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Framework of Analysis for Mass Atrocity Crimes The situation of the Hmong in Lao's People Democratic Republic

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Executive Summary

The following report provides a risk assessment specific to the situation of the indigenous Hmong people living in the Lao People's Democratic Republic (Lao PDR) using the Framework of Analysis for Mass Atrocity Crimes as developed by the United Nations Special Advisers on the Prevention of Genocide and on the Responsibility to Protect ('the Framework'). The experience of the Hmong living in Lao PDR is characterized by high levels of distrust, discrimination and persecution by the Laotian government. While for decades the Government of Laos has deployed a campaign of repression and serious human rights violations against its population, the situation has significantly worsened in recent years.

Incentivized by economic development projects driven by foreign investment in the country, as well as the exploitation of the rich natural resources found in the Xaisomboun province and the Phou bia area, an area traditionally inhabited by the Hmong people, the government's military campaign led by the Lao People's Army (LPA) has intensified significantly in recent years. Development projects include hydroelectric dams,¹ mining activities and a newly announced multi-million dollar tourist facility worth an estimated US \$500 million.² As investment has grown, the government has escalated its crackdown on the ethnic minority and deployed a new campaign of forced displacement and violent attacks with the seeming aim of suppressing the Hmong community's presence in some of their traditional areas, and in particular in the Phou Bia Mountain.

The conclusion of the framework assessment conducted finds that the treatment of the Hmong by the government of Lao PDR appears to satisfy many of the risk factors, particularly the specific risk factors nine and ten on signs of genocide against a protected group. In particular, the assessment finds within the state structures of Lao PDR: clear motives and intent to attack the Hmong ethnic group, a history and continuous presence of violent attacks and suppression, as well as significant structural deficiencies, including a strong reluctance to cooperate with human rights mechanisms. The Lao government does not only fail to ensure basic human rights to the Hmong, but has overseen a surge in military violence against them, particularly in recent years due to growing economic interests in the land inhabited by the Hmong. The Hmong now fear the military is building up to a final eradication effort that could see the last remaining Hmong in the jungle of the Phou Bia area wiped out. The assessment accordingly finds that there is a legitimate concern that Lao PDR sustains an environment conducive to the commission of atrocity crimes, namely genocide, against the Hmong ethnic group, and in particular the so-called ChaoFA Hmong group living in the forest of the Phou Bia Mountain. The assessment identifies an urgent need for the international community to take seriously the continuing repression against the Hmong community and their need for protection.

1. Introduction

The following report provides a risk assessment specific to the situation of the Hmong living in the Lao People's Democratic Republic (Lao PDR) using the Framework of Analysis for Mass Atrocity Crimes as developed by the United Nations Special Advisers on the Prevention of Genocide and on the Responsibility to Protect ('the Framework'). The experience of the Hmong living in Lao PDR is characterized by high levels of distrust, discrimination and persecution by the Laotian government. While for decades the Government of Laos has deployed a campaign of repression and serious human rights violations against its population, the situation has significantly worsened in recent years.

The following assessment refers only to the risk factors relevant specifically affecting the Hmong community in Lao PDR, where the continuing discrimination and violent suppression against the ethnic group amounts to a grave and serious threat to the continued survival of the protected group. The report mainly focuses on human rights violations that have occurred since 2016, as the violent repression has increased to drastic levels threatening the groups very existence since then. For a country-wide assessment of Lao PDR, non-specific to only the Hmong community, we refer to the framework risk assessment for Lao PDR submitted in March 2021 by the Asia Pacific Centre for the Responsibility to Protect, which similarly observes the treatment of the Hmong to be "of particular concern" as a harbinger of future atrocities.³

The authors of the risk assessment finds that the treatment of the Hmong by the government of Lao PDR appears to satisfy many of the risk factors, particularly the specific risk factors nine and ten on signs of genocide against a protected group. Overall the assessment finds within the state structures of Lao PDR:

1. Clear motives and intent to attack the ethnic group,
2. A history and continuous presence of violent attacks and suppression, and
3. Significant structural deficiencies, including a strong reluctance to cooperate with human rights mechanisms.

The assessment accordingly finds that there is a legitimate concern that Lao PDR sustains an environment conducive to the commission of atrocity crimes against the Hmong ethnic group. The assessment identifies an urgent need for the international community to take seriously the continuing repression against the Hmong community and their need for protection.

This report was authored by the Doctoral Clinic of Aix Global Justice – Legal Clinic for International Human Rights Law with the support of researches of the Congress of World Hmong People and the Secretariat of the Unrepresented Nations and Peoples Organization.

1.2. Background

1.2.1 Lao PDR

Lao People's Revolutionary Party is a landlocked country in South East Asia bordering China, Cambodia, Thailand and Vietnam. Under the 1991 Constitution, the Lao People's Revolutionary Party was designated as the sole political party of the country.

As identified by the Asia Pacific Centre for the Responsibility to Protect, there are many structural weaknesses in Lao PDR.⁴ These include: lack of an independent and impartial judiciary, endemic corruption through the judiciary and government, the absence of accountability mechanisms, and lack of ratification of international human rights conventions. Furthermore, Freedom House's Global Freedom Scores rates Laos a mere 2 out of 40 political rights, with the country categorized as "Not Free".⁵ Amnesty International have highlighted how "the rights to freedom of expression, association and peaceful assembly remained severely restricted, and the state exercised strict control over media and civil society".⁶ The state owns nearly all media, while intimidation tactics against state critics result in widespread self-censorship. Lao PDR is therefore characterized by its absence of freedom of speech and repression of domestic media. Moreover the presence of NGOs, international organizations, media or other relevant actors is very strongly regulated, to the point of being essentially non-existent.

While Lao PDR asserts the protection and inviolability of democratic rights and freedoms of all citizens under its Constitution and has ratified a number of international conventions pertaining to the promotion and protection of human rights, in practice, these rights are extremely limited. For instance, criticizing the government is prohibited under the Criminal Code, while political dissidents, human rights activists and ethnic and religious minorities are often detained without valid legal justifications. According to documented evidence, inhuman treatments or even torture such as beating or burning are of regular practices in detention.⁷

In terms of the country's economy, enormous external debts have been accumulated, mostly owed to Chinese lenders and mainly tied to the development of infrastructure projects.⁸ However despite the accumulated foreign investment in recent years, there has not been an equal distribution of benefits, but in the contrary, has led the local communities, where these development projects often take place, to face extreme poverty and serious marginalization. As noted by the UN special rapporteur on Extreme Poverty and Human Rights during his visit to Lao in 2019, there exists persistent structural barriers that prevent the full realization of human rights by people in poverty, particular by ethnic minorities.

1.2.2 The Hmong People

The Hmong are an indigenous group originally from the mountainous regions of southern China, VietNam, Laos, Myanmar and Thailand. Up to 600.000 Hmong are estimated to live in Northern Laos, mostly in the Xaisomboun zone and Phou Bia area, a resource rich remote region covered of jungle. They distinguish themselves from the general Laotian population because of their ethnicity, written and spoken language, culture and religion. According to the latest national census, they constitute about 10

percent of the Lao People's Democratic Republic (LPDR), which makes them the third largest minority.⁹ Despite this, the government refuses to acknowledge the Hmong as an indigenous group, leaving the community without access to legal protection under international law that would accompany such status. In line with that, Lao is the sole language of instruction, which puts Hmong children and other ethnic minorities at an early disadvantage in the Laotian society.

Since the establishment of the Lao People's Democratic Republic (LPDR) in 1975, the Hmong communities have experienced violent attacks from the Lao People's Army (LPA), which continue till this day. The Hmong community, and in particular the ChaoFa Hmong, have a long history of being discriminated against and having their human rights violated by the LPRP. They face uncompensated land confiscation, arbitrary arrests, enforced disappearances, suppression of freedom of expression and severe restrictions on their economic, social and cultural rights. Explicit recognition of the Hmong would provide additional mechanisms to address some of the aforementioned abuses, considering that the LDPR signed article 27 of the International Covenant on Civil and Political Rights and voted in favor of the 2007 Declaration on the Rights of Indigenous Peoples.

During the Vietnam War, the Hmong were recruited by the American Forces in an attempt to counter the Vietnamese invasion of Northern Laos. At the end of the conflict, when the communists took control of the area, the Americans ceased to actively support them. Since then, the government has targeted and discriminated the Hmong people. Due to the persecution and military violence against them, many Hmong have attempted to seek refuge in neighboring countries, but in recent years it has become increasingly dangerous, as Vietnam and Thailand have standing collaboration efforts with the Laotian government to aid in the forceful repatriation of Hmong refugees. Others have gone into hiding in the remote Laotian jungle for fear of government retaliation. This particular group has been referred to as the ChaoFa Hmong, and have as a group been particularly targeted by the Laotian army.

The Laotian Security forces have fired indiscriminately heavy artillery into the areas the ChaoFa Hmong hide, despite being aware that there are civilians, including very small children, in these communities. The ChaoFa Hmong fear they will be executed if they surrender and leave the jungle. Reports suggest that hundreds of Hmong have been lured from the jungle by the prospect of amnesty, but many of them have been met with retaliation instead.

However the human rights abuses against the Hmong are not limited to those who flee the Phou Bia area. All across the Xaisomboun zone, strict surveillance, arbitrary executions, extreme poverty, slavery-like conditions and abuses in the Hmong villages, including sexual abuse, appear to continually take place on a regular basis. It is notable that all requests for independent access to the area have been denied.

Constant persecution in the Xaisomboun region has resulted in a sharp decline in population demographics, from approximately 30,000 individuals in 1975 to an estimated 2,000 to 4,000 in 2016. In 2018 it was believed that around 100 ChaoFa Hmong were in the Phou Bia region. That year, 64 individuals reportedly surrendered to the Lao government and now, approximately 40 individuals are believed to be scattered around the jungle.¹⁰



1.2.3 Current Context

In addition to historical reasons such as the Hmong involvement in the Vietnam War, economic incentives have also led the Laotian military to escalate its attacks. Under the ambit of economic development projects and increased foreign investment into Lao PDR, a campaign was launched in 2016 to seize territories around Phou Bia, with continued attacks continuing in subsequent years.¹¹ Incentivized by economic development projects driven by foreign investment in the country, as well as the exploitation of the rich natural resources found in the Xaisomboun province and the Phou bia area, an area traditionally inhabited by the Hmong people, the government's military campaign led by the LPA has intensified significantly in recent years. Development projects include hydroelectric dams,¹² mining activities and a newly announced multi-million dollar tourist facility worth an estimated US \$500 million.¹³ As investment has grown, the government has escalated its crackdown on the ethnic minority and deployed a new campaign of attacks to violently suppress the Hmong community's existence.

As a result many Hmong communities have been forcibly relocated from their lands and resettled into government controlled camps and villages where they face repeated intimidation, abuse and disconcertingly poor living conditions, particularly for women and children. For the remaining Hmong community living in the mountainous Xaisomboun region, the situation is just as grave, as they are forced to live cut-off from the rest of the population and must constantly relocate to escape attacks.¹⁴

The presence of military camps surrounding the PhouBia mountains prohibits civilian entrance and exit from the jungle,¹⁵ and leaves communities without proper access to adequate supplies of food, water, healthcare and means of external communication.

Reports of brutal killings and enforced disappearances have occurred on a regular basis since the Vietnam war, with the seeming desire to entirely wipe-out the ChaoFa Hmong becoming particularly evident in recent years. On 12 March 2020 a group of Hmong individuals composed of an elderly man (80 years old) and three young girls (18, 17 and 15 years old) disappeared when crossing the Paksan checkpoint, in western Laos. They were trying to flee the extreme situation and the constant military attacks allegedly perpetrated by the Lao People's Revolutionary Party (LPRP). To this day, their location is still unknown.

Despite these serious humanitarian and human rights concerns, the government continues to deny the excessive use of force against the Hmong people and refuses access to the area to international observers, even on humanitarian or medical grounds. Nonetheless, the situation of ethnic minorities and indigenous people in Laos, and in particular the situation of the Hmong in the Xaisomboun region, has recently been gaining the attention of UN experts. On 27 April 2021 the Working Group on Enforced Disappearances and seven Special Rapporteurs sent a second Joint Allegation Letter to the Lao PDR over concerns of indiscriminate military attacks and the denial of the right to food, adequate housing, medical care and safe drinking water among other human rights abuses against the ChaoFa Hmong.¹⁶ The letter further expresses alarm as to purported acts of reprisals and intimidation against the community for reporting to the international community. The alleged reprisals include the extrajudicial killing of a family member, intimidation tactics against the families, and military isolation of the remaining ChaoFa in the Phou Bia mountain. A year prior, in August 2020, nine UN Special Rapporteurs and the UN Working Group on Enforced Disappearances had sent a prior letter expressing the same serious concerns for the country's treatment of Hmong indigenous community.¹⁷ Finally, in September 2021 the UN Secretary General published it's report on reprisals against individuals seeking to cooperate with the UN which highlighted the alarming pattern on reprisals perpetrated by Laos against the Hmong community.¹⁸

2. Common Risk Factors

Factor 1: Situations of armed conflict or other forms of instability

The first risk factor relates to 'situations that place a State under stress and generate an environment conducive to atrocity crimes'. The risk factor recognizes that, even during times of peace, there are certain triggers which leave a state prone to committing serious human rights violations and, eventually, to atrocity crimes. This includes serious levels of political instability, threats to the security of the country, and volatility in economic or social affairs.

Indicator 1.11 concerns ‘social instability caused by exclusion or tensions based on identity issues, their perception or extremist forms’. The experience of the Hmong people in Laotian society is characterized by identity tensions and exclusion organized by the government. As a people, the Hmong are distrusted and systemically discriminated against in Laos owing to a range of factors, including: historical inter-ethnic animosity; the fact that large number of Hmong practice the Catholic religion in a Communist and predominantly Buddhist country; and the involvement of the Hmong community with the US government’s fight against the North Vietnamese during the Vietnam war (see risk factor 4). Consequently, for decades the Government of Laos has deployed a campaign of repression and serious human rights violations against its population, including uncompensated land confiscation, suppression of freedom of expression, arbitrary arrests, enforced disappearances, and several restrictions on their economic, social and cultural rights.

Indicator 1.9 relates to ‘economic instability caused by acute poverty, mass unemployment or deep horizontal inequalities’. Economic instability caused by acute poverty and deep horizontal inequalities is also ubiquitous among the Hmong community. Despite the apparent economic growth of the country, a top-down economic policy has led the Hmong community to face extreme poverty and serious marginalization. As noted by the UN special rapporteur on Extreme Poverty and Human Rights during his visit to Laos in 2019, there exists persistent structural barriers that prevent the full realization of human rights by people in poverty, particularly by ethnic minorities.¹⁹ While Laos “is one of South-East Asia’s most ethnically diverse countries [...] poverty is concentrated among the minority (non-Lao-Tai) ethnic groups, who have lower rates of education, depend primarily on agriculture, and live in more remote areas.” Crucially, according to the Special Rapporteurs, the gap between ethnic minorities and the Lao-Tai majority cannot be fully explained by differences in characteristics like larger household sizes or more limited access to education and infrastructure; there are real indications that government policies disfavor minorities.

Indicator 1.7 refers to ‘economic instability caused by scarcity of resources or disputes over their use or exploitation’. A core propeller of economic instability for the Hmong community can be observed out of the scarcity of resources and disputes over the natural resources in the Xaisomboun region, an area traditionally inhabited by the Hmong people. The Xaisomboun region has long been an area of conflict between the Lao PDR and the Hmong people.²⁰ In recent years, several areas in the region have been designated by the government as ‘specific economic zones’. In other words, the State has selected these territories for the development of large-scale industrial projects and the attraction of foreign investment. This situation has allowed for several foreign firms to gain land concessions with a validity of 99 years. The allocation of land has involved land-grabbing practices that have forced many Hmong communities to relocate and deprived them of their subsistence means. Inside the camps communities have been relocated to, the Hmong face repeated intimidation, abuse and disconcertingly poor living conditions, particular for women and children. As they are not allocated land upon relocation and are prevented from farming or engaging in any agricultural activities which have traditionally sustained them, they are forced to work in slavery-like conditions in exchange for very little remuneration. For the remaining ChaoFa Hmong community’s living in the mountainous Phou Bia region, the situation is even more grave, as the military appear to be actively cutting food sources and killing those in search

of subsistence. Since they face frequent military attacks, they rarely remain in one place for longer than three weeks, which is not enough time to grow their own food. Consequently, many are suffering from severe starvation. As seen in factor 9, dispute over the land in Xaisomboun has frequently lead to violent attacks perpetrated by the Laotian military.

Accordingly, there are high levels of political and economic instability in Lao PDR owing to the governments long-standing mistreatment of the Hmong community, including serious human rights violations, which indicate an enhanced likelihood of the State resorting to atrocity crimes.

Factor 2: Record of serious violations of International human rights and humanitarian law

The second risk factor relates to ‘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’. The risk factor recognises that, throughout history, atrocity crimes are generally always preceded by severe restrictions to economic, social and cultural rights, often linked to patterns of discrimination or exclusion of protected groups.

Indicator 2.1 pertains to ‘Past or 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’. Although Lao PDR asserts the protection and inviolability of democratic rights and freedoms of all citizens under the Constitution²¹ and has ratified a number of international conventions pertaining to the promotion and protection of human rights²², in practice, these rights are extremely limited. For example, criticizing the government is prohibited under the Criminal Code,²³ while imprisoned political opponents are frequently denied access to a lawyer and are not informed of the reasons for their detention or the alleged charges against them. According to documented evidence, inhuman treatments or event torture such as beating or burning are of regular practices in detention.²⁴

The Hmong, as an ethnic minority, are particularly impacted by the States disregard for human rights standards. For decades the Government of Laos has deployed a campaign of serious human rights violations against the Hmong group. As depicted throughout this report, the Hmong are victim of widespread and systematic violations of their civil and political rights, in contravention of their international human rights law. For decades restrictions exist on the freedoms of expression and association, causing the imprisonment of political opponents. Discrimination, uncompensated land confiscation, arbitrary arrests, enforced disappearances (including of children), and a lack of access to food, water, health and education are all violations perpetrated against the Hmong identified by international by the international community.

Indicator 2.3 refers to the ‘policy or practice of impunity for or tolerance of serious violations of international human rights and humanitarian law, of atrocity crimes, or of their incitement.’. A

recurrent practice of impunity can be observed in Laos, especially when the actions reprimanded are done for the benefit of State interests or are carried out by State actors such as the army. In the face of forced disappearances or killings perpetrated by the army against the Hmong of the Phou Bia region, judicial solutions seem out of reach as relatives are unable to report to the local authorities. For instance, concerning a case of enforced disappearances occurred in March 2020, a Joint Allegation Letter was addressed to the Laotian government to obtain the start of an investigation. As with most others cases, the Laotian government refused to conduct any kind of investigation about it.

Indicator 2.4 pertains to ‘inaction, reluctance or refusal to use all possible means to stop planned, predictable or ongoing serious violations of international human rights or their incitement’, while in a similar vein, **indicator 2.5** relates to ‘continuation of support to groups accused of involvement in serious violations of international human rights and humanitarian law, including atrocity crimes, or failure to condemn their actions.’ In this regard, through its inaction, the Laotian government appears to be supporting the specific groups that perpetuate these violations, namely companies in the context of economic policy, and police forces or soldiers for acts of violence and enforced disappearances. Specifically on the Hmong’s persecution by soldiers, the State does nothing to stop or prosecute these actors, and by its inaction, supports the army in its violations. Moreover, in light of the power exercised by Lao PRD over the entire political and military sphere, there is reason to believe that the Laotian army is acting on the orders or the support of the State.

Regarding policy implementation, the government’s recent “Turn Land into Capital” policy is another relevant example of the State’s disrespect of legal procedure and individual rights. There are laws protecting the right to land of the population, and specific procedures providing prior consultation, compensation and relocation. However, none of these are respected, with a serious lack of accountability which makes seeking redress for land grabs essentially impossible.

Indicator 2.8 refers to ‘widespread mistrust in State institutions or among different groups as a result of impunity’. The country’s environment of political repression and systematic human rights violations, particularity against ethnic minorities such as the Hmong, cultivates broad distrust between citizens and the state.

Accordingly, there is a history and active continuation of serious human rights violations perpetrated by Lao PDR against the Hmong people, as well as a culture of impunity and absence of any prevention and protected mechanisms in place to avoid the risk of further violations.

Factor 3: Weakness of State Structures

The third risk factor relates to “circumstances that negatively affect the capacity of a State to prevent or halt atrocity crimes”. This factor highlights how ineffective or non-existent state structures raises the probability of atrocity crimes occurring as populations are left vulnerable to those who may take advantage of the limitations or the dysfunction of State machinery.

There are many structural weaknesses in Lao PDR. These include: deficiencies in the national legal framework, the need to ratify international human rights conventions, endemic corruption through the judiciary and government, and the absence of accountability mechanisms.²⁵ The lack of an independent and impartial judiciary, the lack of resources and lack of foreign support dedicated to institution-building and human rights protection, as well as censorship of media are also hindrances to the effective protection of the Laotian population. While these indicators undoubtedly impact the Hmong population, the issue of weak state structures can be seen as a general and widespread issue relevant to the whole population of Lao, and thus beyond the scope of this reports assessment. We refer to country-wide reports from international actors such as Freedom House²⁶ and the Asia Pacific Centre for the Responsibility to Protect²⁷ for further analysis on the state structures of Laos.

Factor 4: Motives or Incentives

The fourth risk factor considers “reasons, aims or drivers that justify the use of violence against protected groups, populations or individuals, including by actors outside of State borders.” The risk factor recognises that certain motives or incentives, especially those based on exclusionary ideology (i.e. “us” versus “them”), are more likely to lead to atrocity crimes.

Indicator 4.1 refers to the states ‘political motives, particularly those aimed at the attainment or consolidation of power’, while **indicator 4.8** refers to ‘politicization of past grievances, tensions or impunity’. Historically, the Hmong are distrusted and systemically discriminated against by Lao PDR owing to a variety of factors. For instance, a large number of Hmong practice Catholicism and had been royalist (in a communist and predominantly Buddhist country). Historical reasons as well such as the community’s support to the United States during the Vietnam war have aggravated the historical animosity and resentment from the government towards to the Hmong community.²⁸

Indicator 4.2 pertains to ‘economic interests, including those based on the safeguard and well-being of elites or identity groups, or control over the distribution of resources.’. Similarly, **indicator 4.3** relates to ‘strategic or military interests, including those based on protection or seizure of territory and resources’. As established already in indicator 1, economic interests based on the control over resources is a core motive for the Laotian government to target the Hmong community. The Xaisomboun region, where the Hmong are native inhabitants, is a strategically-important region in the country, near the border of Thailand and north of the capital Vientiane and rich in natural resources.²⁹ Driven by foreign investment projects in the mining, timber and tourism sectors, the government has, since 2013 and aggravated further since 2016, intensified its campaign to eliminate the Hmong from Xaisomboun or force them to re-locate to army-controlled settlements. This campaign culminated in March 2021 with the total cordon off of the area around Phou Bia Mountain, the largest mountain in Laos and home to the Hmong, including the ChaoFa community, to allow for a final push to eliminate the Hmong from the area. The military campaigns in PhouBia link to economic incentives are clear. The resources present on the Hmong ChaoFa territory, such as gold or hydroelectric power, are highly coveted by the LPRP, which is also driven by the prospect of increasing tourism in the region. The government moreover supports several large-scale extractive industries present in this region.³⁰

Indicator 4.4 refers to ‘other interests, including those aimed at rendering an area homogeneous in its identity’. Aside from economic interests, the Laotian state appears to intent on targeting the Hmong community, as well as other ethnic minorities, so as to render the country homogeneous in its Laotian identity. The Hmong are an indigenous group who distinguish themselves from the general Laotian population due of their ethnicity, written and spoken language, culture and religion. Despite constituting around ten percent of the Lao PDR’s population, the government refuses to acknowledge the Hmong as an indigenous group, resulting in the absence of specific legislation aiming to protect the rights attached to such a statute. For instance, Hmong are denied minority language and education rights, with Lao being the sole language of instruction in schools, which puts Hmong children and other ethnic minorities at an early disadvantage in the Laotian society.

Preventing the community from freely practicing its own culture is in violation of several conventions ratified by Lao PDR, such as the right to enjoy their own culture (Article 27 of the UDHR) or the prohibition of forced cultural assimilation of indigenous peoples (Article 8 of the 2007 Declaration on the Rights of Indigenous Peoples). By not recognizing the existence of the Hmong community, the Laotian government is following a policy based on a superficial homogeneous identity.³¹

Indicator 4.5 concerns ‘real or perceived threats posed by protected groups, populations or individuals, against interests or objectives of perpetrators, including perceptions of disloyalty to a cause’, while **indicator 4.9** refers to ‘social trauma caused by past incidents of violence not adequately addressed and that produced feelings of loss, displacement, injustice and a possible desire for revenge’. There is a perceived threat posed by the Hmong in the eyes of the Laotian state due to their support for opposition groups during the Vietnam war. The Hmong ChaoFa ethnic community was part of a clandestine CIA army, fighting a secret war against Vietnamese and Laotian communists in the 1970s.³² Thus the alliance of the Hmong ChaoFa with Western powers during the Vietnam war has historically nurtured a perception of disloyalty towards the Lao government.³³ Still associating the Hmong with this role since the 1970s, the national army continues to target and attack the Hmong, in particular by dislodging former soldiers from their hiding places in the jungle.³⁴

Accordingly, the Hmong’s participation in the Vietnam war fed motives and incentives to Lao PDR to deny their identity and culture, creating a clear “us” versus “them” dynamic. These tensions are amplified by recent economic and strategic motives focused on resource exploitation in the Xaisomboun region, which together fuel the States continued persecution of the Hmong.

Factor 5: Capacity to Commit Atrocity Crimes

The fifth risk factors concerns ‘conditions that indicate the ability of relevant actors to commit atrocity crimes’. Factor five recognises that state actors must have at their disposal the necessary substantial resources and support, either internal or external, in order to engage in atrocity crimes.

Specifically, **indicator 5.8** refers to ‘armed, financial, logistic, training or other support of external actors, including States, international or regional organizations, private companies, or others’. There are recent trends indicating that Lao PDR is increasing its military power via developed defence alliances

and increased military aid, particularly with China, Vietnam and Russia.³⁵ Considering that one of the the most at-risk minority groups, the Hmong ChaoFa, are scattered in places such as the PhouBia Mountain and villages under military surveillance, it can be reasonably inferred that the Laotian government may have the means to undertake a very violent repression, and possibly an atrocity crime, against this targeted group.

However as this is risk factor does not strictly relate to to the Hmong community but refers to state resources, we refer to country-wide reports, such as the Risk Assessment conducted on Lao PDR by the Asia Pacific Centre for the Responsibility to Protect for further analysis on this risk factor.³⁶

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’. This factor recognises that certain elements prevalent in a society may reduce the probability of atrocity crimes, such as independent media and the existence of civil society.

Indicator 6.2 pertains to a ‘lack of a strong, organized and representative national civil society and of a free, diverse and independent national media’. The Lao PDR is characterized by its absence of a strong organized civil society and free independent media.³⁷ Combined with international actors’ lack of access to the country and Laos’ reluctance to cooperate with prevention of atrocity crimes and human rights mechanisms [**Indicator 6.3, 6.4 and 6.11**], there are clear indicators showing a lack of strong mitigating factors for the prevention of serious acts of violence against protected groups, populations or individuals.

Indicator 6.1 relates to ‘limited or lack of empowerment processes, resources, allies or other elements that could contribute to the ability of protected groups, populations or individuals to protect themselves’. The Hmong community distinctly lack resources, as discussed in Factor 1, and have no strong allies to support them as a protected group. Furthermore, since 2016, the Hmong have not been represented in the National Assembly or any other representative body nor institution.³⁸

Indicator 6.10 refers to a ‘lack of support by neighbouring States to protect populations at risk and in need of refuge, including by closure of borders, forced repatriation or aid restrictions’. In violation of the principle of non-refoulement, neighboring countries have been entering into agreements with Laos on forced repatriation of the Hmong people. A large number of ethnic minorities, including Hmong, remain stateless today, particularly along the Thai-Lao border. Their situation has not been addressed by Thai authorities, nor have UN agencies adequately responded. Since the last forced repatriations in 2009, UNCHR Bangkok has even refused to register the Hmong as refugees. Therefore while the UN has condemned these forced repatriation agreements and urged countries to reconsider and provide protection to those in need of refuge, it has yet to provide adequate protection itself.³⁹ Moreover, collaborations between the Vietnam, Thailand and Laos have allegedly extended to military targeting

the Hmong communities hiding in the jungle. Evidence show that Vietnamese forces provide military assistance in the Ha Qhoua area, south of Phôn Savan.⁴⁰ Neighboring States thus unambiguously fail to protect populations at risk and in need of refuge.

The Lao PDR is characterized by its absence of a strong organized civil society and free independent media. Combined with international actors' lack of access to the country and Laos' reluctance to cooperate with prevention of atrocity crimes and human rights mechanisms, there lacks strong mitigating factors in the prevention of serious acts of violence against the Hmong.

Factor 7: Enabling Circumstances or Preparatory Action

The seventh risk factor concerns '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'. The factor recognises how certain events, actions or changes can also serve to create an environment that favours or even encourages the commission of such crimes.

For instance, **indicator 7.3** refers to the 'strengthening of the security apparatus, its reorganization or mobilization against protected groups, populations or individuals'. While the armed forces have frequently attacked the Hmong's temporary encampments, resulting in severe injuries and even deaths, this has drastically escalated in recent years. Since 2016 in particular, repression has grown inclemently worse each year through a sustained campaign in which tanks and heavy artillery have been used indiscriminately.⁴¹ In recent times, the Laotian army has established new bases and evidence reports a marked increase in patrolling, signalling a enhanced push against the community.⁴²

Indicator 7.6 pertains to 'imposition of strict control on the use of communication channels, or banning access to them'. The imposition of strict control on the use of communication channels contribute to the lack of reporting and awareness of the violence committed against the Hmong community. Lao PDR is characterized by its absence of freedom of speech and repression of domestic media.⁴³ The state owns nearly all media, while intimidation tactics against state critics result in widespread self-censorship. Moreover, in July 2019, news outlets that disseminate material through social media networks were ordered to register with the government, which threatened fines and prison sentences for those who did not comply; the Information Ministry claimed the move was meant to arrest the spread of "fake news."⁴⁴ The Hmong inhabiting jungle areas of the PhouBia region have satellite mobile phones to relay information, pictures or videos.⁴⁵ However, most of them were ceased by the military upon their arrest, as had been reported in cases in November 2018 and May 2020.

Indicator 7.7. relates to the 'expulsion or refusal to allow the presence of NGOs, international organizations, media or other relevant actors, or imposition of severe restrictions on their services and movements'. Laos has demonstrated a strong reluctance to cooperate with UN human rights mechanisms, and has consistently failed to respond to requests of access to the area and for further information by UN Special Rapporteurs and the UN Secretary General. A notable exception was the country's response to the Working Group on Enforced and Involuntary Disappearances in October 2020

in which they categorically rejected the allegations made by the Working Group, even denying the ethnic group's very existence: "*once again, the Lao PDR would like to firmly reiterate that there is no group called "ChaoFa Hmong Community" or a "rebel group" in the Lao PDR*". The presence of NGOs, international organizations, media or other relevant actors is also very strongly restricted, to the point of being essentially non-existent. As a result, in 2010, when international media found a camp of returned Hmong surrounded by armed guards and razor wire, they were detained, interrogated, searched and forced to leave.⁴⁶ According to information relayed to the UNPO, "*the government continues to deny any wrongdoing and refuses access by international observers, even on humanitarian or medical grounds*"⁴⁷.

As depicted throughout this report, increased violations of the right to life, physical integrity and security of the Hmong are clearly observable. This is in line with **indicator 7.8** which refers to 'increased violations of the right to life, physical integrity, liberty or security of members of protected groups, populations or individuals, or recent adoption of measures or legislation that affect or deliberately discriminate against them'. The LPA's targeted attacks directly impact the community's fundamental rights, particularly the right to life and physical integrity as a number of individuals have died following acts of ill-treatment (amplified by the absence of health facilities). The targeted attacks also significantly impact the availability of food, water and healthcare for the population, severely undermining the security, health and well-being of the Hmong.

Indicator 7.9 relates to 'increased serious acts of violence against women and children, or creation of conditions that facilitate acts of sexual violence against those groups, including as a tool of terror'. Both those living in the jungle and those in the settlement camps are persistently at risk of forced disappearance, indiscriminate attacks, and extremely poor living conditions.⁴⁸ However this situation takes an even stronger toll on children and women. Indeed, according to asylum-seekers and refugees in Thailand, as well as video footage, the signs of child malnutrition are easily observable: "*distended bellies, bleached hair or slight frames*".⁴⁹ On 6 April 2006 Lao government troops reportedly launched an attack in northern Vientiane province which killed 26 Hmong belonging to a jungle group. Of the 26 dead, reports state that 17 were children and several women.⁵⁰ In March 2020 the disappearance of three Hmong minors and their accompanying adult was reported. They were last seen at a check point in Paksan, Laos. Two weeks later, the vehicle which was transporting the group at the time of their disappearance was found off a hill with two dead bodies inside - the drivers - bearing marks of torture. Reportedly, three of the disappeared individuals were seen in a detention center in the Phou Bia region in early July 2020, but the source of information is unwilling to provide additional information due to a fear of further reprisals.

Furthermore, NGO reports show that women have been taken to camp-like settlements in isolated villages upon their arrest, where they are subject to slavery-like treatments, torture and ill-treatment, including rape by law enforcement officers.⁵¹ Women that are captured can be separated from their family, used for house chores and forced into sex-slavery, leaving them in states of complete distress even when they manage to leave.⁵² In Kang Vieng, four women have testified as victims of sexual abuses in April 2019: KabKwm (16 years old), Mos Hawj (18 years old), Mai Lis (22 years old), SuaMuass (35 years old).⁵³ Moreover, women who surrender without their husbands are threatened with forced marriage if they do not get their husbands to surrender as well.

Indicator 7.10 relates to the ‘imposition of life-threatening living conditions or the deportation, seizure, collection, segregation, evacuation, or forced displacement or transfer of protected groups, populations or individuals to camps, rural areas, ghettos or other assigned locations’. Both the Hmong in the jungle and the Hmong who surrendered live in life-threatening conditions. They both experience forcible displacement, either to government-controlled camps⁵⁴ or to locations all over the jungle as they try and flee military attacks .

Regarding the Hmong individuals remaining in the jungle, there is alleged evidence of helicopters spraying chemicals over the crops which leads to the starvation of the community.⁵⁵ **Indicator 7.11** pertains to the ‘Destruction or plundering of essential goods or installations for protected groups, populations or individuals, or of property related to cultural and religious identity’. The necessity of being constantly on the move precludes the population from growing crops, as it would only make them easier targets due to their visibility from the sky.⁵⁶ The army has been known to block pathways to natural food sources, or sometimes destroys them altogether, such as fruit trees or temporary agriculture structures. The use of chemicals also destroys essential goods that the population need to rely on for its survival, as the chemicals strongly impact the environment and livestock in nearby areas as the wind carries and disperses the substances. When a raid is conducted, the army often cease the few tools the population have, such as solar panel chargers or cooking devices.⁵⁷ Anyone trying to provide assistance, even just by sharing essential food items such as salt, is at risk of imprisonment or even forced disappearance as the support is not tolerated by the LPA.⁵⁸

A young man who fled from the jungle confirmed that they “never stayed longer than 15 days in the same place”, thus preventing them from accessing basic services such as healthcare or sanitation.⁵⁹ The journalist and author of the book “The Opium Heirs: Life in Indochina's remote villages”,⁶⁰ travelled to Southeast Asia to learn about State persecutions. He managed to visit a camp in December 2019, and witnessed that the civilians that surrendered were living among soldiers, either in a one-story military building or in small huts made of bamboo and wood without electricity or drinking water. They are not allowed to go further than 20 kilometres from the camp, thus resembling “*some kind of concentration camp without walls*”⁶¹.

Consequently, the Hmong, whether in the jungle or in camps, are completely cut off from both Laotian society and the international community. The impossibility for NGOs to conduct field investigations makes it extremely difficult to gather information and raise awareness. The frequency of targeted attacks shows a willingness to directly harm this community, and their life-threatening living conditions, actively made worse by the military, demonstrate an environment conducive to the decimation of the Hmong.

Factor 8: Triggering Factors

The eighth factor concerns “Events or circumstances that, even if seemingly unrelated to atrocity crimes, may seriously exacerbate existing conditions or may spark their onset.” The factor recognises that the events or circumstances prompting the perpetration of atrocity crimes are not the same in all cases and that the commission of atrocity crimes might unfold at different velocities.

A number of the indicators of factor eight are directly relevant to the Hmong situation. First, **indicator 8.5** relates to ‘attacks against the life, physical integrity, liberty or security of leaders, prominent individuals or members of opposing groups. Other serious acts of violence, such as terrorist attacks’. The leaders of the Hmong community are seen as prominent threats and have been recipient to attacks and other forms of violence. For instance, it was reported that, on 8 March 2021, Mr. Chue Youa Vang, a 63-year-old male, and a relative of two of the disappeared in March 2020, was killed by a group of Laotian soldiers in the forest while attempting to escape. A disturbing photo of Mr. Vang’s body was taken by the soldiers and disseminated among the Hmong community.⁶² These attacks have had a debilitating impact on advocacy efforts as many Hmong community members are afraid to share details of their experiences. Vadoua Vang, former vice-president of the ChaoFa group tries to keep his identity secret in fear of facing “severe reprisals, including disappearance.”⁶³

Indicator 8.7 pertains to ‘acts of incitement or hate propaganda targeting particular groups or individuals’. The Laotian government also uses the media as a tool for hate propaganda targeting the Hmong community, while strictly limiting their freedom of expression. The state owns nearly all of the media while use legal restrictions and intimidation tactics against state critics are widespread.⁶⁴ In particular, the Laotian government, through controlling the media, seek to conceal all persecution about the Hmong minority. According to testimonials, soldiers have reportedly threatened the Hmong against the leaking of information pertaining to their living condition or whereabouts.⁶⁵ Moreover in Lao PDR it is forbidden for anyone to listen, read or to be in possession of documents criticizing the government and its policy.⁶⁶

Indicator 8.10 relates to the ‘discovery of natural resources or launching of exploitation projects that have a serious impact on the livelihoods and sustainability of groups or civilian populations’. As depicted throughout this report, the areas inhabited by the Hmong are rich in natural resources, which has led to the launching of numerous projects exploiting the area to the detriment of the community's living there (see indicator 9 for further details on living conditions). Between 2010 and 2014, the government had been reported to being involved in 2,600 land concession deals, although the real numbers are suspected to be much higher.⁶⁷ As part of the “Turn Land into Capital” policy, many Hmong have been forced to relocate into military-controlled camps and villages, while those remaining in the Phou Bia area are forced to live cut-off from the rest of the population, both experiencing extremely poor living conditions.

Indicator 8.12 concerns ‘acts related to accountability processes, particularly when perceived as unfair’. Such expropriations of land described above typically occurs without due process,⁶⁸ and no complaint procedure has been established. Additionally, there are usually no investigations pertaining to the death of Hmong civilians following military attacks. Only in a small number of particularly high profile cases have investigations been opened.⁶⁹ One of those instances concerned the killing of 26 Hmong on April 6, 2006 and the said investigation only consisted of “a phone call to a military commander, asking whether he had received any reports about the attack” according to Amnesty International.⁷⁰ After a negative response from the commander, the authorities reportedly concluded that no killing had taken place. The leader of the Hmong group, Bliia Shoua Her, appealed to the international community for help in carrying out a proper investigation; however, this was never carried out. Furthermore, as mentioned, in October 2020 in response to requests for information by the UN

Working Group on Enforced and Involuntary Disappearances, the country categorically rejected the allegations made.⁷¹

Consequently, there are a number of serious triggering factors observable in Laos which increase the risk of atrocity crimes occurring against the Hmong population, most notably a series of attacks against the life, physical integrity, liberty or security of prominent Hmong leaders, and the pursuance of exploitation projects in the Phou Bia area that have a serious impact on the livelihoods and sustainability of the Hmong community living there.

3. Specific Risk Factors

Factor 9: Intergroup tensions or patterns of discrimination against protected groups

Factors 9 and 10 of the United Nations' Framework of Analysis for Atrocity Crime are analyzing risks that may constitute a genocide. The ninth factor 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." The factor recognises that genocide is an identity-based crime and that persistent patterns of discrimination establish divisions within society which serve as both a material cause and a perceived justification of group violence.

Indicator 9.1 concerns 'Past or present serious discriminatory, segregational, restrictive or exclusionary practices, policies or legislation against protected groups.' As mentioned in factor four, since the end of the Vietnam war, the Hmong have been the targets of government-sponsored retaliation, as the Laotian government embarked on what was described as "a punitive war of extinction".⁷² Initially the LPRP's policy was to target Hmong veterans who supported the United States, but today it has drifted into a generalized policy of insecurity. Some Pathet Lao officials even appear to have admitted the genocide, repeating that "the war will end when the Hmong are gone."⁷³

Consequently, the Hmong have faced continual abuse and persecution intentionally executed by the Laotian government. This has led to the community often being confined and isolated in the mountainous Xaisomboun Region where living conditions are poor and they are constantly in danger of being attacked by the surrounding military camps.

Indicator 9.2 refers to the 'denial of the existence of protected groups or of recognition of elements of their identity'. Notably Lao PDR does not recognize the Hmong as an indigenous group, resulting in the absence of a specific legislation aiming to protect the rights attached to such a statute. Lacking protection makes the Hmong vulnerable to becoming victims of arbitrary executions or forced disappearances, violations of their rights to land through uncompensated land confiscation, or even deprived of their freedom of expression.

This denial of existence has materialized in a number of ways. For instance, the Laotian government have been known to deny the existence of clashes between ChaoFa Hmong and its army. For example Yong Chanthalangsy, Lao Ambassador to France, said "there are no Hmong CIA in the jungles [...]"

there are no clashes. As you may notice by traveling in our country there is a peaceful atmosphere.”⁷⁴ Another element of the Lao PDR's denial of the Hmong identity and existence is the refusal to provide the Hmong any documents or identification, such as the family book or ID. This essentially denies them the possibility of leaving the military controlled area.⁷⁵ Additionally, the Hmong children attending school upon resettlement are exclusively studying Lao language and culture, which deprives them of learning Hmong customs and habits, and forces them to undergo assimilation and acculturation to the Lao culture, risking the survival of their culture.⁷⁶

Indicator 9.3 concerns a ‘history of atrocity crimes committed with impunity against protected groups’. There have, historically and continual to the present, been repeated acts of violence committed by the Lao PDR against the Hmong community. The Laotian army uses heavy artillery against unarmed Hmong individuals. It also regularly resorts to extrajudicial executions, regardless of the age or gender of the individuals, resulting in gross human rights violations. For instance, from August to September 2018 at least 15 individuals belonging to a 93 Hmong persons’ group, including 5 minors, were killed during armed attacks, targeted at Hmong settlement areas.⁷⁷ Others attacks, though not lethal, occurred on April, September, October, and November 2018. These attacks were carried out using soviet made 82mm mortars, chemical products, B51 rocket grenades, 120mm and 130mm bullets firing, among other heavy weapons. On April 29, 2019, shooting and bombing were reported North of Vang Vieng. On May 9, 2020, another heavy attack occurred, killing one Hmong man, and ceasing a satellite phone, portable solar panel chargers and cooking devices, essential for the group’s survival. On March 8, 2021, a new attack was reported, killing an individual who was out looking for food.⁷⁸

a. Chemical Attacks

There is some evidence to suggest that the Lao PDR have made use of chemical weapons against the Hmong community, even after it ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction in 1997.⁷⁹ For instance, the documentary *Hunted like Animals* by Rebecca Sommer, filmed in 2004, shows the disastrous effects of the alleged chemical attacks on the Hmong population, such as blindness and deformation.⁸⁰ Moreover, between 2016 and 2019, several cases of chemical attacks were allegedly reported, resulting in a number of Hmong children’s deaths. Since 2016, it is allegedly reported that helicopters regularly fly over the area where the Hmong are located. In this regard, a group has reported that Mi-17 helicopters conducted daily flights over their territory, both to locate and observe them and, at times, to spray over them with what is believed to be a chemical product.⁸¹ Each time a helicopter flies over, the population has significant symptoms, which massively alter their health, including that of the children. During September and October 2016, several infants died of violent coughing following military attacks, who were likely making use of rockets loaded with some toxic gas. Similar cases continued to be reported throughout 2018 and the first half of 2019. Next to the deaths of infants, symptoms such as coughing, nausea, vomiting, headaches, diarrhea, chest congestion and weakness of legs and arms affected many of the Hmong people in the jungle.⁸²

b. Torture, Inhumane and Cruel Treatment

The Hmong people are treated in “cruel, inhumane and merciless manners” with the intention to cause humiliation and fear to both the family of the deceased and their community. For instance, the

documentary *Hunted like Animals* reports the testimony of a woman whose husband was killed: his head was cut off and impaled on a stake as a trophy.⁸³ Forms of torture have also been reported against this community. The aforementioned documentary provides testimonies of inhumane treatments against Hmong people, including children. Interviewed by Rebecca Sommer in 2004, Chue Chou Tchang, a member of the Hmong American Mutual Assistance Association, reported that women and children are raped, and that hands, legs, nose, and ears are cut off while victims are still alive.⁸⁴ The reporter filmed on April 12, 2006, inside Laos jungle, a Hmong child sliced in the stomach whose intestine were hanging out while he was still living.⁸⁵

As mentioned, since March 12, 2020, a group of ChaoFa Hmong, composed of three minors and their accompanying adult, were reported missing. Two weeks later, the vehicle, which was transporting the group at the time of their disappearance was found off a hill with two dead bodies inside – the driver and his father – bearing marks of torture. On 8 March 2021, **Mr. Chue Youa Vang**, a 63-year-old male, and a relative of two of the disappeared, was killed by a group of Laotian soldiers in the forest while attempting to escape. A disturbing photo of Mr. Vang's body was taken by the soldiers and disseminated among the Hmong community.⁸⁶ This provocation of violence, leading to killings, shows the aggravation and recurrence of the arbitrary killings by the Laotian army.

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, expressions of group identity or to perceptions about the targeted group'. As reiterated throughout this report, the Laotian government have been involved in serious tensions and violent conflict against the Hmong on a great number of occasions. While the tensions are to a large extent related to identity, disputes over the natural resources in the Xaisomboun region, which is an area traditionally inhabited by the Hmong people, has been a major source of tension in itself. As incentives for economic development and exploitation of the region's natural resources have increased, particularly since the designation of the area as a special economic zone in 2003 and from around 2016 with increased foreign investment in Laos, suppression of the Hmong region-wide has accelerated as the government seeks to clear the region for economic development.

These tensions have led to an extreme deterioration in living conditions. The Laotian army have been known to block access to wild food, in order to starve the Hmong ChaoFa community that resist their pressure to leave the PhouBia jungle area for the advancement of development projects.⁸⁷ Hmong people in the jungle are forced to live cut-off from the rest of the population and to constantly relocate, which inhibits their freedom of movement, their right to land and their right to property. Although the community has often managed to build temporary shelters in the jungle, they have been continuously destroyed by military attacks, as well as the community's harvests, farms, and all kind of fruit trees.⁸⁸

Furthermore, because of their situation, Hmong are not integrated in the health care system and do not have access to basic sanitation services and facilities.⁸⁹ As a result they cannot be properly treated for the diseases and infections they catch in the jungle. This is particularly concerning as some cases of malaria with higher risks of death upon contamination have even been detected in the highlands of Lao. Moreover, the Hmong population cannot access help by humanitarian aid in order to meet their vital needs as the government prevents any NGOs from entering the region.⁹⁰

For those forced to surrender from the jungle as a result of the country's 'turn land into capital' policy which has forced relocation for many Hmong into military-controlled camps and villages, the living conditions raise serious concern. In December 2019, a journalist managed to visit a few families and reported how the Hmong who surrendered suffer from great psychological pressure and slavery-like treatment, while also having very little (or none at all) access to food, water or light. The Hmong traditionally practice shifting cultivation of dry rice, corn as well as opium for medical purposes, and raise a variety of farm animals, however, they were not allocated land upon their relocation and are thus prevented from farming or engaging in any agricultural activities.⁹¹ Nonetheless, it is sometimes possible for the Hmong, who are used to a barter economy, to work for other villagers in exchange of food. However, according to recent testimonies, these exchanges are largely asymmetrical, as some have testified to work endless hours for very little remuneration.⁹²

Regarding the living conditions of the Hmong women specifically, some have been subject to slavery-like treatment, torture and ill-treatment, including repeated rapes by law enforcement officers, as early as 2007.⁹³ As seen above, they also have no access to medical care or medicines, which is reflected in the high rates of maternity, birth and child mortality, both for the Hmong women living in villages throughout the country and to those living in the jungle.⁹⁴

Finally, **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.

Factor 10: Signs of an intent to destroy in whole or in part a protected group

The tenth factor relates to "Facts or circumstances that suggest an intent, by action or omission, to destroy all or part of a protected group based on its national, ethnical, racial or religious identity, or the perception of this identity". Recognizes that early indicators of genocide are unlikely to be explicit, but that they may be inferred from conduct that would reasonably lead to the belief, even if not the certainty, that the intent of or a plan for annihilation could exist.

Indicator 10.1 relates to 'official documents, political manifests, media records, or any other documentation through which a direct intent, or incitement, to target a protected group is revealed, or can be inferred in a way that the implicit message could reasonably lead to acts of destruction against that group'. As indicated in factor 9, the Laotian government has demonstrated over the past forty years a clear intent to persecute and eliminate the Hmong population. This reflects an intent to destroy, in whole or in part, an ethnical group, which is constitutive of the *dolus specialis* required to qualify a genocide under Article 2 of the Genocide Convention.

Indicator 10.3 concerns 'widespread or systematic discriminatory or targeted practices or violence against the lives, freedom or physical and moral integrity of a protected group, even if not yet reaching the level of elimination'. As explained above, the Hmong people suffer from widespread and systematic discriminatory practices from the Laotian government.⁹⁵ Their current difficult living conditions and lack of access to health services are endangering the survival of the Hmong ChaoFa community, for both those in the jungle as well as those forcibly relocated.

Indicator 10.8 concerns ‘Attacks against or destruction of homes, farms, businesses or other livelihoods of a protected group and/or of their cultural or religious symbols and property’. Targeted by the Laotian military forces, the ChaoFa Hmong’s lives are at regular threat of military attacks and are therefore forced to continuously move. Their displacement and their need to remain invisible to military forces preclude them from establishing permanent housing structures. Under such conditions they can only keep with them the bare minimum, often foregoing important or personal items, which are often found and confiscated by the military. For instance following an attack on May 9, 2020, the military confiscated a number of vital items of the ChaoFa Hmong, such as a satellite phone, portable solar charger panels, cooking devices and food. Even within the villages where the surrendered Hmong live, the right to adequate housing is not guaranteed, with very limited access to food, water and light within the dormitory's families are provided with.

Indicator 10.2 pertains to the ‘targeted physical elimination, rapid or gradual, of members of a protected group, including only selected parts of it, which could bring about the destruction of the group’. A distinction should be made between the ChaoFa Hmong community predominantly in the PhouBia region, and the wider Hmong community living in the North of Laos. While the wider Hmong community experience distinct repression and marginalization as a group, the Laotian state’s targeting of the ChaoFa Hmong group is far more pervasive and violent in it’s attempt to eliminate the group. A final push to eliminate the ChaoFa Hmong culminated in March 2021 with the total cordoning off the area, including the prohibition of civilian entrance and exit from the jungle, leaving them completely cut off from both Laotian society and the international community, as well as proper access to adequate supplies of food, water, healthcare and means of external communication. This continuing discrimination and violent suppression against the ethnic group generates grave questions as to the future survival of the the ChaoFa community. In 2018 it was believed that around 100 ChaoFa Hmong were in the Phou Bia region. That year, 64 individuals reportedly surrendered to the Lao government and now, approximately 40 individuals are believed to be scattered around the jungle.⁹⁶

Indicator 10.5 relates to the state’s ‘resort to methods or practices of violence that are particularly harmful against or that dehumanize a protected group, that reveal an intention to cause humiliation, fear or terror to fragment the group, or that reveal an intention to change its identity’, while **indicator 10.6** points to the state’s resort to ‘means of violence that are particularly harmful or prohibited under international law, including prohibited weapons, against a protected group’. The Lao PDR is violating humanitarian principles of distinction and proportionality by using weapons that cannot allow distinction between the intended targets (rebels and civilians, and even among civilians between adults and children). Since early 2017 in particular, the Lao military has used tanks and heavy artillery, firing indiscriminately into Hmong territory. Other particularly harmful methods of violence include the alleged used of chemical agents against the ChaoFa, as described in indicator 9. The violent techniques and policies used against the Hmong amount to dehumanization,⁹⁷ and if these attacks were to continue, they could lead to the destruction of the group.⁹⁸

In light of the assessment above, there is a legitimate concern that the Lao PDR government sustains an environment conducive to the commission of genocide against the Hmong community. Repeated attacks perpetrated by the Laotian government, a history of discriminatory practices and policies, and the deliberate destruction of livelihood all indicate

Laos' capacity to escalate the current tensions into a systematic and targeted destruction of the Hmong population.

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- 2 The Laotian Times, Phu Bia Mountain to be Developed as New Tourism Site (12 January 2021) available at <https://laotiantimes.com/2021/01/12/phu-bia-mountain-to-be-developed-as-new-tourism-site/>.
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- 14 “Submission of information to Special Rapporteurs: Concerning serious violations of International Human Rights Law by the Laotian Government against the Hmong community”, *UNPO*, June 2020, p.2.
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- 19 Statement by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights on his visit to Lao PDR, 18-28 March 2019, available at <https://srpovertyorg.files.wordpress.com/2019/03/lao-pdr-end-of-mission-statement.pdf>.
- 20 See, e.g., Amnesty International, Lao People's Democratic Republic: Hiding in the jungle - Hmong under threat(23 March 2007), available at <https://www.amnesty.org/en/documents/ASA26/003/2007/en/>.
- 21 Article 6 of the Constitution. Similarly, the Constitution explicitly enshrines numerous rights such as: minority rights (Article 8), freedom of religion (Articles 9 and 43), the right to property (Article 17), preservation of the national culture and traditions of the country (Article 23), equality of sexes and rights (Article 37), the right to inviolability of the person and the home (Article 42), freedom of expression and assembly (Article 44).
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