>40</sup> The World Bank also suggests Laos is developing “reforms to support greener, more inclusive growth”. Indeed, the construction of the Vientiane-Vangvieng highway, the Lao-China railway and the formation of International economic partnerships (ie. The Mekong-Ganga Cooperation and its highway proposal) are all indicative of this aspiration.<sup>41</sup>

Despite this, the economic growth of Lao PDR does currently remain dependent on natural resource exploitation. As discussed in **Indicator 1.3**, hydropower has become a national focus, incentivised by the electricity shortage in Southeast Asia and thus the energy demands of neighbouring countries.<sup>42</sup> While stakeholders

such as the World Bank have lauded Laos for its development in the hydropower sector, the ecological degradation and ensuing human risks such as food insecurity are vast and have not been granted due scrutiny.<sup>43</sup> Reports conducted on behalf of hydropower developers often misrepresent environmental risks.<sup>44</sup> Independent reports have suggested that the impacts are transboundary – that dam creation can disrupt the seasonal flood cycle to deleterious impact upon fish populations and biodiversity across the Mekong.<sup>45</sup> Dams may also increase the duration and severity of natural flood events, disrupting essential food production.<sup>46</sup> International NGOs such as Oxfam have called for an increase in civilian control of and access to Lao's natural resources to prevent their misappropriation.<sup>47</sup> Given that 70% of the population depend upon forests and waterways for their livelihoods and nutrition, this is incredibly important.<sup>48</sup> Continued dependency on natural resources for economic prosperity, with little effort to diversify the basis of economic growth, could culminate in economic instability.

**Indicator 1.8** refers to 'economic instability caused by severe crisis in the national economy'. The global COVID-19 pandemic has the potential to aggravate the pre-existing structural macroeconomic vulnerabilities of Lao PDR.<sup>49</sup> The economic impact is largely dependent upon the longevity and severity of the crisis, along with the recovery of Lao PDR's key trading partners. The impact is difficult to project. Nevertheless, sectors that are connected to global and regional value-chains, primarily tourism, trade and commodity prices, are especially vulnerable.<sup>50</sup> Lao PDR is also vulnerable to financial crisis due to a pre-existing fiscal deficit, high levels of public debt and lack of foreign capital buffers.<sup>51</sup> The World Bank economic monitor report estimates that the pandemic is likely to increase the fiscal deficit from 5.1 percent of GDP in 2019, to between 7.5 and 8.8 percent of GDP in 2020.<sup>52</sup> The same report estimates that between an additional 6,000 and 214,000 people will become impoverished due to the pandemic.<sup>53</sup> The UN's 2018 triennial review of Laos' LDC (Least Developed Country) status reported that, if pre-COVID-19 levels of growth are maintained, Laos could graduate from LDC status in 2024.<sup>54</sup> The likelihood of this projection is now uncertain. The World Bank provides a number of recommendations, including reprioritising public spending, developing a targeted social welfare program and building a resilient emergency health response capacity.<sup>55</sup>

### Poverty and Inequality

**Indicator 1.9** addresses 'economic instability caused by acute poverty, mass unemployment, or deep horizontal inequalities'. While Laos has made considerable economic advances, wealth has not been evenly distributed throughout the populace.<sup>56</sup> As of 2012, 23.2%, of the population remains under the poverty line.<sup>57</sup> The United Nations Human Rights Special Rapporteur on extreme poverty and human rights has suggested that despite Laos' consistently high GDP, profits flow to an elite class without a commensurate reduction in poverty overall.<sup>58</sup> Similarly, in the education sector, Lao PDR has achieved the Millennium Development Goal of 'universal access to primary education with gender parity'. Despite this, Laos has poor education indicators. For instance, approximately 70% of children are not enrolled in early childhood education programs.<sup>59</sup> Quality of education remains a concern, learning outcomes are low and teacher capacity is limited.<sup>60</sup> Reliance on the natural resource sector has left little room for job creation, leaving the majority of Laotians working within the failing agriculture sector.<sup>61</sup>

While the instance of absolute poverty has reduced, Laos remains highly unequal. Horizontal inequalities are particularly concerning. When the data is disaggregated into rural versus urban population, or by ethnic minority versus majority, inequality has increased.<sup>62</sup> Urban/rural differentials are well-documented, and the United Nations Development Programme (UNDP) estimates that poverty in rural provinces is 2.9 times that of urbanised areas.<sup>63</sup> Sanitation and access to clean drinking water remains unavailable to a sizeable portion of those living in rural areas.<sup>64</sup> Urbanisation is also increasing; widening the gap between the urban populous and those residing in rural Laos.<sup>65</sup> Within rural regions, a further horizontal inequality exists between the ethnic Laos majority and minority ethnic groups.<sup>66</sup> Non-Lao-Tai ethnic populations, which are minority groups, are located in the highlands of Laos.<sup>67</sup> In upland areas, the geophysical environment is difficult and conducive to food insecurity - rice deficits occur for four months in a 'normal' year.<sup>68</sup> Location also affects access to education.<sup>69</sup>



## RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OTHER FORMS OF INSTABILITY

As previously stated, the poorest rural communities rely heavily on the agricultural industry for their livelihood. Coupled with environmental barriers to productivity, the profitability of the industry has been challenged by wartime Unexploded Ordnance (UXO).<sup>70</sup> As a result of US involvement in the Second Indochina War, per capita, Lao PDR remains ‘the most heavily bombed nation in the world’.<sup>71</sup> This impinges upon their socio-economic development, as communities are unable to farm agricultural land or construct basic infrastructure (sanitation, roads, houses) for risk of being severely injured or killed by some 80 million cluster munitions which failed to detonate.<sup>72</sup> Of the 45 poorest districts in Laos, 41 of those suffer from the highest rates of UXOs.<sup>73</sup> Clearing land is both expensive and time consuming, though attempts are ongoing.<sup>74</sup> UXO Lao estimated they had cleared only 0.05% of cluster munitions in the period from 1996-2010.<sup>75</sup> Despite this, the Lao National Regulatory Authority (NRA) for the UXO/Mine Action Sector has pledged to clear UXO on 10,000h of land across 2020.<sup>76</sup>

Gender-based inequality also remains a barrier to economic stability. While, of course, arguments for gender inequality should not be made on the basis of economic remuneration alone, gender inequality does have an instrumental role to play in economic stability and development.<sup>77</sup> Lao PDR’s OECD Social Institutions and Gender Index is classified as ‘low’, as of 2019.<sup>78</sup> Despite this, and despite the adequacy of formal legislation, deeply-rooted and culturally-contingent discrimination continues to prevent full participation. In Hmong culture especially, women may be forced and sold into marriage.<sup>79</sup> Women remain unrepresented in the formal workforce, undertaking the vast majority of unpaid domestic and reproductive labour.<sup>80</sup> Human trafficking continues to disproportionately affect women, with 72% of victims being females aged 18 or younger.<sup>81</sup> Referring again to the urban/rural differential, women in rural areas are particularly likely to be exploited for trafficking purposes.<sup>82</sup>

## RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

**The second risk factor concerns any ‘past or current serious violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct, and including those amounting to atrocity crimes, that have not been prevented, punished or adequately addressed and, as a result, create a risk of further violations’.** In Lao PDR, systemic violations of political and civil rights occur, especially against ‘protected groups’ such as the Hmong ethnic group. While these past and current violations are worth noting and warrant sustained monitoring, there is little evidence of such incidents ‘assuming an early pattern of conduct’. Similarly, it is worth discussing state-based persecution of the Hmong ethnic group, whilst recognising that there is insufficient evidence to claim that this amounts to a past or present atrocity crime.

### Past and Present Violations of International Human Rights and Humanitarian Law

**Indicator 2.1** refers to ‘past and present serious restrictions to or violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct and if targeting protected groups, populations, or individuals’. The relationship between the GoL and the ethnic Hmong hill tribe has been volatile for a number of decades.<sup>83</sup> The Hmong can be defined as a ‘protected group’ under the framework. Officially, Article 8 of the 1991 Constitution recognises that Lao PDR is a multiethnic state and pledges to preserve equality between ethnic groupings.<sup>84</sup> In practice, Hmong people are subject to spates of violence and discrimination. The Hmong fought with the French during the colonial wars and then with the United States during the second Indochina war.<sup>85</sup> Communist forces prevailed and the Pathet Lao government renamed the country as Lao People’s Democratic Republic, in 1975.<sup>86</sup> During this period, the Hmong fled to Thailand in mass exodus.<sup>87</sup> This was, of course, in fear of reprisal from the new regime for their collaboration with enemy forces. In the following period, the GoL was responsible for a number of violent assaults against civilian Hmong.<sup>88</sup> In 1977 a communist newspaper pledged to “hunt down American collaborators...to the last root”.<sup>89</sup> Conflict subdued in the 2000s, yet still today sporadic instances of state-sponsored violence emerge.<sup>90</sup> These have been recorded by Amnesty International and other NGOs. There are also claims that Hmong remain systematically persecuted by the Lao military today.<sup>91</sup> The situation is difficult to ascertain due to Lao PDR’s lack of transparency. More recent incidents regarding the treatment of the Hmong by the Laotian government are discussed in **Risk Factor 9**.

## RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

Human Rights Watch has reported extensively on the treatment of those residing in drug ‘treatment’ facilities within Lao PDR. In particular, the treatment of those in the Somsanga Treatment and Rehabilitation Centre in Vientiane.<sup>92</sup> Marketed as a voluntary therapy program, evidence suggests that Somsanga is punitive in nature, arbitrarily detaining people and subjecting them to abuse and torture.<sup>93</sup> Some inmates are driven to take their own lives.<sup>94</sup> In contravention of international human rights law, those detained are subject to indefinite detention without trial and are at risk of physical and mental abuse.<sup>95</sup> There is little evidence that those detained have any access to drug dependency treatment.<sup>96</sup> In fact, the centre functions more as a mechanism for the Laotian government to isolate ‘undesirables’ from the rest of society, through the detention of homeless people and those suffering from mental illness.<sup>97</sup> The United States Department of State maintains that, as at 2011, there was no evidence to support the claim that human rights violations were occurring in Somsanga.<sup>98</sup> It should be noted that the United States has funded the Drug Centre for a number of years and continues to do so, announcing in February of 2016 that they would fund a reservoir and green house program for detainees.<sup>99</sup> This is in direct contradiction to the reports of abuse tabled by Human Rights Watch, who condemn the US embassy’s involvement in the Centre.<sup>100</sup> Reports suggest that more broadly, prison conditions across the country are inconsistent with human rights standards, along with the Convention against Torture to which Laos is a party.<sup>101</sup> The Laotian government and the United Nations Office on Drugs and Crime deny that such abuse occurs, contributing to the applicability of **Indicator 2.6**.

Violations of civil and political rights by the Laotian authorities are commonplace. While such rights are nominally protected under the constitution,<sup>102</sup> and by the International Covenant on Civil and Political Rights to which Laos is a party, in practice, they are frequently and systemically abused. Religious freedom is restricted as is freedom of speech. Such violations are discussed more extensively in relation to **Risk Factor 6**.

Indicator 2.2 refers to ‘Past acts of genocide, crimes against humanity, war crimes or their incitement’. There are some claims that LPDR has committed, and continues to commit, these crimes against the Hmong ethnic group.<sup>103</sup> Reportedly, the Hmong group are persecuted and targeted by the Laotian military. There have been calls to investigate and indict Lao military and communist party officials for crimes against humanity against the Hmong ethnic tribe.<sup>104</sup> Hmong National Development has urged international war crimes tribunal staff in The Hague, Netherlands to investigate the instance of war crimes such as ethnic cleansing and genocide.<sup>105</sup> This is further discussed within Risk Factor 9, in relation to intergroup tensions.

## RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

**The third risk factor concerns ‘circumstances that negatively impact on the capacity of a state to prevent or halt atrocity crimes’.** Weak state structures, while not necessarily the direct ‘cause’ of atrocity crimes, can be indicative of a State’s ability or inability to protect its own population against an atrocity crime’s occurrence. When considered in light of other applicable Factors, weakness of state structure may be influential in determining the overall likelihood of atrocity crimes occurring. In Lao PDR, there are many structural weaknesses. These include deficiencies in the national legal framework, the need to ratify international human rights institutions, endemic corruption through the judiciary and government, and finally, the absence of accountability mechanisms. State structures promote governance forms that do not protect the populace.

### **Institutional Protections**

**Indicator 3.1** observes a ‘national legal framework that does not offer ample and effective protection, including through ratification and domestication of relevant international human rights and humanitarian law treaties’. The national legal framework as it currently stands requires some improvements. The Constitution came into force in 1991 and protects a number of rights. However, it does not reference international law.<sup>106</sup> Lao PDR has been generally reluctant to adopt individual human rights compliance mechanisms that may, in their eyes, infringe upon sovereignty.<sup>107</sup> While Lao PDR has ratified the Genocide Conventions, Geneva Conventions and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, Lao PDR is not a party to the Rome Statute.<sup>108</sup> Under the Rome Statute, atrocity crimes perpetrated

### RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

against the civilian population are tried in the International Criminal Court.<sup>109</sup> It is also of note that Lao PDR has done little to support the implementation of the Responsibility to Protect (R2P).<sup>110</sup> The UNDP also notes that while, in principle, an adequate legal framework incorporating decrees and resolutions is in operation, enforcement is weak.<sup>111</sup> The UNDP states that significant challenges remain in ensuring the application of the rule of law within Lao's legal framework.<sup>112</sup> The lack of operation of the rule of law within Laotian legal systems has created a legal system in which law is applied arbitrarily, often at the expense of civilian rights.<sup>113</sup> Between provinces, application of the rule of law and of the national legal framework lacks consistency.<sup>114</sup> There is also a need to harmonise domestic legislation with a number of international legal obligations to which Lao PDR has committed.<sup>115</sup> Some progress in strengthening the rule of law has been made, however. The Legal Sector Master Plan, adopted by Lao PDR in 2009, seeks to implement a streamlined, cohesive legal process throughout the country and ensure that justice is accessible.<sup>116</sup> In 2018, Lao PDR's first Penal Code took effect and the Civil Code was adopted.<sup>117</sup> The Prime Minister also aims to establish a Rule of Law State in 2020.<sup>118</sup> These are encouraging developments and the United Nations has deemed this period a "critical juncture in the legal sector evolution".<sup>119</sup>

Currently, sentences of detention are rarely limited to that which is prescribed by law.<sup>120</sup> Capital punishment is in operation for a number of criminal offences, including murder, terrorism, drug trafficking and robbery.<sup>121</sup> While there is limited complete and disaggregated data, as of 2015, there were at least twenty individuals on death row despite no record of any executions having taken place for over 20 years.<sup>122</sup> Lao's refusal to establish a moratorium on the death penalty in line with International Law has been a subject of concern for a large number of States during Lao PDR's Universal Periodic Reviews (UPR).<sup>123</sup> During the latest UPR in January 2020, there were calls for Lao PDR to establish a formal moratorium on the death penalty.<sup>124</sup>

The UPR also called for the ratification of a number of international human rights and humanitarian law treaties.<sup>125</sup> Relevant to the aforementioned disappearance of Sombath Somphone is the Laotian government's non-ratification of the International Convention for the Protection of All Persons from Enforced Disappearances.<sup>126</sup> Laos has ratified nine of eighteen United Nations Human Rights Instruments.<sup>127</sup> Those ratified include the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>128</sup> Optional Protocols to the International Covenant on Civil and Political Rights, including that related to the death penalty, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families have not been signed or ratified.<sup>129</sup> While these formal commitments to international law are commendable, reports suggest that the State continues to violate international human rights standards.<sup>130</sup> Freedom of speech and other associated civil and political rights remain heavily restricted.<sup>131</sup> The allegations of mistreatment of drug offenders in detention and of the Hmong population, as discussed under 'Current Violations' in relation to **Risk Factor 2**, coupled with the restrictions on civil and political rights violations discussed in **Risk Factor 6** are indicative of a legal framework that does not protect citizens.

It becomes clear from an examination of the current judicial, law enforcement and human rights institutions that there is a number of legal deficits due to insufficient resources and training mechanisms (Indicator 3.2). The GoL issued the Legal Aid Decree in 2018, which adopts the procedures for the implementation of legal aid programmes and the expansion of legal aid centres. However, as the UNDP has raised, there are a number of issues related to the number and capacity of trained professionals in the legal sector.<sup>132</sup> In March of 2016, the UNDP noted that for a country of almost 6.8 million people, fewer than 200 lawyers are currently practising within Laos.<sup>133</sup> Securing funding to meet the running costs of legal aid clinics is also of concern.

#### Judiciary

**Indicator 3.3** refers to a 'lack of an independent and impartial judiciary'. Lao PDR's judiciary remains corrupt and is heavily influenced by the GoL Executive.<sup>134</sup> Freedom House has expressly stated that the courts exist under the control of the Laotian government.<sup>135</sup> The National Assembly Standing Committee is responsible for the appointment and dismissal of the judiciary, a task previously undertaken by the government.<sup>136</sup>



## RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

While in practice, this appears an improvement, of the 149 seats in the National Assembly, 144 are members of the LPRP.<sup>137</sup> Accordingly, Freedom House rates Lao 0/4 in relation to the independence of its judiciary.<sup>138</sup> In June 2019, a number of Lao National Assembly members openly criticised the extent of judicial corruption.<sup>139</sup> One member spoke of frequent bribery, political interference in court decisions and lenient judicial treatment of government officials. A culture of rampant corruption in the judiciary inhibits legal transformation in Lao PDR.<sup>140</sup>

### Security Forces

**Indicator 3.4** relates to a ‘lack of effective civilian control of security forces’. The state military in Lao PDR does not operate under strict civilian control.<sup>141</sup> Security forces are very influential in state affairs.<sup>142</sup> Security forces largely conform to the needs of LPRP, acting as a mechanism to subdue any ‘political and civil unrest’ of the civilian population.<sup>143</sup> Reports have emerged that link security services to the forced disappearance of human rights activists, as discussed in Indicator 1.6.<sup>144</sup> Military spending was last recorded in 2011 as accounting for a mere 0.23% of Lao’s GDP. The Ministry of Public Security is similarly under the control of the LPRP, though a mechanism for citizen complaints in relation to police behaviour does exist.<sup>145</sup>

### Corruption

**Indicator 3.5** relates to ‘high levels of corruption or poor governance’. High levels of corruption persist within the Laotian government. Accordingly, Lao PDR routinely ranks in the lower quartile of anti-corruption measures globally. In 2019, Transparency International allocated Laos a Corruption Perception Index score of 29 (where 0 is ‘highly corrupt’ and 100 is ‘very clean’) ranking Laos in 130th position out of 180 countries.<sup>146</sup> The world average for 2019 is 43 points.<sup>147</sup> In January 2016, the former Finance Minister Phouphet Khamphounvong was arrested due to allegations of involvement in a ‘ghost project’, in which money is provided to officials for projects and the projects never eventuate, causing a loss to the State.<sup>148</sup> The project is reported to have suffered a loss of \$36 million US dollars at the hands of Khamphounvong and his colleagues.<sup>149</sup> This was not an isolated incident. In 2019, The Ministry of Public Works and Transport reported over 1,000 cases of corruption by state employees.<sup>150</sup> Furthermore, as mentioned, the June 2019 Lao National Assembly members spoke out about endemic corruption throughout Laotian institutions.<sup>151</sup> Some have argued that corruption cannot be addressed through the one-party political structure, because the party is not held accountable to the electorate through political competition.<sup>152</sup> The lack of political opposition, along with the active suppression of dissent by the GoL, prevents the required accountability mechanisms for mitigating corruption.<sup>153</sup>

Promisingly, Freedom House reports that the GoL is actively targeting corruption.<sup>154</sup> Prime Minister Thongloun empowered financial and budget investigations through the State Audit Organisation (SAO).<sup>155</sup> A number of instances of malpractice have been uncovered. The increasing rhetorical assertiveness of the Lao National Assembly is evidence of this anticorruption drive. Freedom House also reports an improvement in transparency in relation to operation, with legislative bills now made available to the public prior to their commencement.<sup>156</sup> Despite improvements, stringent government control of public life provides ample opportunities for bribery and fraud.<sup>157</sup> Lao PDR remains highly corrupt.

### Accountability

**Indicator 3.6** relates to an ‘absence or inadequate external or internal mechanisms of oversight and accountability, including those where victims can seek recourse for their claims’. Lao PDR has few mechanisms for government oversight and accountability mechanisms. LPRP retains control over virtually all areas of government and civil life.<sup>158</sup> As will be discussed in Risk Factor 6, the media is incapable of acting in its role as ‘fourth estate’. Courts are also not required to publish their decisions. However, promisingly, the Legal Sector Master Plan aims to implement a peer review mechanism to ensure greater accountability in this field.<sup>159</sup> Recently, the United Nations has pledged to support the development of a corruption complaints mechanisms. The introduction of hotlines and complaint boxes for public service feedback in 2017 has been an improvement, with over 3000 complaints being received between 2017 – 18.<sup>160</sup> The UNDP’s implementation of a computer program to allow public servants to monitor aid projects is another notable achievement.<sup>161</sup>

### RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

#### Awareness of Human Rights and Capacity for Reform

There is no evidence that the GoL has taken steps to provide human rights or humanitarian law training for military forces or those in other security roles (**Indicator 3.7**).<sup>162</sup> However, Lao PDR does continue to receive training on UN human rights conventions from international donors. Considering other fiscal problems, Lao PDR may lack the resources necessary for reforms or to ensure the protection of populations (**Indicator 3.9** and **3.10**).

### RISK FACTOR 4: MOTIVES AND INCENTIVES

**Risk factor 4** refers to the ‘reasons, aims or drivers that justify the use of violence against protected groups, populations or individuals’. While the legal definition of ‘atrocities crimes’ does not consider perpetrators motivations or incentives for extreme violence, these variables can be an important early warning indicator. Identifying the potential reasons, aims and drivers for violence can present the opportunity to neutralise or address these motivations before violence can be actualised. Few factors are found to be directly applicable to Lao PDR. However, ‘perceptions of disloyalty’ as a result of war grievances relate to the tumultuous Hmong-government relationship (**Indicator 4.5**).

#### Consolidation of Power or Economic Power

**Indicator 4.1** refers to ‘political motives, particularly those aimed at the attainment or consolidation of power’. Political rule remains largely uncontested in Lao PDR. It remains unlikely, given the lack of political competition, that the LPRP would consider a ‘consolidation’ of power by way of atrocities crimes (**Indicator 4.1**). The control currently exercised by the LPRP over the civilian population is pervasive and rarely challenged.

**Indicator 4.2** refers to ‘economic interests’, especially those that ‘guard the well-being of elites or identity groups’. As previously articulated in the discussion of **Factors 1** and **3**, deep horizontal inequalities and corruption are present in Laos, to the benefit of political elites. Natural resource exploitation can also be seen as an economic interest of the elite factions of Lao PDR (**Indicator 1.7**). There is no evidence to suggest that the aforementioned economic interest is associated with a strategic or military interest (**Indicator 4.3**).

#### Identity Politics

Tensions between the ethnic Hmong tribe and the GoL are, in accordance with **Indicator 4.8**, based upon the ‘politicization of past grievances’ and are motivated by ‘perceptions of disloyalty to a cause’ (**Indicator 4.5**). As discussed in **Indicator 2.1**, as a result of their collaboration with the United States during the second Indochina war, the Hmong are subject to ongoing state-based violence.<sup>163</sup> In this way, past war grievances are politicized. The Laotian government has not sought substantive reconciliation with those who fought in opposition against the communist forces. There is some evidence that a state-sponsored campaign of persecution continues, and war veterans are hunted<sup>164</sup>. Consistent with **Indicator 4.5**, this may be due to a ‘perception of disloyalty’ to the communist government. It is even plausible that historical grievances have incited a ‘desire for revenge’ (**Indicator 4.9**) against the Hmong tribe. Although the true extent of Hmong-government violence and the political campaign that surrounds it is difficult to quantify, a clear ‘us’ versus ‘them’ binary has persisted for decades. Relatedly, the GoL has done little to address the ‘social trauma’ of the war (**Indicator 4.9**). Feelings of ‘loss, displacement, and injustice’ may be amplified by the number of unexploded munitions in the country.<sup>165</sup> Aid donations to assist with clearance are often diluted as a result of corruption.<sup>166</sup> Due to the extent of political repression, it is unlikely that these feelings would culminate in extreme violence, however.

### RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

**Risk factor 5** refers to ‘conditions that indicate the ability of relevant actors to commit atrocities crimes’. Atrocities crimes are not carried out on a whim. They require planning, resources and support. As such, an important indication of the likelihood of an atrocity crime’s occurrence is the capacity of relevant actors to commit such crimes. Capacity to commit an atrocity crime is not necessarily indicative of an impending act being committed, particularly where little to no motives or incentives are present. In the present case, while a small num-

## RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

ber of indicators are present, neither the Lao government nor other actors appear to possess the required resources, finances and support to commit an atrocity crime.

### Available Resources

As previously mentioned in relation to **Risk Factor 3**, Lao's military is not well-resourced.<sup>167</sup> Global Firepower ranks Lao's military capacity as 131st of 138 nations, with a mere 30 000 active personnel.<sup>168</sup> Military spending is low and Lao PDR faces an impending debt crisis. Therefore, it is not foreseeable that the relevant ammunition, arms and personnel to carry out an atrocity crime could be financed.

### Mobilisation and Control of Civilian Population

The GoL has a high degree of control over the civilian population and through the control of media may be capable of mobilising support from the general public (**Indicator 5.3**). The repressive political regime has contributed to the creation of a culture of obedience to authority and group conformity (**Indicator 5.4**). As Human Rights Watch has suggested, a "climate of fear and self-censorship" is at large in the nation.<sup>169</sup>

### Support System

There is no evidence that the GoL is linked to other armed forces or non-state armed groups, nor that they have any presence within Lao PDR (Indicator 5.5). Similarly, Lao PDR has no commercial affiliations that may enable mass violence (Indicator 5.6). While financial and political support is provided to Laos in the form of foreign aid, major donors (ie. Australia, Japan, Germany and the World Bank) are adherents to international human rights law and would be opposed to the perpetration of an atrocity crime in Lao PDR (**Indicator 5.7**).<sup>170</sup>

## RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

**Risk factor 6 refers to the 'absence of elements that, if present, could contribute to preventing or to lessening the impact of serious acts of violence against protected groups, populations or individuals'.** It is crucial that the state and the international community have the capacity to prevent the occurrence of atrocity crimes. Some indicators can be found in relation to Lao PDR. These include a lack of strong civil society and independent media, limited presence of international NGOs and at times, a lack of support from neighbouring states. These warrant discussion because their absence could facilitate an atrocity crime.

### Domestic and International Civil Society

**Indicator 6.2** refers to a 'lack of strong, organised and representative national civil society and of a free, diverse and independent national media'. As discussed, political and civil rights are heavily restricted in Lao PDR, thus weakening civil society. While freedom of assembly, freedom of speech and freedom of religion are guaranteed in the Lao PDR Constitution, these rights are systematically restricted in practice.<sup>171</sup> Freedom of association is restricted for workers whose unions must, by law, be under the control of the LPRP's Lao Federation of Trade Unions.<sup>172</sup> There is no recorded evidence of formal processes that allow protected groups or individuals to empower and protect themselves (**Indicator 6.1**).

Where dissent has occurred, it has been in individual cases that are met with extreme repression. The disappearance of Sombath Somphone, as previously discussed, is a case in point. Additionally, Swiss humanitarian aid worker, Anne-Sophie Gindroz, was forcibly removed from Laos in 2012 for opposing the LPRP's authoritarian regime and in particular, its poor reception of NGOs.<sup>173</sup> In 2019, at least seven political activists were wrongfully detained for planning a peaceful pro-democracy demonstration in Vientiane.<sup>174</sup> They are believed to belong to the unregistered pro-democracy group 'Lao National Unity'.<sup>175</sup> As will be discussed below, a number of people have been detained for violating internet laws that prevent anti-LPRP messages from being publicised on social media. In March 2016, three individuals were arrested under the internet laws (discussed below) which prevent anti-LPRP messages being publicised on social media.<sup>176</sup> Their punishment included a



## RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

forced public apology on television and a term of imprisonment.<sup>177</sup> More recently, there have been a spate of arrests including the arrest of two people in March 2020 for posting a land clearing video to social media.<sup>178</sup> These instances are all in violation of the International Covenant on Civil and Political Rights (ICCPR) to which Lao PDR is a party.<sup>179</sup>

The GoL exercises absolute control over media in Lao PDR, which includes TV, radio and print.<sup>180</sup> Again, the Constitution provides for ‘freedom of the press’ though, in practice, a number of heavy restrictions and regulations are placed upon the operation of media outlets.<sup>181</sup> A mere three of forty TV channels are privately-owned. Regulations introduced in January of 2016 further restrict the publication rights of national and international media outlets by requiring that coverage be approved by the Laos government prior to release.<sup>182</sup> Criticism of the State is punishable by criminal prosecution and accordingly, media outlets self-censor for fear of legal action.<sup>183</sup> As of April 2020, Lao PDR was ranked 172<sup>nd</sup> in the Reporters without Borders’ (RSF) World Press Freedom Index<sup>184</sup>. Since 2013, Lao PDR has ranked in the bottom ten.<sup>185</sup>

There are also restrictions in relation to social media. In 2014, a decree was issued that criminalised on-line criticism of the LPRP.<sup>186</sup> The decree bans the circulation of ‘false information online’.<sup>187</sup> The regulations also prohibit individuals creating anonymous profiles online, criminalising those who do not provide their full name and address.<sup>188</sup> Several government agencies have also been permitted to conduct pervasive online surveillance.<sup>189</sup>

### International Media

**Indicator 6.3** refers to the ‘lack of interest and focus of international civil society actors or of access to international media’. Some international media is accessible within Lao PDR, though a high degree of censorship has been reported.<sup>190</sup> Restrictions on the operation of foreign media while in Laos were amended in January of 2016.<sup>191</sup> The GoL now requires that media content be submitted for review prior to publishing.<sup>192</sup> Additionally, foreign journalists are to provide the Ministry of Foreign Affairs with the details of what they intend to produce ahead of time.<sup>193</sup> The visa process for visiting media outlets is rigorous.<sup>194</sup> Recently, controversy arose over the coverage of the ASEAN Summit by foreign media outlets, though officials claimed the Summit was an exception to the rule.<sup>195</sup> The distribution of information about Lao PDR to the international community remains heavily monitored and filtered.

### Limited Presence of International Actors

**Indicator 6.4** refers to a ‘lack of or limited presence of the United Nations, INGOs or other international or regional actors in the country and with access to populations’. The United Nations operates an office in Vientiane and several UN entities (including UNDP and OHCHR) also have country offices located throughout Lao PDR.<sup>196</sup> In this way, there is a definitive network of international actors through the United Nations and associated entities.<sup>197</sup> The operation of both national and international Non-Government Organisations (NGOs) in Laos is, however, extremely restricted.<sup>198</sup> Between 1953 and 1986, a mere three international NGOs were permitted to work in Lao PDR.<sup>199</sup> Freedom House reports that following the signing of the International Covenant on Civil and Political Rights, Laos established a formal licensing system for NGOs. The number of international NGOs operating within Laos is 159, as of 2018.<sup>200</sup> However, restrictions on their operation remain. NGOs wishing to work within Laos must first seek permission from the State under the licensing scheme.<sup>201</sup> Even where access is granted, NGOs face restrictions in relation to; ‘operating permits, office approval, project approval, approval to recruit staff, and approval to undertake activities not linked to a project’.<sup>202</sup> Thus, NGOs remain under constant supervision and must cooperate with state-controlled organisations.<sup>203</sup> As a result, the ability for NGOs and development partners to address relevant problems and access communities directly is limited.

Nevertheless, UNICEF has established a strong presence in the country and notable progress has been made in relation to the protection of women and children. The passing of a presidential decree by the Laotian government in 2004, The Law on Development and Protection of Women, signified the beginning of an ongoing commitment to the protection and development of women.<sup>204</sup> The decree recognised the integral role of the

## RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

Lao Women's Union (LWU) in advocating for the rights and interests of women.<sup>205</sup> Two years later, the LWU, in collaboration with UNICEF, opened Lao's first women's and children's shelter for victims of domestic violence or trafficking.<sup>206</sup> UNICEF also provided financial support for the production of a documentary televised on Lao stations for the purposes of educating the population on the risks of trafficking.<sup>207</sup> In 2007, the Law on the Protection of the Rights and Interests of Children was passed.<sup>208</sup> This was followed by the passing of an additional law in 2014, 'Preventing and Combatting Violence against Women and Children'.<sup>209</sup> A number of positive developments have occurred as a result, such as the government's implementation of a formal child protection system, supported by UNICEF.<sup>210</sup> In 2018, the GoL launched their "Multi-Sectoral Priority Action Plan in Response to Violence Against Children Survey".<sup>211</sup> Available services now include a youth counselling hotline, establishment of Child Court Chambers and the development of Juvenile Criminal Procedure Law.<sup>212</sup> In 2019, the GoL and UNICEF concluded a number of Children and Youth Consultations in Vientiane to discuss the SDGs and Convention on the Rights of the Child (CRC).<sup>213</sup>

### Regional and International Partnerships

Laos has consistently participated in regional and international multilateralism, such that Indicators 6.5 and 6.6 appear inapplicable. Lao PDR maintains a Permanent Mission to the United Nations in New York, of which it has been a full member since 1955.<sup>214</sup> Laos also remains actively involved in ASEAN, acting in the position of Chair in 2016 and hosting the 2016 ASEAN Summit. Through these organisations, Laos has demonstrated an interest in building multilateral relationships with countries in the region, in particular with China and Thailand in relation to hydropower dams on the Mekong.<sup>215</sup> On an international level, some members of the international community have been critical of Lao PDR's lacklustre response to its Universal Periodic Reviews.<sup>216</sup>

Despite commendable participation in international and regional bodies, Laos continues to place stringent restrictions on the operation of NGOs and thus fails, at least in part, to cooperate with human rights mechanisms (**Indicator 6.7**). In relation to **Indicator 6.11**, Lao PDR and the Pacific Disaster Center (PDC) partnered in February 2020 to develop an Early Warning Early Response system. The current focus is on the initial development of standard operating procedures, to institutionalise a Disaster Monitoring and Response System throughout Lao PDR's disaster management community.<sup>217</sup>

### Support of Neighbouring States

**Indicator 6.10** is related to the 'lack of support by neighbouring states to protect populations at risk and in need of refuge, including the closure of borders, forced repatriation or aid restrictions'. Since 2004, members of the ethnic Hmong tribe have crossed the border into Thailand to apply for refugee status.<sup>218</sup> In 2007, Amnesty International reported that 7000 Hmong were living in a makeshift camp in Northern Thailand.<sup>219</sup> By January 2009, that number had dropped to 5000 and the Thai Foreign Ministry threatened their forcible return to Laos.<sup>220</sup> At this point, 150 recognised refugees had been detained in a Thai immigration facility for over 2 years.<sup>221</sup> In December of 2009, the Thai government repatriated over 4000 Hmong. The decision was condemned by the international community and the United Nations urged Thailand to reconsider and provide protection to those in need of refuge.<sup>222</sup> Recent reports of Vietnamese involvement in conflict between the Hmong and the Laos government is similarly concerning.<sup>223</sup> These events indicate that neighbouring states may fail to protect at-risk populations and provide asylum in the event of an atrocity crime. The Hmong will be further discussed in relation to **Risk Factor 9**.

## RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

**Risk factor 7** refers to the 'events or measures, whether gradual or sudden, which provide an environment conducive to the commission of atrocity crimes, or which suggest a trajectory towards their perpetration'. Given that atrocity crimes require planning and resources, it is often possible to identify circumstances in which actors are taking preparatory action. While the lack of media freedom and restrictions on NGOs may seem to fulfil **Indicators 7.6** and **7.7**, these repressive measures have not been implemented or intensified suddenly, nor do they appear to be occurring in conjunction with other indicators. **Risk factor 7** is found to be inapplicable.

## RISK FACTOR 8: TRIGGERING FACTORS

**Risk factor 8** relates to ‘events or circumstances that, even if seemingly unrelated to atrocity crimes, may seriously exacerbate existing conditions or may spark their onset’. Few of the indicators in Risk Factor 8 are currently applicable to the situation in Laos. Whilst, in accordance with Indicator 8.9, Lao PDR may be at risk of financial crisis, there is no evidence that this situation would be particularly conducive to atrocity crimes.<sup>237</sup> Similarly, while Indicator 8.10, referring to discovery of natural resources or launching of exploitation projects, is applicable, there has been no recent change in this practice worth noting.

## SPECIFIC RISK FACTORS: GENOCIDE

### RISK FACTOR 9: INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST

**Risk Factor 9** relates to ‘past or present conduct that reveals serious prejudice against protected groups and that creates stress in the relationship among groups or with the State, generating an environment conducive to atrocity crimes’. Given that genocide is an identity-based crime, Risk Factor 9 refers to discrimination against a protected group on the basis of identity (national/ethnic/racial/ religious). The Hmong ethnic tribe are considered a ‘protected group’ under the definition provided in Section I of the Framework. As previously stated, tension between the Laos government and the Hmong has existed for a number of decades. However, in the early 2000’s particularly, reports emerged of poor treatment towards the Hmong. It is these events which satisfy some of the indicators of this Risk Factor, though it should be noted that the events do not satisfy Risk Factor 10.

#### Discrimination

**Indicator 9.1** refers to ‘past or present serious discriminatory, segregational, restrictive or exclusionary practices, policies or legislation against protected groups’. Stereotyped as an ‘anti-government’ group since the end of the Second Indochina War, the ethnic Hmong have faced continuous abuse and persecution by the Laotian government. The Hmong have been confined to the isolated mountainous regions towards the North of the country.<sup>224</sup> The Hmong are unable to freely express their cultural and religious identity for fear of persecution on the basis of their involvement in the war.<sup>225</sup> Additionally, the systemic inequalities between rural and urban populations (as expressed in Risk Factor 1) continue to disadvantage the Hmong. Lao PDR fails to recognise the Hmong as indigenous people and as such, there currently exists no legislation to recognise their struggles or secure their protection (**Indicator 9.2**).<sup>226</sup>

#### Access of Protected Groups

**Indicator 9.4** relates to ‘past or present serious tensions or conflicts between protected groups or with the State, with regards to access to rights and resources, socioeconomic disparities, participation in decision making processes, security, expression of group identity or to perceptions about the targeted groups’. As previously mentioned in relation to **Risk Factor 2**, the Hmong and Laotian government have been involved in violent conflict on a number of occasions. In 2006, Amnesty International reported that 26 people were ‘massacred’ by Laos government troops in the mountainous areas the Hmong inhabit.<sup>227</sup> Other reported incidents include soldiers physically harming and poisoning Hmong civilians.<sup>228</sup> Most recently, there have been reports across 2019 from UNPO that the Laotian military are ‘hunting’ the Hmong Chaofa people and barring them from food sources.<sup>229</sup> The reports also note that heavy artillery has been launched against them.<sup>230</sup> While the conflict has its basis in political allegiances,<sup>231</sup> there also appears to be tension surrounding the Lao government’s exploitation of Hmong indigenous land.<sup>232</sup> Reports in April 2016 suggest that in recent times, the LPRP, in partnership with Vietnam, have been conducting unsustainable activities such as hydro-power dam projects for commercial gain, at the expense of the Hmong.<sup>233</sup> The Hmong community report that incursions have occurred since late 2015, and involved establishing a military presence in the Phou Bia region.<sup>234</sup> As at June 2016, reports further evidenced that soldiers had begun to operate within the region, including reports of attacks in the jungle regions the Hmong inhabit.<sup>235</sup> There have been no further updates since. Thus, following a history of conflict, the Hmong people continue to be discriminated against, subject to uncompensated land compensation and persecuted.



## SPECIFIC RISK FACTORS: GENOCIDE

### RISK FACTOR 9: INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST PROTECTED GROUPS

#### Ability to Address Conflict

**Indicator 9.6** relates to a 'lack of national mechanisms or initiatives to deal with identity-based tensions or conflicts'. There is no apparent national mechanism to address Hmong-government tensions. Instead, the government has resorted to incommunicado detention and intimidation tactics to encourage the movement of the Hmong people into neighbouring countries.<sup>236</sup>

### RISK FACTORS 10-14

**Special Risk Factor 10** refers to 'signs of an intent to destroy in whole or in part a protected group'. The evidence is not yet substantial enough to deem Hmong-government tensions an instance of 'targeted physical elimination'. However, as detailed in **indicator 9.4**, the Hmong ethnic tribe are continually persecuted and targeted by the Laotian military. This constitutes 'discriminatory or targeted practices....against a protected group', fulfilling **indicator 10.3**. Overall, however, **risk factor 10** is largely inapplicable. Similarly, **Special Risk Factors 11 through 14 are not found to be applicable. The persecution of the Hmong people occurs too sporadically to be deemed** widespread or systematic. Again, from what is publicly available, persecution of the Hmong does not seem to be occurring under a specific plan or policy (**Risk Factor 12**). **Risk Factor 13** and **14** refer to crimes in the context of armed conflict. There is no current armed conflict in Lao PDR and as such, these factors are inapplicable.

## CONCLUSION

Lao PDR is a highly repressive political regime that frequently violates the rights of its citizens. However, when employing the Atrocity Crimes Risk Assessment Framework, it becomes clear that this repression is not conducive to a situation in which atrocity crimes are 'highly likely' to be committed. **The risk of an atrocity crime occurring in Laos People's Democratic Republic is assessed as low-medium.** However, ongoing violence against the Hmong people by the Laotian government should be subject to continual monitoring and has the capacity to escalate into more systemic violence (Risk Factor 9). Broadly, the situation in Lao PDR warrants increased academic and institutional scrutiny, but its political opacity somewhat precludes this.

A number of risk factors were found to be applicable. In accordance with Risk Factor 1 (situations of armed conflict or other forms of instability), Lao PDR is an autocratic political regime with macroeconomic vulnerabilities that leave it susceptible to financial crisis. Lao PDR also depends heavily upon natural resource exploitation for economic growth and has undertaken a number of hydroelectric projects that may intensify pre-existing vulnerability to natural disasters. The Laotian government has past and current human rights violations against the Hmong group and continually violates civil and political rights, in accordance with Risk Factor 2. Lao PDR also has weak state structures including endemic corruption and poor applicability of the rule of law (Risk Factor 3). There is an absence of mitigating factors (Risk Factor 6), particularly an absence of governmental accountability measures, weak civil society, and limited presence of international actors.

A number of recommendations are presented below which may assist in the overall prevention of atrocity crimes. Recommendations have been listed in the order of their perceived importance for each area.

## RECOMMENDATIONS

RECOMMENDATIONS FOR THE GOVERNMENT OF LAO PDR	
1	The Lao government should take seriously its primary responsibility to protect the human rights of its populace. Careful attention should be paid towards the protection of ethnic minorities in Lao PDR. Accordingly, the government should formally condemn military violence against the Hmong people, recognise their status as indigenous peoples, and develop legal mechanisms for their explicit protection. The international human rights obligations of Lao PDR warrant these actions.
2	The Lao government should conduct a systemic review into the safety procedures of large-scale hydroelectric processes, where these have the potential to endanger lives and displace traditional agrarian livelihoods. This should be conducted alongside a long-term ecological impact assessment.
3	The government should consider easing restrictions on the content and operation of national media, in accordance with the Laotian Constitution which already commits to 'freedom of the press'. The government should also consider easing restrictions on the operation of national and international NGOs.
4	The government should foster its existing partnership with UNDP to extend anti-corruption and accountability mechanisms in both governmental and judicial sectors.
5	The government should continue to address issues which disproportionately affect women and children such as trafficking and family violence. The considerable progress made in collaboration with UNICEF is a testament to the benefits of a strong partnership between the Laotian government and the international community. Continued commitment to this partnership is recommended.
6	The government should consider strengthening its disaster management system. Alongside the National Strategic Plan for Disaster Risk, it is recommended that the government continue its collaboration with the Pacific Disaster Center to implement an effective early warning and information management system at the local level.
7	The government should look to collaborate more effectively with OHCHR on implementing the recommendations of the 2020 Universal Periodic Review. Most notably this includes recommendations to firstly, ratify the International Convention for the Protection of All Persons from Enforced Disappearances and to secondly, establish a formal moratorium on the death penalty in Lao PDR.
8	The government should consider building a national dialogue on the implementation of the Responsibility to Protect, along with appointing a National R2P Focal Point to coordinate action on atrocities prevention in the country
RECOMMENDATIONS FOR FOR THE INTERNATIONAL COMMUNITY	
1	ASEAN and its dialogue partners should provide capacity-building assistance to Lao PDR in the area of human rights protection and the protection of minorities within the country. The government should be encouraged to sign and ratify the Rome Statute and the International Convention for the Protection of all Persons from Enforced Disappearances particularly, to demonstrate Laos' commitment to international human rights norms.
2	The United States and other concerned countries should significantly increase their commitment to the clearing of unexploded ordnance. A marked increase in the rate of unexploded ordnance clearing will lessen food scarcity concerns, decrease poverty and empower rural communities.
3	The United States and other concerned countries should significantly increase their commitment to the clearing of unexploded ordnance. A marked increase in the rate of unexploded ordnance clearing will lessen food scarcity concerns, decrease poverty and empower rural communities.

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