

**Mandates of the Special Rapporteur on the right to food; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on minority issues; the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on the human rights to safe drinking water and sanitation**

REFERENCE:  
AL/LAO/3/2020

28 August 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to food; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on minority issues; Special Rapporteur on extreme poverty and human rights; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 32/8, 36/6, 37/8, 35/15, 42/16, 43/14, 42/20, 43/8, 44/13 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alarming situation of the Hmong indigenous community located in the Phou Bia region (referred to as the "ChaoFa Hmong"), including the indiscriminate attacks against the community, enforced and involuntary disappearances, denying access to their rights to food, housing, health and safe drinking water.**

We would also like to recall that the cases of Mr. **Vacher Her**, Ms. **Zoua Her**, Ms. [REDACTED] and Ms. [REDACTED] have also been treated under the humanitarian mandate of the Working Group on Enforced or Involuntary Disappearances

According to the information received:

Situation of the ChaoFa Hmong community

It is reported that many ChaoFa Hmong were involved in the Second Indochina War, fighting alongside the United States of America. After the end of the conflict, ChaoFa Hmong fled the Lao PDR but an estimated 20,000 –

30,000 remained behind, hiding in the remote mountain areas. Some continued to carry out attacks against the Lao Army. In 2018, it was believed that around 100 people were in the Phou Bia region of Xienkhouang province. That year, 64 individuals reportedly surrendered to the Lao government and today, approximately 40 individuals are believed to be scattered in the jungle.

Since 2016, there have been sustained military incursions into the jungle area around Phou Bia region, northern Lao PDR where the ChaoFa Hmong have fled. The Lao military have increased the number of installations and bases which made it increasingly difficult for Hmong communities to grow crops and led to the community having to continuously relocate and rely on wild food sources. Hmong shelters in Phou Bias have allegedly been destroyed, which forced them to flee continuously and constant displacement prevents them from enjoying the right to housing or property. Members of the community in the jungle face constant military attacks, and are exposed to extremely difficult living conditions, including limited access to food, housing, water, sanitation and health care.

Since early 2017, the Lao military has reportedly used tanks and heavy artillery, firing indiscriminately into Hmong territory. Such attacks continue to date. For example on 9 May 2020, in La Na area (Xaysombun Special Zone, Lao PDR) the military opened fire and launched four grenades against a ChaoFa Hmong group, killing one person. Following the attack, the military confiscated phones, solar charger panels, cooking posts, plates and food, leaving the community without tools to prepare their meals. At least 15 individuals have allegedly been killed since 2018, including 5 children.

Furthermore, it is alleged that the Lao military has blocked pathways to wild food sources and has also purposely destroyed wild food sources they come across, such as fruit trees, as well as temporary agriculture structures. The military has chased and at times killed individuals foraging for food. Many members of the ChaoFa Hmong community now suffer from severe starvation, remaining hidden in the forest and relying on the consumption of wild roots and leaves to survive. These conditions do not provide individuals with enough nutrients; access to subsistence foraging is even more difficult during the rainy season that runs from June to October.

Additionally, the ChaoFa Hmong community have little or no access to safe drinking water and basic sanitation services and facilities. They do not have regular access to water purification tablets, which are used throughout the region. Relying on unsafe water source, the collection of water also remains difficult exposing members of the community to the danger of encountering military forces, as aforementioned.

They also lack adequate access to health care. In the jungle, they are particularly exposed to risks of infections and diseases. Individuals, including children, are brought to the hospital after having surrendered or succumbed to wounds or

poisoning in the forest. Furthermore, many Hmong have not been issued the necessary documentation by the Ministry of Public Security that grants them access to essential healthcare coverage.

Community members who surrendered to the Army due to their living conditions, have reportedly faced additional violations. On 24 November 2018, 64 individuals, predominantly women and children, surrendered to the Lao Army. The men were allegedly separated from their families and sent away for interrogation for 1-3 months. The group lived in a military village among soldiers under close surveillance. The children have reportedly been able to attend one year of free schooling, but it is not clear if they have been able to continue and the education is exclusively in Lao language and culture, with no instruction in their own language or related to their culture. They were allegedly not provided land and had to work long hours, in exchange for which they received the bare minimum necessary for their survival. –Furthermore, when arriving in a village they are allocated one room per family in a former military dormitory, with no furniture and without access to water or light, only a limited amount of food was provided to the families. It is reported that they did not have access to safe drinking water and that several of the women faced sexual abuse by the military when they surrendered and are now at risk of forced marriage.

It is alleged that the attacks by the military are linked to economic projects. There are several large-scale extractive industries, which are supported by the Lao government. The construction of hydroelectric dams along the Nam Ngum River, including on the province of Xaisomboun, gold and silver mining, as well as illegal forest logging, have seriously affected the environment in the Phou Bia area. A feasibility study is currently being conducted on building tourist facilities in the area. There is one official gold mining site and many non-official gold and silver mining sites in the area. Concerns have been raised in the past by the United Nations Human Rights Committee about “forced relocation of a number of ethnic minority communities as a result of land grabbing and land concessions to development projects, without adequate consultation or compensation, and about reports of the arbitrary arrest and detention of farmers and villagers protesting against land leases and concessions.”<sup>1</sup> As per the “Turning Land into Capital” policy, it is alleged that businesses are allocated large parcels of land for their activities, sometimes resulting in significant displacement for local populations, without adequate consultation.

#### Enforced Disappearances

On 10 March 2020, four members of the ChaoFa Hmong community, Mr. Vacher Her (80 years old) and his granddaughter, Ms. Zoua Her (18 years old), and Ms. [REDACTED] (17 years old) and her sister Ms. [REDACTED] (15 years old) left the Xaisombun area planning to cross the border to Thailand in order to find a safer

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<sup>1</sup> <https://undocs.org/A/HRC/WG.6/35/LAO/2>, para 6.

place to live. They travelled by car, and persons associated with them monitored their progress by satellite phone.

At around 4 p.m., on 12 March 2020, the group reached the Mekong river near Vientiane, and met another individual. It was decided that it was too late to cross the river that day and instead they decided to travel to a village. The group was last heard from at around 7 p.m., on South Highway 13, the only road to the village, when they stopped at the Paksan checkpoint, (the location of which varies between the north of Paksan and the south of Paksan). The checkpoint is run by police and sometimes also by members of the Army.

On either 12 or 13 March 2020, the car in which the individuals were travelling was found down a hill by the side of a road in the Phou Makthao Mouang Moc area, about 100 kilometers away from the Paksan checkpoint.

On 28 March 2020, a video clip was posted on Youtube showing a pickup truck pulling the car back onto the road, with the bodies of two individuals inside. Neither of the bodies belonged to Mr. Vacher Her, Ms. Zoua Her, Ms. [REDACTED] or Ms. [REDACTED], and the fate of whereabouts of these four individuals is not known.

Given the last known location of the individuals was at Paksan checkpoint, it is alleged that the Lao authorities, possibly the Army, may have been involved in the disappearance.

While we do not wish to prejudge the accuracy of the information received, we are deeply concerned by alleged enforced and involuntary disappearance of four members of the ChaoFa Hmong community, Mr. Vacher Her, Ms. Zoua Her, Ms. [REDACTED] and Ms. [REDACTED].

We are also alarmed by information that the ChaoFa Hmong community is subjected to indiscriminate attacks and intentional limiting of the ability of the ChaoFa Hmong to access their rights to adequate food, housing, health and safe drinking water. We are further seriously concern about allegations of sexual violence. We are alarmed that no independent access is permitted to the region to ascertain the situation on the ground.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:



1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the fate and whereabouts of Mr. Vacher Her, Ms. Zoua Her, Ms. [REDACTED] and Ms. [REDACTED] and detailed information on the investigations conducted into their disappearance. If no investigations have taken place, please explain why and how this is compatible with the Government's human rights obligations.
3. Please provide information on the allegations that indiscriminate attacks have been carried out on the ChaoFa Hmong community, including attacks on their shelters.
4. Please provide information on the measures taken by your Government to ensure that the ChaoFa Hmong community have access to their rights to adequate food, housing, health, and safe drinking water and sanitation.
5. Please provide information on the allegations that members of the ChaoFa Hmong community have been forcibly relocated and displaced, as a result of the "Turning Land into Capital" policy.
6. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the allegations of sexual abuse against ChaoFa Hmong women. In cases where no inquiry has taken place or if they have been inconclusive, please explain why.
7. Please provide information on any protection and accountability measures being set in place to address sexual abuse against ChaoFa Hmong women as well as measures taken to ensure their right to effective remedies.
8. Please indicate what measures, if any, are in place to ensure children from the ChaoFa Hmong community are provided to equal access to public education, including teaching in their own language and respectful of their culture.
9. Please provide information on the allegations that independent access is not permitted to the area.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Michael Fakhri  
Special Rapporteur on the right to food

Luciano Hazan  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

David R. Boyd  
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Balakrishnan Rajagopal  
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

José Francisco Cali Tzay  
Special Rapporteur on the rights of indigenous peoples

Fernand de Varennes  
Special Rapporteur on minority issues

Olivier De Schutter  
Special Rapporteur on extreme poverty and human rights

Léo Heller  
Special Rapporteur on the human rights to safe drinking water and sanitation

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by the Lao People's Democratic Republic on 13 February 2007. ICESCR article 11 (1) recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." In interpreting this provision, the Committee on Economic Social and Cultural Rights (CESCR) stressed in its General Comment No. 12 that the core content of the right to adequate food implies, inter alia, both economic and physical accessibility of food (para. 7). The Committee considers that the core content of the right to adequate food implies, inter alia, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility.

The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.

We would like to also refer to ICESCR article 12 which protects the right to health. In its General Comment No. 14, the CESCR states that the right to health is inclusive and extends not only to timely and appropriate health care but also to the underlying determinants of health, such as, inter alia, access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing (para. 11). In this connection, the CESCR proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of, inter alia, race, national or social origin, birth, civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health (Ibid, para.18).

With regard to the general lack of access to health services in remote areas, and by ChaoFa Hmong individuals in particular, we would like to recall that availability and physical accessibility are two of the essential elements of the right to health. According to the CESCR, States have a core obligation to ensure that functioning public health and health-care facilities, goods and services, as well as programmes, are available in sufficient quantity and equitably distributed (Ibid, para. 43). This includes adequate

sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries. Furthermore, the Committee emphasized that medical services and underlying determinants of health must be within safe physical reach for all sections of the population without discrimination, including in rural and remote areas. Particular attention should thereby be paid to groups in vulnerable or marginalized situation, such as ethnic minorities and indigenous populations (Ibid para 12 (b)).

In addition, articles 24 and 27 of the Covenant of the Rights of the Child (CRC), which the Lao People's Democratic Republic acceded to on 8 May 1991, protects the right of every child to health and to an adequate standard of living, respectively, that is adequate for the child's physical, mental, spiritual, moral and social development. Article 24 of the CRC that protects the right to health, provides measures that States Parties should take in order to protect health determinants, including the right to food, by ensuring "the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care", and by combating "disease and malnutrition, including within the framework of primary health care, through, inter alia, "the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution".

In light of the above allegation that the ChaoFa Hmong community's shelters have been destroyed and members of the community have been forcibly relocated due to economic projects, we would like to recall that the Lao PDR is under obligation to respect the right to adequate housing, as guaranteed under article 11 of the (ICESCR). The Committee on Economic, Social and Cultural Rights commenting on the right to adequate housing in its General Comment No. 4, stressed that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. The right to housing includes guaranteeing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.

Furthermore, we would also like to refer to the Committee on Economic, Social and Cultural Rights' General Comment No. 7 on forced evictions, which stipulates that procedural protections are essential in relation to forced evictions, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid (paragraphs 15 and 16). We also wish to call your attention to the Basic Principles and Guidelines on Development-based Evictions and Displacement, prepared by a former Special Rapporteur on adequate housing, which provides guidance on the States' obligations before, during and after development-based evictions.



We would furthermore like to draw the attention of your Excellency's Government to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the United Nations General Assembly on 13 September 2007 and with an affirmative vote by the Lao People's Democratic Republic. Article 7 of the Declaration provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. Article 24 (2) affirms that indigenous peoples have an equal right to the enjoyment of the highest attainable standard of physical and mental health, while Article 21 stipulates that indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including in the area of health. States are required to take effective and, where necessary, special measures in this regard, paying particular attention to the rights and special needs of indigenous children. UNDRIP affirms the right of indigenous peoples to be actively involved in developing and determining health programmes affecting them and, as far as possible, to administer such programmes through their own institutions (article 23).

Article 26 of UNDRIP asserts the right of indigenous peoples to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired' and for legal recognition of those rights 'with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.'

UNDRIP sets out in Article 32 that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources and that 'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources'. Article 32 also underlines that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. Article 10 affirms that indigenous peoples shall not be forcibly removed from their lands or territories and that no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Recognizing that the individuals affected are members of minorities, we would like to bring to your Excellency's Government's attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).

We would like to recall that the 1992 Declaration on the Protection of all Persons from Enforced Disappearance proclaims that no State shall practice, permit or tolerate enforced disappearance (article 2); that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7); and requires that whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State promptly refers the matter to a competent and independent State authority to investigate even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation (article 13).

Regarding sexual abuse against ChaoFa Hmong women and forced pregnancy, we would like to refer to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by the Lao People's Democratic Republic on 14 August 1981. In its General Recommendation No. 35, the CEDAW Committee stresses that discrimination against women –as defined in article 1 of the Convention– includes gender-based violence, that is, violence which is directed against a woman because she is a woman or that affects women disproportionately, and, as such, is a violation of their human rights (para 1). The prohibition of gender-based violence against women has evolved into a principle of customary international law (para 2) and may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape; and in some cases, may also constitute international crimes (para 19). Forced pregnancy and forced continuation of pregnancy are violations of women's sexual and reproductive health rights and are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment (para 18).

States parties are responsible for preventing gender-based violence against women or omissions by their own organs and agents and must investigate, prosecute and apply appropriate legal or disciplinary sanctions as well as provide reparation in all such cases, including in cases of failure, negligence or omission on the part of public authorities (para 23).