The Vanishing Hmong: Forced Repatriation to an Uncertain Future

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Cover Page Footnote
International Law; Commercial Law; Law

This comments is available in North Carolina Journal of International Law: https://scholarship.law.unc.edu/ncilj/vol34/iss1/5
THE VANISHING HMONG:

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† I would like to thank the dedicated cite checkers and editors on the journal for all of their hard work and for their dedication to my piece.
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I. Introduction

In the highest mountains of Laos exists a large population of Hmong veteran soldiers who fought as American allies against Communist forces within Laos during the Vietnam War. Although the U.S. Central Intelligence Agency funded and trained the soldiers, who became known as the “Secret Army,” many of those soldiers remained in Laos when the United States left the region in 1975. The Hmong veterans were then subjected to rule and abuse by the very Communist forces against whom they fought. Many of the Hmong sought refuge in Thailand or resettled into third countries. Others escaped to the jungles of Laos and have never been able to rejoin society.

The remaining veterans are no longer young or threatening; generations have been born and have died in the very jungles to which the members of the Secret Army escaped thirty-three years ago. In fact, the “Jungle Hmong” are now made up mostly of starving women and children. Another large group of Hmong continues to seek asylum in Thailand and will likely face forcible repatriation to Laos if the international community does not intervene. Since the 1970s, both Hmong groups have experienced horrific atrocities at the hands of the Lao Government, which pledged in 1975 to “exterminate [the Hmong] to the root of the

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4 Jacobs, supra note 2, at 143-44.
5 Id. at 144.
6 Fuller, supra note 1.
7 Id.
This has led to attacks on the Jungle Hmong, a group that now faces certain death if attacks continue. If repatriated, the asylum-seeking Hmong face a similar fate.

While the Jungle Hmong and the asylum-seeking Hmong have distinct issues, locations, and circumstances, they experience many of the same grave breaches of basic human rights. Attacks on either group threaten the safety and future of the Hmong in the other group. Immediate families are split between the jungles in Laos, the refugee camps in Thailand, and sometimes third countries. Often a small group from the jungle is able to escape to Thailand; sometimes the jungle groups surrender to Lao authorities and later flee back to the jungle or to Thailand after mistreatment by the Lao government. Because the groups are often victimized in the same way and at times move between the same locations, it is impossible to examine the situation without discussing both groups.

This Comment will first briefly outline the long and complex history of the Hmong’s persecution in Laos. It will detail only a few of the hundreds of reported attacks against the population of Hmong that remain hiding in the jungles. The second section will discuss refugee and asylum policies and the role of the United Nations High Commissioner for Refugees (UNHCR). Although it is impossible to provide an account which could successfully demonstrate the enormity of the situation, the history of the Hmong seeking refuge in Thailand and stories of past and current repatriations will be presented in some detail. Finally, recommendations will be made for potentially viable solutions to the ongoing human rights violations experienced by the Hmong. In order to understand how the Hmong's struggle fits into current international law, "solutions" that are likely to be ineffective or impossible to implement are also discussed.

II. Who are the “Hmong?”

The Hmong are the third largest ethnic minority in Laos; today, the estimated 450,000 Hmong in Laos constitute about

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9 Jacobs, supra note 2, at 144.
10 Fuller, supra note 1.
eight percent of its population.\textsuperscript{12} Centuries ago, Hmong migrated from China to various countries in Southeast Asia, including Laos.\textsuperscript{13} Lao-Hmong, those Hmong whose ancestors settled in Laos, are represented in all levels of the Lao administration, though in very limited numbers.\textsuperscript{14} Thus, not all Hmong are being persecuted, for many supported the Communist forces during the Laotian Civil War and continue to support the government today.\textsuperscript{15} The Hmong referred to throughout this Comment are individuals who were associated with the Secret Army and their relatives, and are concentrated mostly in Lao jungles and makeshift refugee camps in Thailand.

\textbf{III. The CIA Funded “Secret Army”}

The United States was involved in a “war against Communism”\textsuperscript{16} throughout Indochina beginning in the 1950s.\textsuperscript{17} Cambodia, Laos, and Vietnam were each struggling with Communist forces: the Khmer Rouge, Pathet Lao, and Viet Cong respectively.\textsuperscript{18} The United States’ reliance on the Hmong in Laos began in late 1959 when the U.S. Central Intelligence Agency (CIA) met with Vang Pao, the military leader of a Royal Lao Army Battalion, which was then fighting against the communist insurgents.\textsuperscript{19} The CIA recruited Vang Pao to organize a small fighting force made up of about 10,000 Hmong and promised to supply the force with the necessary weapons.\textsuperscript{20}

In 1962, the United States and North Vietnam, along with twelve other countries, signed an agreement in Geneva pledging neutrality in Laos.\textsuperscript{21} After signing the agreement, the United

\textsuperscript{13} \textit{Id.}
\textsuperscript{14} \textit{Id.}
\textsuperscript{15} \textit{Id.} at 5.
\textsuperscript{16} Ely, \textit{supra} note 3, at 1093.
\textsuperscript{18} Ely, \textit{supra} note 3, at 1093.
\textsuperscript{19} Leary, \textit{supra} note 17, at 77.
\textsuperscript{20} \textit{Id.}
\textsuperscript{21} Ely, \textit{supra} note 3, at 1094.
States removed its 666 military advisors and staff from Laos and stopped supplying weapons to the Hmong.22 But this removal was not the end of the United States’ presence in Laos; by the time the United States military left Indochina in 1973, it had dropped over 1.6 million tons of bombs on Laos.23 The United States dropped more bombs on Laos during the Vietnam War than it dropped on all of Europe during World War II.24 In fact, the United States is said to have dropped over 6.7 million tons of ordnance on Indochina during this “war on Communism.”25 This amount is roughly three times the total dropped on all enemy nations during World War II.26 While the war in Laos may be less widely known, it certainly appears no less destructive than many previous wars. To understand the current situation of the Hmong, it is important to understand the history behind the war and the human rights violations against the Hmong that followed.

Shortly after signing the 1962 Geneva Accord, the North Vietnamese forces violated the agreement by establishing the Ho Chi Minh trail, part of which ran through Laos.27 This trail allowed North Vietnamese Army troops, who were fighting in their own country, to establish supply routes in the apparent safety of Laos.28 The Kennedy administration, also in violation of the neutrality agreement, responded by authorizing the CIA to increase the size of Vang Pao’s army.29 The army quickly reached 20,000 troops.30 The conflict escalated in 1964 as the Pathet Lao forces, which had aligned themselves with the Viet Minh Communist force in Vietnam,31 attacked the Lao right-wing royalists and nationalists.32 Khoa-xane Pathet Lao, the official mouthpiece of the Pathet Lao, demanded that the Hmong be

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22 Leary, supra note 17, at 79.
23 Ely, supra note 3, at 1098.
25 Id.
26 Id.
28 Ely, supra note 3, at 1094-95.
29 Leary, supra note 17, at 79.
30 Id.
31 Jacobs, supra note 2, at 141.
32 Amnesty Int’l 2007 Report, supra note 12, at 4; Leary, supra note 17, at 79.
“exterminated down to the root of the tribe.”

Vang Pao’s “Secret Army” continued to grow, reaching some 40,000 troops at its peak. The Army remained relatively covert for a number of years until 1969 when news reports started reaching the American public. Facing a North Vietnamese Army with more than 67,000 troops, the CIA continued to fund, train, and supply aircraft and weaponry to the Secret Army until 1973, when American troops withdrew from Indochina after signing the Paris Peace Accord. The cease-fire Agreement on the Restoration of Peace and Reconciliation in Laos was signed a month later, and by late 1975, the Communist Pathet Lao controlled the Lao government. In December 1975, the Communist party officially took control and the Kingdom of Laos became the Lao People’s Democratic Republic (LPDR).

The United States lost a total of 100 air personnel in Laos during the period that the Secret Army fought. The death toll for the CIA’s Hmong soldiers reached 17,000, and an additional 50,000 Hmong civilians also perished.

IV. The “Jungle Hmong”

After the Pathet Lao gained control, some 300,000 Hmong fled the country in fear of government retribution. The United States flew Vang Pao from Laos to Thailand, and then resettled him in the United States. Many other veterans and their families sought refuge in Thailand, and the majority of them eventually resettled in other countries. The United States received about 250,000

33 Jacobs, supra note 2, at 144.
34 Id. at 142.
35 Leary, supra note 17, at 80.
36 Jacobs, supra note 2, at 142-43; Leary, supra note 17, at 82-83.
37 Jacobs, supra note 2, at 142-43.
38 Id. at 143.
39 Leary, supra note 17, at 83.
40 HAMID, supra note 8, at 4.
41 Id.
43 Jacobs, supra note 2, at 143.
45 Id.
Hmong refugees between 1975 and 1996.46

A number of the Hmong that did not escape Laos were arrested and put in "re-education" camps.47 Tens of thousands of Hmong fled to the jungles of Laos to launch sporadic resistance against the new Communist government.48 Reports of the LPDR dropping chemical toxins on the Hmong in the jungles began immediately.49 The Lao People's Army, joined by about 30,000 Vietnamese troops, successfully crushed much of the Hmong's resistance during the first few years, but thousands of Hmong remained in the jungle for fear of the military and the government.50 These Hmong are sometimes referred to as the "Jungle Hmong"51 and are still hiding in the dense jungles of Laos today.52

The original group that fled to the jungle was largely made up of Secret Army veterans and their immediate families; today the remaining Jungle Hmong are mostly women and children.53 Few of the Jungle Hmong alive today actually fought in the war against the Communists.54

Because so few journalists have been able to safely trek into the jungles, it is difficult to determine exactly how many Hmong are still hiding.55 The U.S. Embassy in Vientiane, the capital of Laos, estimates that anywhere from hundreds to a few thousand Hmong are spread throughout the deep forests and remote mountains of Laos.56 Other estimates reach 17,000.57 Accurate population estimates are also hard to obtain because the entire population of Jungle Hmong is split into groups and spread

46 Id.
47 Jacobs, supra note 2, at 143.
49 Jacobs, supra note 2, at 144.
52 See Fuller, supra note 1.
53 See HAMID, supra note 8, at 7.
54 Id.
55 Fuller, supra note 1. Only about twelve journalists have ever journeyed to the jungles of Laos to visit the Hmong. Id.
56 Id.
throughout Laos in order to avoid detection. One Hmong group leader showed a visiting journalist a document counting the leader's group at 7,000 in 1975; all that remains of his group today is 800 starving men, women, and children.

A. Lao Military Attacks on the Jungle Hmong

Several sources have reported frequent Lao military attacks on the Jungle Hmong over the past thirty-three years. Footage of the victims of a Lao military attack on a dozen boys and girls gathering food in May 2004 reveals brutal rape, mutilation, and disembowelment. This report is just one of hundreds that have been a constant concern to human rights advocates. Perhaps the most publicized attack occurred on April 6, 2006. The Lao military mutilated and slaughtered a group of twenty-six unarmed Hmong as they foraged for food on the outskirts of their camp. Twenty-five of the twenty-six killed were women and children; five infants later died from starvation because their mothers were not alive to breast-feed them. Amnesty International and the Fact Finding Commission (FFC) have obtained photographs and videos documenting the aftermath of this massacre. In response to inquiries from the UN and international humanitarian organizations, the LPDR simply stated that the incident was a

58 Id.
62 See BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T OF STATE, LAOS, 2006 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES § 1(a) (2006); HAMID, supra note 8, at 7.
64 BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, supra note 62, § 1(a).
65 Arnold, supra note 60, para. 16.
67 BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, supra note 62, § 1(a).
fabrication.\textsuperscript{68} In fact, the Lao government never conducted an investigation.\textsuperscript{69}

The U.S. Department of State’s \textit{Country Reports on Human Rights Practices} lists incident after incident of the LPDR military killing Hmong who they believe were tied to the Secret Army.\textsuperscript{70} Many of these deaths occurred in the Saisomboun Special Zone, a military administrative area where no U.N. or U.S. Embassy staff can travel.\textsuperscript{71} In each of these cases, the LPDR denied involvement and refused to investigate the allegations.\textsuperscript{72} In addition, the LPDR prohibits most international humanitarian organizations from entering the country.\textsuperscript{73} Without access, these agencies are also unable to investigate these allegations.

\textbf{B. Surrender Attempts by the Jungle Hmong}

Due to the harsh jungle conditions, many Hmong feel that they have little choice but to join Lao society; they are malnourished and diseased, and cannot continue living in the jungles without access to medical care.\textsuperscript{74} Throughout the years, many have attempted to “surrender” to Lao authorities, hoping to reintegrate into Lao society.\textsuperscript{75} There is no way to know how many Hmong have surrendered, but estimates between June 2005 and December 2006 exceed 2,000.\textsuperscript{76} A few of these groups are reported to have successfully integrated into Lao society with assistance from the LPDR.\textsuperscript{77} Support is often much less than promised, but implemented programs include job training and donations of land

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{68} \textit{Id.}
\item \textsuperscript{69} \textit{Id.}
\item \textsuperscript{70} \textit{Id.}
\item \textsuperscript{72} Jacobs, \textit{supra} note 2 \textit{passim.}
\item \textsuperscript{73} \textit{Bureau of Democracy, Human Rights, & Labor, supra} note 62, § 4.
\item \textsuperscript{74} \textit{See} HAMID, \textit{supra} note 8, at 8-10.
\item \textsuperscript{75} Pollard, \textit{supra} note 51 \textit{passim.}
\item \textsuperscript{76} \textit{Bureau of Democracy, Human Rights, & Labor, supra} note 62, § 2(d).
\item \textsuperscript{77} \textit{Id.}
\end{itemize}
\end{footnotesize}
and farming equipment. More often than not, however, the groups that surrender simply disappear.

In stark contrast to the reintegration successes are alarming reports of surrenders leading to detention and violence. For example, when a group of 173 Hmong surrendered in June 2005, the FFC attempted to organize an international presence to monitor the resettlement of the group. At least three members of the FFC managed to escape detection and were present, but due to the ban on humanitarian presence, no other agencies were able to provide assistance. When discovered, the FFC monitors were detained and later deported for "illegally liaising" with the relatives of Secret Army veterans. Amnesty International reported that the LPDR military imprisoned the group of 173 Hmong in "appalling conditions" for six months. By the end of the six months, the group was told that they could leave as individual families, but not as a group. The Hmong left the prison in the middle of the night and walked in different directions as ordered. The fates of the families remain the subject of debate, though there is speculation that several have sought refuge in Thailand. The Lao Vientiane Times newspaper reported that the government resettled the Hmong and provided them with food, money, medical attention, materials for home construction, and land for rice cultivation. These claims cannot be substantiated and the Lao government "has publicly denied all reports that have emerged" about the status of the group.

In October 2006, a group of about 350 Hmong surrendered in

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78 Id. § 5.
79 Pollard, supra note 51 passim.
81 BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, supra note 62, § 5.
83 Amnesty Int’l 2007 Report, supra note 12, at 17. According to an anonymous eyewitness account, two children in the group died of malnourishment while imprisoned, thus reducing the group to 171. Id.
84 Id.
85 Id.
86 Id. at 18.
87 HAMID, supra note 8, at 11.
Two months later, a group of more than 400 surrendered in the Xiang Khouang Province. There were no reports of violence against these two particular groups, but the government denied access to international monitors, refusing to reintegrate the Hmong into society in a transparent way. The status and welfare of these two groups and many others remain unknown.

C. Jungle Conditions Documented by Visiting Journalists

The few journalists who managed the trek into the jungles have published numerous articles, taken hundreds of photos, and recorded hours of video which have been made into various documentaries. Independent third parties have authenticated most, if not all, of these materials. The Lao government continually denies any attacks on Hmong living in the jungle, dismissing claims as “fabrication.”

The trek into the jungle is incredibly dangerous. In 2003, Andrew Perrin, a writer for TIME Magazine, was following his Jungle Hmong escorts on their ninth day of trekking through the foliage when LPDR troops spotted them and began firing rounds at the group. After lying on the dense jungle floor for hours, they were able to hike out of the area without further incident.

Teams of reporters and journalists who successfully enter the jungle do not always leave the jungle safely. In June 2003, two European journalists, based in Bangkok, visited the jungle with a Hmong-American interpreter and three ethnic Lao-Hmong nationals. When the group emerged from the jungle, they were

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89 BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, supra note 62, § 5.
91 BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, supra note 62, § 5.
92 Id.
93 Id.
94 HAMID, supra note 8, at 7.
96 Perrin, supra note 59, para. 1.
97 Unfair Trial, supra note 90, at 1.
arrested; one of the Lao-Hmong nationals escaped to Thailand to seek refuge and was later resettled in a third country. The Lao government detained the others, and tried and sentenced them that same month in a hearing that lasted just three hours. Though represented by their respective embassies, the journalists and the American-Hmong interpreter received sentences between ten and twenty years each. The embassies and the Lao government eventually negotiated a settlement for the release of the foreign nationals, but the two Lao-Hmong remain in prison today. The LPDR retained the journalists' notes, videos, and photographs.

Journalists who make the dangerous trek into the jungles organize the trip through an underground network of "blackbirds." These Hmong blackbirds arrange for a small group of men and boys to meet the foreign team and safely escort them to the Hmong "camps" in the jungle. Because the Hmong groups move at least once a month to avoid detection, they have no permanent structures set up in the jungles. The Hmong are unable to cultivate food without being detected and attacked, so they survive on little more than foraged cassava roots and boiled palm tree leaves. The children have distended bellies due to malnourishment and are often without clothes. Although they trek over rugged mountains, the Hmong typically have only plastic flip flops for footwear. For protection from attacks, they still carry the rusted weapons and ragged packs provided by the CIA in the 1960s. They dig up ammunition from former U.S. air bases but estimate that only one third of the rounds are live. Journalists who have visited the Hmong confirm that the groups present no military threat to the LPDR. This observation is important...
observation because if the Hmong are considered to be a threat to national security, the Lao government may argue that they are justified in using force against them.

Each journalist has reported multiple injuries among the men, women, and children living in the jungle. Documented injuries range from three-decade-old scars to recent shrapnel wounds and gunshot wounds. In 2003, Communist Lao troops shot one Jungle Hmong boy, Tong Hua Her, in the face. As a result, Tong is missing half of his face; his right eye is almost completely deformed and his entire nasal cavity is exposed. Well-known photojournalist Roger Arnold photographed Tong and others during a June 2006 visit to the jungle. About his arrival Arnold wrote: “After 72 hours of climbing we reached their hidden village, where I found the saddest place I have ever seen. Before me on hands and knees were hundreds of men, women, and children crying and screaming for me to save their lives from Communist soldiers.” Arnold documented the remains of the April 2006 massacre in which Tong’s group lost twenty-six members to the LPDR military attack.

Many of the Hmong children suffer from deformities and blindness due to chemicals military forces drop into the jungle. The Hmong can only identify the chemicals by color and recognize that the black chemical is the worst. The Hmong have described the horror of death by these chemicals to journalists. Often, a victim will become paralyzed after eating a plant covered in the chemicals. Most contact with these chemicals results in death; “after they die, their tongue sticks out,” notes one Hmong leader. In addition, the military once surrounded vegetation

108 Id.
109 See Arnold, supra note 60.
110 Id.
111 Id.
112 Id. para. 12-13.
113 Id. para. 16. See supra text accompanying notes notes 63–69.
115 Id.
116 Id.
117 Id.
118 Id.
with landmines in order to kill the women and children foraging for food. Similar reports of bombings have been made consistently throughout the thirty-three years that the Hmong have been hiding.

In an interview with The New York Times, sixty-year-old Secret Army veteran Va Chang requested “America to give [the Hmong] a place to live. We want America to give us food and medicine.” He then pled, “If the Americans don’t want to do that, they should drop a big bomb on us and end our misery.” Many of the other Hmong living in constant fear of the military share Va Chang’s attitude.

Journalists have provided the Hmong with satellite phones and occasional video cameras to document abuses. Many group leaders keep lists of the names and ages of the Hmong attacked and report these incidents by phone to humanitarian organizations overseas. FFC receives a number of reports, the most recent being a list of the names of seventy-one people who died between January 15 and February 10, 2008. The Hmong on the list ranged in age from one to seventy-eight. Military troops killed twenty-two of them; the remaining forty-nine died from starvation.

Since 2007, the LPDR military has become more aggressive in its attacks on the Jungle Hmong. Although government authorities publicly deny the existence of the Jungle Hmong, the government has given “shoot to kill” orders and has offered membership in the Communist Party and the equivalent of a U.S. $600 reward for each Jungle Hmong body brought out of the

119 Id.
120 Fuller, supra note 1.
121 Id.
122 Id.
123 Arnold, supra note 60, para. 4.
124 Id.
126 Id.
127 Id.
128 Mudie, supra note 95, para. 4; Killing Fields Revisited, supra note 125, para. 1.
The government also requested the help of the Vietnamese Intelligence Service to use modern technological devices to detect the location of the Hmong's satellite phones. The Vietnamese Intelligence Service, stationed in Nong Tang, Laos, maintains a façade as a scrap metal business while reporting information on Jungle Hmong whereabouts to the Lao officials.

It seems that the LPDR is intent on carrying out its 1975 pledge to eliminate the Hmong. U.S. Embassy Spokesperson Amy Archibald says that the United States “find[s] these reports very credible” and “know[s] that there are human rights abuses by security forces.” She comments that the situations are difficult to fully analyze because no one knows “who fired the first bullet.” LPDR Foreign Ministry Spokesman Yong Chanthala-ningsy simply states: “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.” Comments such as these are also helpful in assessing whether the LPDR truly considers the Hmong a security threat.

V. The Lao-Hmong in Thailand

A. The Status of the Asylum-Seeking Hmong

In order to qualify for international asylum protection, the Hmong must be considered refugees under international law. According to the 1951 Convention Relating to the Status of Refugees (Convention), a “refugee” is a person who:

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself on the protection of that

129 Mudie, supra note 95, para. 4; Killing Fields Revisited, supra note 125, para. 1.
130 Mudie, supra note 95, para. 13; Killing Fields Revisited, supra note 125, para. 1.
131 Mudie, supra note 95, para. 13.
132 Killing Fields Revisited, supra note 125, para. 1.
133 Fuller, supra note 1.
134 Id.
135 Id.
country . . . 136

Since the Jungle Hmong are within the borders of Laos, they
do not qualify for protection as "refugees." Only those Hmong
seeking asylum in Thailand may qualify for refugee status. The
Convention prohibits expulsion or return (called
"nonrefoulement") "in any manner whatsoever to the frontiers of
territories where [the refugee's] life or freedom would be
threatened . . . ." 137

While Thailand is not a party to the 1951 Convention or its
1967 Protocol, customary international law also recognizes the
principle of nonrefoulement and binds all countries, regardless of
ratification status, to this principle. 138 Customary international law
is a set of principles so fundamental that most countries in the
world accept and abide by their terms. 139 It generally includes
crimes such as genocide, war crimes, and crimes against
humanity. 140

In addition, as a party to the United Nations, Thailand must
abide by the Universal Declaration of Human Rights and respect
basic rights afforded to every person. 141 Rights delineated in this
declaration include "the right to life, liberty, and security of
person," 142 and the right not to be "subjected to torture or to cruel,

136 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259,
189 U.N.T.S. 150 art. 1(A)(2) (emphasis added) [hereinafter Convention Relating to the
Status of Refugees]. The original text of the Convention required the refugee to have a
well-founded fear based on events occurring before January 1951. Id. Because of the
need to address new refugee situations, the 1967 protocol allowed acceding States to
apply the substantive provisions of the convention without date limitations. Protocol
1(2).

137 Convention Relating to the Status of Refugees, supra note 136, at art. 33.


139 Parry & Grant Encyclopaedic Dictionary of International Law 109 (John P. Grant

140 Id.

141 Universal Declaration of Human Rights, G.A. Res 217A, at 14(1), U.N. GAOR,
Declaration of Human Rights].

142 Id. at art. 3. Interestingly, Thailand's new Constitution, adopted in 2007,
contains a section on individual liberty titled "Rights and freedoms of the Thai people,"
excluding non-Thais. See U.S. COMM. FOR REFUGEES AND IMMIGRANTS, UNCHR
REFWORLD, World Refugee Survey 2008, June 19, 2008,
inhuman or degrading treatment." Humanitarian agencies have urged Thailand to recognize these fundamental principles in determining a solution for the Hmong.

The UNHCR has determined three "durable solutions" to permanently end refugees' suffering and need for international protection and assistance: (1) voluntary repatriation, (2) local integration into the country of first asylum (in this case, Thailand), or (3) resettlement in a third country. The international community, countries of origin (in this case, Laos), and countries of asylum generally agree that voluntary repatriation is the most desirable of the three solutions. Although refugees do return to the country from which they fled persecution, many repatriation movements, when paired with post-conflict reconstruction, are successful. The 2004 UNHCR Executive Committee noted that "it is crucial to ensure that appropriate levels of security, social services, and economic opportunity are available to returnees."

Thailand considers the asylum-seeking Hmong illegal immigrants because they violated the Thai Immigration Act when they entered the country. As illegal immigrants, the Hmong are subject to imprisonment, fines, and expulsion. Like Laos, Thailand will not allow international humanitarian agencies to assist with the Hmong situation within their country.

Were the 1951 Convention to apply, Thailand would be prohibited from "impos[ing] penalties, on account of their illegal entry or

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143 Universal Declaration of Human Rights, supra note 141, at art. 5.
146 Id. at 130.
147 Id. at 133. After a fourteen-year civil war in Liberia, the UNHCR, with the assistance of NGOs, the Liberian Transitional Government, and neighboring refugee host states, successfully returned over 320,000 refugees to their country of origin. Id. at 133-34.
148 Id. at 133.
149 Jacobs, supra note 2, at 143.
150 Id.
151 BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, supra note 62, § 5.
presence, on refugees."Unfortunately, because Thailand has not ratified the Convention and will not allow the UNHCR to evaluate the Hmong claims of persecution, most Hmong in Thailand are not considered refugees by the legal definition; they are asylum seekers. Though there is no specific framework in the Convention for the treatment of asylum seekers, the nonrefoulement provision and the penalty provision quoted directly above are both applicable to refugees before formal determination (when they are considered asylum seekers) and at the point of recognition as refugees.

B. History of Asylum-Seeking Hmong and Refugee Camps in Thailand

Refugee camps in Thailand have a long and checkered history. After the change in Lao government, Thailand experienced a great influx of Lao-Hmong seeking asylum. The Thai government allowed the UNHCR to set up temporary refugee camps to provide care to the Hmong. Although the Thai government officially listed these asylum seekers as illegal immigrants, the UNHCR was able to establish refugee status for many of them.

The U.S. government announced that it would take 168,000 refugees from Indochina in the year 1979, but Thailand was still left with more than 250,000 refugees and asylum seekers from Laos and other countries. In order to dissuade more Hmong from entering, Thailand set up a camp with poor living conditions and allowed no chance for resettlement to third countries. The United States also tried to slow the influx of refugees by passing the Refugee Act of 1980, which provided resettlement approval on a case-by-case basis only.

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152 Convention Relating to the Status of Refugees, supra note 136, at art. 33.
154 Jacobs, supra note 2, at 143.
155 Id.
156 Id.
157 Id. at 144.
158 Id.
dropped to just 3,800 in 1981. Those hoping for resettlement to the United States also faced strict drug laws requiring refugees to be free from drug use for five years prior to entry. Prior policy required refugees to be free from drug use for only six months. The Hmong regularly used opium for medicinal purposes because they often lacked access to other medicine; thus, the United States excluded many of the Hmong from the resettlement process.

The United States also experienced a decrease in refugees due to external factors. Those awaiting resettlement in Thailand heard that Hmong in the United States were among the most welfare-dependent groups in the country. Also, from his home in the United States, former Secret Army leader Vang Pao instructed the Hmong to remain in Thailand in hopes that his efforts would assure them a safe return to Laos.

Thailand continued to experience an increase in asylum-seekers and with the help of UNHCR, Canada, and the United States, established a screening process in order to determine each Hmong's status. Individuals who were determined to be refugees were sent to a barren camp, and those who were found to have entered the country for other reasons, namely economic concerns, were sent to a detention center to await repatriation. Thailand also distinguished those Hmong with relatives in third countries, perhaps indicating that the Thai government was only willing to temporarily house those it could easily resettle.

Thailand's screening process contained several flaws. Many Hmong reported bribing officials with 2,000-36,000 Thai baht

160 Jacobs, supra note 2, at 145.
161 Id.
162 Id.
163 Id.
164 Id.
165 Id. Vang Pao tried to aid the Hmong in their resistance efforts even from his home in California for years after his resettlement in the US. Id. In June 2007, Vang Pao and nine others were arrested and charged with plotting to overthrow the Lao government. See CNN, 10 Charged with Alleged Laos Plot, CNN, June 4, 2007, http://www.cnn.com/2007/LAW/06/04/laos.arrests/index.html?iref=newssearch.
166 Jacobs, supra note 2, at 145.
167 Id. at 146.
168 Id. at 145–46.
169 At the time of writing, 2,000-36,000 Thai baht is roughly equivalent to U.S. $58
in order to enter the process or to gain refugee status. As early as 1989, the Lawyers Committee for Human Rights reported that "screening [was] conducted in a haphazard manner with little concern for legal norms. Extortion and bribery [were] widespread." Eventually, the situation turned violent as asylum-seekers had their money confiscated, were shot at as they tried to enter Thailand, or were forced back to Laos where they risked being gunned down and killed by the Pathet Lao.

By 1991, UNHCR and the Lao and Thai governments, with support and financial assistance from the United States, signed the Luang Prabang Tripartite Agreement. The Agreement provided for the closing of all refugee camps and repatriation of all Hmong from Thailand to Laos by the end of 1994. The official position of the Lao government at the time was that of reconciliation, yet authorities admitted that many government officials still resented the Hmong, and the government refused to accept refugees whom the Thai government had previously screened out.

Since many of the Hmong remained unwilling to return to Laos, the United States recruited a well-respected Hmong leader to return first in hopes that other Hmong would follow. This plan was also unsuccessful. Vue Mai, a former major in the Secret Army, was repatriated in November 1992 with the promise of a safe return; his clan assured him that they would follow after he


170 Jacobs, supra note 2, at 146.


173 Jacobs, supra note 2, at 147. At least two separate incidents of this type were reported. The first involved the killing of thirty-two Hmong asylum seekers. One eight-year-old Hmong girl was shot but survived. In the second incident, all sixteen asylum seekers were killed. Id.

174 Hmong Refugees Fear Forced Repatriation, supra note 172.

175 Jacobs, supra note 2, at 147.

176 Id.

177 Id. at 148.
was favorably resettled. The LPDR claimed that he ran off with a girlfriend, but the Hmong refused to believe this explanation, given that the LPDR had assigned an officer to follow and watch after Vue Mai. After Vue Mai’s repatriation, despite his mysterious disappearance, involuntary repatriations to Laos were completed with greater frequency. United States and UNHCR officials said that they would consider forcibly repatriating reluctant Hmong if necessary. Thousands of repatriations occurred in the early 1990s, and by the end of 1994 all but one camp had been closed in Thailand. It seemed that the problem of Lao-Hmong in Thailand was almost resolved.

Yet in May 2004, the U.S. House of Representatives passed House Resolution 402, which outlined a stance critical of Laos and sympathetic to the Hmong. Shortly thereafter, the United States government agreed to allow more Hmong entry into the United States, and as a result, about 15,000 refugees from Thailand resettled in the United States in June 2004. Immediately, perhaps encouraged by the U.S. resettlements, a wave of 4,000 to 5,000 Lao Hmong fled across the Mekong River into Huay Nam Khao, Thailand, to seek refuge. Once inside Thailand, many of the Hmong lived on the edges of the forest near the village and received food and assistance from local Thai residents. Others

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178 Id.
179 Id.
180 Id. at 148–49.
181 The Lao and Thai governments considered these returns to be “voluntary,” as forced repatriation violates the principle of nonrefoulement, but in reality many of the Hmong were given only the choice to return or face indefinite “prison-like detention.” Jacobs, supra note 2, at 149.
182 Id. at 150.
183 Id. at 149.
186 Id.
187 MÉDICINS SANS FRONTIÈRES, supra note 11, at 3.
188 Id.
worked on nearby farms or traded resources at the local market.\footnote{Id.} In June of 2005, Thai officials forced the Hmong to leave the forests and pressured the Thai residents to stop helping the asylum seekers.\footnote{Id.} The United States made arrangements to resettle another group of a few thousand Hmong but later decided it was unable to resettle those refugees.\footnote{Oratai Singhananth, Missing Lao Hmong Girls Back in Thailand, Lao Official Says, RADIO FREE ASIA, June 30, 2006, http://www.rfa.org/english/news/lao/lao_hmong-20070630.html-09202007210221.html [hereinafter Singhananth, Missing Lao Hmong Girls].} Still more Hmong may have been encouraged to flee to Thailand by news of the possible resettlement arrangements.

The humanitarian agency Médecins Sans Frontières (MSF)\footnote{MÉDECINS SANS FRONTIÈRES/DOCTORS WITHOUT BORDERS, http://www.doctorswithoutborders.org (last visited Oct. 5, 2008).} learned of the makeshift refugee camp in July 2005 and visited the town to assess the situation.\footnote{MÉDECINS SANS FRONTIÈRES, supra note 11, at 3.} By that time, 5,000 to 6,000 Hmong were living on both sides of the main road.\footnote{Id.} Food, shelter, safe drinking water, and medical care were all in short supply.\footnote{Id.} MSF set up an outpatient clinic in the makeshift camp and by 2007 over 7,800 asylum-seekers inhabited what is known as the Ban Huay Nam Khao camp.\footnote{Id.}

C. Repatriation Efforts Since 2004

Repatriation efforts after 2004 have also had devastating consequences for the Hmong. Since November 2004, Thailand has forcibly repatriated over 400 asylum-seeking Hmong to Laos. Approximately fifty can be accounted for; the whereabouts of the others are unknown.\footnote{Supalak Ganjanakhundee, Laos Insists to Take Hmong, THE NATION (Bangkok, Thail.), Aug. 31, 2007, available at http://www.nationmultimedia.com/2007/08/31/regional/regional_30047327.php.}

In December 2005, Thailand forcibly repatriated a group of
twenty-eight Hmong, predominantly comprised of children.\textsuperscript{198} The Thai government confirmed that it had unofficially deported the group, but Lao officials refused to openly acknowledge the presence of the group, although they privately indicated that they were holding the Hmong within Laos.\textsuperscript{199} Later, Lao authorities denied ever holding the group or knowing of its whereabouts.\textsuperscript{200} In the 2006 Country Reports on Human Rights Practices, the U.S. Department of State noted that multiple sources indicated that the Lao government held the children in government detention facilities since their repatriation in 2005.\textsuperscript{201} The reports indicate that the Lao government held the boys in Vientiane and later transferred them to a detention facility in Phongsaly.\textsuperscript{202} The government detained the girls at a prison attached to an army base outside of another town in Laos.\textsuperscript{203} In March of 2007, Lao officials reported that they “found” the girls in the country and released them to their relatives soon thereafter.\textsuperscript{204} Of the twenty-one girls released to relatives, twelve fled back to Thailand in May to reunite with their parents.\textsuperscript{205} The girls told the MSF team of repeated rape, beatings, and other abuse during their detention in Laos.\textsuperscript{206} The whereabouts of the six boys and one adult are still unknown.\textsuperscript{207}

A group of fifty-three Hmong repatriated on November 15, 2006 are also missing.\textsuperscript{208} Lao official media previously reported

\begin{footnotesize}
\begin{enumerate}
  \item Id.
  \item Id.
  \item Id.
  \item Singhananth, Missing Lao Hmong Girls, supra note 191.
  \item MÉDECINS SANS FRONTIÈRES, supra note 11, at 4.
  \item Id. MSF is the only international humanitarian agency that has been allowed to provide medical and relief assistance to the Lao Hmong refugee population in Huai Ñam Khao in recent years. Id.
  \item Id.
  \item Id. Press Release, Human Rights Watch, Thailand: Stop Deportation of Hmong Refugees to Laos (Dec. 12, 2006), http://hrw.org/english/docs/2006/12/12/thaila14822_
that the returnees would undergo "re-education," a fate that has included detention, starvation, forced labor, torture, and other ill-treatment.\footnote{Id.} International humanitarian organizations remain concerned about these returnees.

Later in November 2006, Thai police arrested 153 UNHCR-recognized Hmong refugees who escaped from the Ban Huay Nam Khao camp.\footnote{Amnesty Int'l 2007 Report, supra note 12, at 25. According to another source, Thai police arrested 149 refugees. See Singhananth, UN Urges Thailand, supra note 144.} In December, Thai officials moved the detainees from Bangkok to an immigration center in Nong Khai, where they remain today.\footnote{Singhananth, Missing Lao Hmong Girls, supra note 191, para. 5.} Ninety of the detainees are children,\footnote{Press Release, United Nations, UNHCR Calls for Lao Hmong Refugees to be Released After Hunger Strike, para. 2, (Aug. 20, 2007), available at http://www.unhcr.org/news/NEWS/46c97f5f4.html [hereinafter UNHCR Calls for Release].} and the number of current refugees detained is 154 due to the birth of an infant while in detention.\footnote{Amnesty Int'l 2007 Report, supra note 12, at 25.} Thailand had hoped to repatriate the group in January 2007 but delayed the attempt because of international pressure\footnote{See, e. g., Press Release, Lao Human Rights Council, Hmong Lao in Nong Khai Detention Centre Appeal for Justice and Human Rights from Thai Government (Aug. 16, 2007), http://www.laohumanrightscouncil.org.} and resistance by the refugees.\footnote{UNHCR Calls for Release, supra note 212, para. 5.} On the day of planned repatriation, Thai officials drove the women and children to the Lao border where they awaited the arrival of their male relatives; however the men at the detention center had barricaded themselves inside their cells.\footnote{Amnesty Int'l 2007 Report, supra note 12, at 25.} After attempting to saw through the bars and emitting a gas-like substance into the cells, detention officials stopped the deportation.\footnote{Id.} Thai authorities said that they would not deport the Hmong against their will and "pledged to agree" to allow resettlement in third countries.\footnote{Id.} Although multiple countries have agreed to take the refugees, Thailand has still not released them, perhaps in order to discourage
other asylum-seekers from entering Thailand.\footnote{Ganjanakhundee, supra note 197. The Hmong remain in detention as of August 2008. Id.}

\textit{D. Current State of Lao-Hmong Repatriation}


observer noted that the two governments are intent on repatriating the Hmong "no matter how many bullet wounds they have."227 As part of the negotiation, Laos required that Thailand exclude third party assistance and monitoring.228 Since the UNHCR's mandate expired in 2001, Laos and Thailand have prohibited the organization from determining Hmong refugee status and aiding with reintegration into Lao society.229 The Lao-Thai repatriation agreement will guarantee that the UNHCR remains excluded from the process.

Still categorizing the asylum-seeking Hmong as illegal immigrants, the Thai government does not believe that repatriation violates international law.230 Thai officials announced that they would screen the Hmong before sending them back to Laos in case any qualify for protective status.231 Unfortunately, since that announcement, they have stated that all Hmong would be sent back to Laos without the option of resettlement in third countries.232 Considering the more than 1,300 repatriations since January 2008, the latter policy seems probable. To date, more than five industrialized countries, including the United States, Canada, and Australia, have offered to accept some of the refugees from Thailand.233 A number of the Hmong at the Ban Huay Nam Khao camp have official refugee status, dating from pre-2001 UNHCR assessments.234 Many are photographed with their documents identifying them as refugees. Other Hmong have produced tattered photos and papers proving their participation in the Secret Army, in hopes that with this proof, Thailand will award them refugee status.235 Human Rights Watch called this resettlement refusal "brazen contempt for the most basic principles of refugee law."236 Prime Minister Surayud announced his


228 MÉDECINS SANS FRONTIÈRES, supra note 11, at 2.


230 MÉDECINS SANS FRONTIÈRES, supra note 11, at 2.

231 Id. at 1.

232 Id. at 1-2.

233 Protect Hmong Refugees, supra note 221.

234 Id.

235 Fuller, supra note 1.

236 Hmong to be Sent Back to Laos, supra note 226.
intention to “continue” cooperation with the international community on the basis of “transparency, democratic values, and an adherence to international law—especially the UN Charter and the Universal Declaration on Human Rights.”237 Any recent cooperation with the international community has not included the presence of monitors.

In routine medical and psychological assessments, MSF has found “extreme fear and psychological distress among [the Hmong] population, which has only been exacerbated by the threat of a return to Laos.”238 The agency also reports that many Hmong have physical scars and injuries, allegedly from abuses in Laos,239 and states that “it’s clear that the wounds are recent and caused by guns.”240

Reports indicate that Lao officials visited the Hmong in the Ban Huay Nam Khao camp in August 2007 in order to show a documentary illustrating the treatment of previous returnees.241 Since some of the Hmong have been living in Thailand for over three decades, the Lao government is preparing homes for the Hmong who sold their property or have no relatives in Laos.242 Laos reportedly invited foreign officials and journalists to the Kasi district to see the new facilities built for the returning refugees.243 To date, journalists have not published anything about those facilities, perhaps because of delays in reporting, or, more discouragingly, because the government has not upheld the invitation.

Regardless of the efforts to calm those at the refugee camp, many Hmong still vehemently resist repatriation. In February 2008, Thai authorities rounded up a group of thirteen Hmong and dragged them onto trucks.244 Some Hmong reportedly clung to branches and bushes and had to be pulled free.245 When two men

237 Stop Deportation of Hmong Refugees, supra note 208.
238 MÉDECINS SANS FRONTIÈRES, supra note 11, at 1.
239 Id.
240 Fuller, supra note 1.
241 Ganjanakhundee, supra note 197.
242 Id.
243 Id.
245 Id.
jumped out of the moving truck to avoid repatriation, Thai soldiers sent police dogs after them; the police dogs severely mauled the two men, resulting in hospitalization. The Thai government claimed that the group of Hmong volunteered and willingly returned to Laos, but as Human Rights Watch pointed out, "volunteers don’t need police dogs to coax them onto trucks." Two other refugees were hospitalized after reportedly poisoning themselves in fear of repatriation. Another source said that they had not poisoned themselves, but that Thai authorities beat them after they refused to sign papers consenting to return.

In late June 2008, 5,000 Hmong refugees left Huay Nam Khao in a mass protest march to Bangkok. The Thai army set up a roadblock and deported 837 Hmong back to Laos. About 3,700 returned to the camp the following day, but 1,300 are still missing.

VI. Lao Government

The LPDR is one of only five Communist governments in existence today. Laos ranks 130 out of 177 countries on the UNDP Human Development Index, and in the bottom twelve in the Reporters without Borders Worldwide Press Freedom Index and the Heritage Foundation/The Wall Street Journal Index of Economic Freedom. These three indices measure various country conditions and are used as a frame of reference to assist in social and economic development.

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246 Id.
248 U.S. COMM. FOR REFUGEES AND IMMIGRANTS, supra note 142.
249 Id.
In 1991, Laos approved a Constitution detailing the country’s rule of law, but years later, the legal framework is yet to be established.\textsuperscript{255} The result, as the government admitted, is “the absence of uniformity and consistency in the application of the law.”\textsuperscript{256} The government controls the media and mass organizations,\textsuperscript{257} prohibits domestic nongovernmental organizations (NGOs) from forming, and allows few international development NGOs to provide food and other assistance to Hmong who accept resettlement offers.\textsuperscript{258} The government only sporadically responds to international human rights organizations requesting information about human rights practices in Laos.\textsuperscript{259} Perhaps most detrimental for the Hmong is that Laos prohibits access of independent human rights monitors.\textsuperscript{260} If Thailand repatriates the Hmong to Laos, they will be subject to the Lao government without third party monitors. Without transparency, it is likely that the torture, rape, and detention of Hmong, as reported in the past, will only continue.

Lao government restricts its citizens’ freedom of speech, assembly, religion, and political opposition or efforts to change the government.\textsuperscript{261} During the 1989 election, the first since the establishment of the LPDR, Laos allowed only those candidates approved by the communist Lao People’s Revolutionary Party (LPRP) to seek office.\textsuperscript{262} Elections for the Lao People’s Democratic National Assembly were held in 2002, a year earlier than scheduled.\textsuperscript{263} Again, the government excluded from participation in the election all candidates other than those from the LPRP.\textsuperscript{264} In 1999, the government arrested five peaceful Lao student protestors seeking political and economic reform, who

\begin{footnotesize}
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\item \textsuperscript{255} Amnesty Int’l 2007 Report, supra note 12, at 4.
\item \textsuperscript{256} Id.
\item \textsuperscript{257} Id. at 3. Examples of such mass organizations include the Lao Front for National Construction, the Lao Federation of Trade Unions, the Lao People’s Revolutionary Youth Union, and the Lao Women’s Union. Id.
\item \textsuperscript{258} BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, supra note 62, § 4.
\item \textsuperscript{259} Id.
\item \textsuperscript{260} Amnesty Int’l 2007 Report, supra note 12, at 6.
\item \textsuperscript{261} H.R. Res. 402, 108th Cong. (2004).
\item \textsuperscript{262} Id.
\item \textsuperscript{263} Id.
\item \textsuperscript{264} Id.
\end{itemize}
\end{footnotesize}
remain imprisoned in Laos today. Two years later, the government arrested a group of pro-democracy activists, including a member of the European Parliament, Olivier Dupuis, when they protested for the release of the Lao students. Prison conditions are consistently reported as inhumane, life-threatening, and appalling.

VII. Recommendations

A. International Attention as a Solution

Of the potential solutions for the situation of the Hmong both in Laos and Thailand, none are judicial and none are binding. The United Nations must constantly remind Thailand and the LPDR that it is aware of the many reports of human rights abuses and treaty violations against the Hmong.

Laos is a party to several treaties that require the party-State to regularly report to the treaty committee of experts (commonly referred to as the “treaty body”) so that those experts can monitor treaty implementation. While the treaty body has no judicial power, it may request missing Lao reports and ask questions about the ones received. The treaty body can request explanations regarding allegations of abuses within the country in hopes of embarrassing the government. Another country which is a party to the treaty may also bring the situation in Laos to the attention of the treaty body. This action requires the treaty body to communicate with Laos regarding concerns about the Hmong’s

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situation.\textsuperscript{269} Consistent embarrassment and attention may elicit a response from Laotian officials. The hope is that questioning and communication would eventually allow international humanitarian agencies unfettered access to monitor Hmong treatment.

Consider recent communication regarding the LPDR's duties to report under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD): the treaty requires that states report to the Committee every two years\textsuperscript{270} and detail "acts of extreme violence," including "bombing of villages, use of chemical weapons, and [sic] landmines and extrajudicial killings and torture."\textsuperscript{271} The treaty defines racial discrimination as:

any distinction, exclusion, restriction or preference based on . . . national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.\textsuperscript{272}

Listed obligations of the treaty include citizens' rights to "security of person and protection by the State against violence or bodily harm,"\textsuperscript{273} "freedom of movement and residence,"\textsuperscript{274} and public health and medical care.\textsuperscript{275}

In 2003, the Committee on the Elimination on Racial Discrimination sent a warning letter to Laos expressing "concern that the [LPDR] . . . is 18 years late in submitting its reports to the Committee."\textsuperscript{276} It also detailed reports of violent attacks on the Hmong and "urge[d] the State party to halt immediately acts of violence against members of the Hmong population."\textsuperscript{277} The

\begin{footnotesize}
\textsuperscript{269} Id. at art. 11.
\textsuperscript{270} Id. at art. 9.
\textsuperscript{272} CERD, \textit{supra} note 268, at art.1.
\textsuperscript{273} Id. at art. 5(b).
\textsuperscript{274} Id. at art. 5(d)(i).
\textsuperscript{275} Id. at art. 5(e)(iv).
\textsuperscript{277} Id. ¶ 6(a).
\end{footnotesize}
LPDR responded with a report in 2004, but failed to address many of the international community's concerns.278 The Committee reviewed this report and made "concluding observations" which listed fourteen continuing concerns and a few recommendations.279 The Lao government filed comments on the Committee's concluding observations in May 2006.280 The Government stated: "As we explained to CERD and the international community on many occasions, there is no conflict between the Government and certain members of the Hmong in the Lao People's Democratic Republic."281 The LPDR explains any armed attacks as reactions to "banditry, a social phenomenon found in a number of countries."282 Finally, the LPDR states that it "protects the legitimate rights and interests of its citizens of all ethnic groups, including Hmong, and will take resolute measures, as it deems necessary, when the national security is in jeopardy."283

Not only does communication such as the Committee's letter and report remind the LPDR that the international community retains ongoing interest in the treatment of Lao citizens, but it allows the international community to see how the Lao government views the Hmong situation. By responding that any armed attacks were acts of "banditry," the government effectively announced that they do not view the Hmong as a serious threat. This information is important for treaty bodies and humanitarian agencies. As previously mentioned, if the Lao government does not perceive the Hmong to be a security threat, justification for the Lao government's treatment of the Hmong is unfounded.284

Untimely and incomplete reports are likely common to many

281 Id. at para. 3.
282 Id.
283 Id. at para. 4.
284 See supra text accompanying note 107.
of the other treaties to which Laos is a party. The reports of violence against the Hmong, if true, could constitute a breach of treaty obligation for each treaty to which Laos is a party. Heightened and continued demand for these reports would demonstrate the seriousness of the allegations and might promote the Lao government to more thoroughly evaluate and explain the situation.

While Laos is a signatory to other relevant treaties, namely the International Covenant on Civil and Political Rights, there is no obligation to abide by the terms in those treaties. There is an understanding that the State should not act in any way to undermine the nature of the treaty, but there is no effective monitoring mechanism or way to sanction any signatory that undermines the treaty. Thus, the treaties may be an ineffectual option.

A second means by which to bring attention to the ongoing struggle of the Hmong is through the United Nations Human Rights Counsel (HRC), a more visible body than the individual treaty committees. The HRC performs universal periodic reviews of each U.N. member state in order to assess member states’ compliance with human rights obligations. The HRC is also available to consider problems that arise within any particular state. While the review for the LPDR is not scheduled until the eighth session in 2010, NGOs and “other relevant stakeholders” may file communication with the HRC to draw attention to the human rights violations. As MSF is the only international humanitarian aid organization with an ongoing first-hand look at the situation of the Hmong in Thailand, detailed summaries filed by MSF may be especially important to include to information gathered in anticipation of the universal review. Unfortunately, if the date of the Lao review cannot be changed to an earlier date, HRC may be unable to evaluate the reports presented by MSF in time to assist with the current Hmong problems.

Individual countries can put pressure on the governments of Laos and Thailand as well. After a May 2008 hunger strike at the Huay Nam Khao camp in Thailand, Representative Patrick A.


Kennedy of the U.S. House of Representatives introduced House Resolution 1273, which calls on Thailand to stop repatriations and Laos to stop military attacks on the Jungle Hmong. The resolution is currently before the House Committee on Foreign Affairs.

Finally, since the U.S. general public knows so little about the situation in Laos, any and all means of raising awareness will be beneficial. Unfortunately, it is dangerous and difficult for journalists and reporters to make the trek to the jungles. Any documentation that has already become public should continue to be circulated. As Steven Spielberg drew attention to China's controversial aid to Sudan by withdrawing as artistic director to the 2008 Olympic Games in Beijing, perhaps a similar individual, organization, or company could bring awareness to the actions of the LPDR.

VIII. Ineffective or Unlikely Solutions for the Hmong's Plight

The following solutions are either impossible under international law or likely to fail. Some have been suggested in passing without deeper evaluation of their probability of implementation. To find an effective and permanent solution for the Hmong and others in similar situations, it is necessary to understand why many legal forums and non-legal alternatives are unavailable.

A. Problems with Holding the Lao Government and Individual Actors Responsible for Genocide

Many human rights organizations have referred to the actions of the LPDR as genocide. The universally accepted definition of genocide used in customary international law is contained in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), to which Laos

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288 See supra text accompanying notes 94–102.
acceded in December 1950. Article 2 lists a number of acts, any of which "committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group" would constitute genocide. The most common act associated with genocide is "killing members of the group." Others include "causing serious bodily or mental harm to members of the group," and "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."

On the surface, it seems that the LPDR's actions in killing the Hmong or dropping chemicals into the jungles would constitute genocide. The first problem, however, is that the Hmong may not fit into any of the listed targeted groups. While the Hmong are a distinct ethnic group, it is likely that the LPDR is killing them for their political beliefs, for not all Hmong are persecuted. The LPDR does not target those Hmong that are part of the Communist government or have been an integrated part of society since the LPDR came to power in the 1970s.

Even assuming the Hmong constitute a protected group under the Genocide Convention, determining whether the LPDR's killing was with the intent to destroy "in part" complicates the analysis. The International Criminal Tribunal for the Former Yugoslavia noted that "it is widely acknowledged that the intention to destroy must target at least a substantial part of the group." Considerations in determining whether a substantial portion of the group is targeted for destruction include examination of the size of the targeted group compared to the entire group, numerically and in "relation to the overall size of the entire group." Unfortunately, since thirty-three years have passed since the Hmong first retreated to the jungles, many have

291 Id.
292 Id.
293 Id. at art. 2(a).
294 Id. at art. 2(b) - 2(c).
295 Id. at art. 2.
297 Id. ¶ 12.
disappeared or died of both natural and unnatural causes. High estimates of Hmong in the jungle number 17,000;298 those seeking asylum in Thailand add roughly 6,000 to the targeted group.299 Out of the estimated 450,000300 Hmong currently living in Laos, 23,000 is arguably a relatively small portion of the entire population. Another consideration is the targeted group’s prominence within the Hmong population: whether a specific part of the group is “emblematic of the overall group” or is “essential to its survival.”301 The survival of the Hmong in Laos as an ethnic minority may not depend on the group of persecuted Hmong. The loss of 17,000 seemingly invisible individuals would likely not threaten the existence or character of the larger group of 450,000. Similarly, the 8,000 Hmong seeking asylum in Thailand have been living outside of Laos for quite some time and may also not threaten the existence or character of the group of 450,000.302

Proving intent to destroy the group would be much less difficult than proving some other elements of genocide. Intent is explicit in the 1975 vow to “exterminate to the root of the tribe,” and the “shoot to kill” orders. Intent is also implicit in the monetary reward for the body of each Hmong killed, and membership in the Communist party.303

Not only do complications exist in determining whether the Genocide Convention applies to the small group of an estimated 23,000 Hmong, but judicial resolution would also prove to be a challenge. The Genocide Convention confers jurisdiction for related disputes on the International Court of Justice (ICJ).304 Thus, by signing the Genocide Convention, the LPDR has


299 Hmong to be Sent Back to Laos, supra note 226.


301 Prosecutor v. Krstic, ¶ 12.

302 An argument could be made that the participation of over 40,000 Hmong in resisting the Communist forces is part of the “character” of the whole group of Laos-Hmong, and that the disappearance of the remainder of this group threatens the character of the group.

303 See Jacobs, supra note 2 and accompanying text.

304 Genocide Convention, supra note 290, at art. 9.
effectively consented to the ICJ specifically for violations under the Genocide Convention. In addition, the option to bring charges which fall under customary international law in front of any forum under universal jurisdiction\textsuperscript{305} proves equally difficult.\textsuperscript{306}

\textbf{B. Problems with Holding the LPDR and Individual Actors Responsible for Crimes against Humanity}

Borrowing terminology directly from the \textit{Khoa-xane Pathet Lao} publication,\textsuperscript{307} the government could be held for violating Crimes against Humanity, specifically under an "extermination" provision. Crimes against Humanity is also a \textit{jus cogens} crime of customary international law, but unlike genocide, there is no universally accepted statute for Crimes against Humanity. Article 7 of the Rome Statute of the International Criminal Court (ICC)\textsuperscript{308} provides an example of a statute. Listed acts, "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack," include "murder; . . . extermination; . . . deportation or forcible transfer of population; . . . rape; . . . and enforced disappearance of persons."\textsuperscript{309}

Much of the violence against the Hmong falls into the above listed acts, each of which constitutes a Crime against Humanity. However, to be eligible for protection, the Hmong must first qualify as a "civilian" population, a label that arguably does not apply because the Hmong are armed. If the Hmong present a true threat to the government or other Lao citizens, they may not qualify as "civilians," but rather militia or rebels; thus they might not qualify for protection under the Crimes against Humanity laws. The counterargument is that the Hmong are not truly armed. Since so few of the remaining Hmong in the jungle are Secret Army veterans, their only weaponry is decades-old, and the quality of their ammunition is questionable.\textsuperscript{310} Further, LPDR officials refer to any presence of people in the jungle as "bandits."

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\textsuperscript{305} See discussion infra note 320 and accompanying text.

\textsuperscript{306} See discussion infra Part VIII.C.

\textsuperscript{307} See Jacobs, supra note 2, at 144.

\textsuperscript{308} The Rome Statute established the ICC. Rome Statute of the International Criminal Court, July 1, 2002, 2187 U.N.T.S. 90, art. 1.

\textsuperscript{309} Id. at art. 7.

\textsuperscript{310} See Perrin, supra note 59 and accompanying text.
no longer calling them “rebels.”\(^{311}\)

The Hmong may also not be able to rely on protection from the Crimes against Humanity laws because problems exist in finding LPDR officials or individuals who are responsible for Crimes against Humanity. If it is possible to name specific governmental actors or military officers who have violated international law, it may still be impossible to find judicial resolution. Sitting governmental officials have immunity under universal jurisdiction.\(^{312}\) Thus, the question of finding guilty parties, particularly when combined with the issue of whether the Hmong are even classified as civilians, undermines the ability of the Hmong to rely on the Crimes against Humanity laws as a basis for providing ongoing future protection. In a similar analysis, it would be difficult to use War Crimes as a means of providing protection.

**C. Judicial Forums: An Unlikely Remedy for the Jungle Hmong**

Since Laos is not a party to the Rome Statute of the ICC, no permanent forum exists through which to prosecute Laos or Lao officials for violations of customary international law, which include Genocide, Crimes against Humanity, and War Crimes. The ICC forum is open only to parties who have ratified the Rome Statute,\(^{313}\) and has jurisdiction over crimes occurring only after 2002.\(^{314}\) Thus, this remedy is limited by the inability to identify those who commit the crimes, excluding crimes that occurred prior to 2002, and excluding Laos as a whole.

As another option, the Hmong could sue an individual actor using the Alien Tort Claims Act of 1979,\(^{315}\) but this would require that the individual be present in the United States at the time of service.\(^{316}\) Without personal jurisdiction over the individual, a

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\(^{312}\) See *infra* note 320 and accompanying text.

\(^{313}\) Rome Statute at art. 12.

\(^{314}\) *Id.* at art. 11(1). Even if Laos were to ratify the Rome Statute in the future, the ICC can only exercise jurisdiction over crimes committed after a State’s entry into force date. *Id.* at art. 11(2). As such, the ICC would not be able to review the crimes that have already occurred to date.


The known presence of a specific individual on United States territory is only the beginning of a difficult case for the Hmong, but since presence in the United States does not appear likely, this option also seems unhelpful.

In considering whether domestic prosecution is possible within Laos itself, sovereign immunity appears to block that option. The highly controversial concept of universal jurisdiction is always cited as an option for treaty violations, yet rarely produces effective results. Belgium has been aggressive in trying individuals under universal jurisdiction, but has recently limited its capability to hear such cases. If a State did decide to try any Lao individual for a *jus cogens* crime under universal jurisdiction, it would likely do so by a trial in absentia. Absent the defendant, the trial is likely to be ineffective. Further, the ICJ concluded in *Democratic Republic of Congo v. Belgium* that the immunity of a Minister of Foreign Affairs protects him from any “act of authority of another state which would hinder him or her in the performance of his or her duties,” such as the universal jurisdiction asserted by Belgium. If the decision in this case becomes widely accepted, the only individuals that could be brought to trial under universal jurisdiction would be former governmental officials, individuals with no ties to the Lao military, or those who willingly submit. Thus, prosecution under universal jurisdiction appears to be an unlikely solution.

Although the ICJ hears a relatively small number of cases, the

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317 *Id.*

318 "‘Universal jurisdiction’ refers to the competence of a national court to try a person suspected of a serious international crime—such as genocide, war crimes, crimes against humanity or torture—even if neither the suspect nor the victim are nationals of the country where the court is located (“the forum state”), and the crime took place outside that country.” *Human Rights Watch, Universal Jurisdiction in Europe: The State of the Art,* 18 HuM. RTS. WATCH 1, 1 (2006), available at http://hrw.org/reports/2006/ij0606/ij0606web.pdf.

319 *See id.* at 1–4.

320 *Id.* at 37.

321 *See id.* at 56–57.

322 *See id.* at 62.

forum is available for violations of *jus cogens* crimes.\textsuperscript{324} If heard, cases regarding Genocide, Crimes against Humanity, and War Crimes would likely be before the ICJ. Even if the argument could be made that the Hmong are the victims of genocide, it is highly unlikely that the ICJ would prosecute the case; the ICJ has never heard any similar cases.\textsuperscript{325} The ICJ has accepted jurisdiction for *jus cogens* crimes only in dictum.

For Crimes against Humanity and War Crimes, each State-party must consent to the jurisdiction of the ICJ before either State-party can bring a case before the court.\textsuperscript{326} Some States have signed a blanket-consent to ICJ jurisdiction, but Laos is not a party to the ICJ outside of the compulsory consent attached to the Genocide Convention.\textsuperscript{327} Laos’ consent to any forum is highly unlikely, given a 2000 bilateral agreement with China where the countries stated their belief that the principle of universality of human rights must be linked to each country’s specific national conditions.\textsuperscript{328} Laos is “opposed to any hegemonic deeds of using human rights as an excuse to infringe upon a country’s national sovereignty and interfere with its internal affairs.”\textsuperscript{329}

Finally, an ad hoc tribunal is unlikely to be created in this situation. Due to the time and expense in forming and running the International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda, it is possible that the United Nations Security Council would not authorize another similar tribunal. Although the Hmong have been persecuted for over three decades, the United Nations Security Council may view the dwindling number of people affected as insufficient for the time and cost of creating these tribunals. Ceasing the creation of

\textsuperscript{324} Statute and Rules of the Court, 1940 P.C.I.J. 21–22 (ser. D) No. 1 [hereinafter ICJ Statute].

\textsuperscript{325} The closest case to come before the ICJ questions whether the Genocide Convention is applicable to the alleged crimes. The case came before the ICJ only after charges were already brought in court. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), 1996 I.C.J. 595 (July 11, 1996).

\textsuperscript{326} See ICJ Statute at 22.

\textsuperscript{327} See id.


\textsuperscript{329} Id.
ad hoc tribunals for individual situations may also push more States to join the ICC. Even if the Security Council did set up an ad hoc tribunal for the atrocities in Laos, the People's Republic of China, one of the permanent five members on the Council and a strong ally of Laos, would probably veto the decision.

A hybrid tribunal like the Extraordinary Chamber Courts of Cambodia (ECCC)\textsuperscript{330} is also not a viable option. The ECCC and similar hybrid tribunals in Kosovo,\textsuperscript{331} East Timor,\textsuperscript{332} and Sierra Leone\textsuperscript{333} are comprised of national and international judges. Created by treaty, a court of this nature would require the consent and cooperation of LPDR. Thus, none of the above judicial forums appear to be workable solutions to the struggle of the Hmong.

\textbf{D. Non-Judicial Solutions: Withholding Aid and Implementing Trade Embargoes and Travel Restrictions}

Outside of judicial measures, which generally seem ineffective, it appears unlikely that the LPDR will be persuaded to protect the Hmong without a great deal of international pressure. Withholding aid would appear to be an effective means of persuading the government to change its position on the treatment of this group. The Hmong would likely not be affected by reduction or withholding of aid since the government denies the plight of the Hmong and since there are no humanitarian agencies able to distribute aid. The World Bank, the International Monetary Fund, and the Asian Development Bank have been reported to have "donor fatigue" because of the repeated refusal by

\textsuperscript{330} \textit{See generally} Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, amended Oct. 27, 2004, Royal Decree No. NS/RKM/1004/006 (Cambodia) (establishing a tribunal of Cambodian and international judges to prosecute serious crimes committed during the Khmer Rouge regime).


the LPDR to reform its practices. However, the People’s Republic of China provides monetary assistance without pushing for Lao reform, and Japan, Laos’ largest provider of aid, also does not allow politics to have bearing on financial decisions.

A trade embargo may be another way to express disapproval of the country’s actions but would probably be ineffectual and take too long to implement. If an embargo were to be considered, Thailand would be a much better target than Laos. Laos trades most lucratively with China, Thailand, and Vietnam, and has bilateral agreements and strong relations with each. None of these countries would likely be willing to embargo Laos, and an embargo on Laos from a different country would make a much lesser impact. For example, in 2007, the United States exported $13.4 million in goods to Laos and imported only $20 million from Laos. Thailand, on the other hand, exported $22.7 billion to the United States and received $8.4 billion in imports.

Furthermore, the United States would be unlikely to place an embargo on Laos because it just lifted a previous embargo on the country in 2004. The United States has benefited from cooperation with Laos. For example, bilateral work has led to recovery of American soldiers missing in action, and as part of its trade agreement with Laos, the United States made gains in counter-narcotics and the removal of land mines. The United States also signed a made an agreement with Vietnam to repatriate thousands of undocumented Vietnamese residing in the United States.

Considering the strong relationship between Laos and

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335 Storey, supra note 334, at 3.

336 See, e.g., *China, Laos Agree on Increased Cooperation*, supra note 328, at para. 11.


338 *Id.*


340 *Id.*

Vietnam, the United States probably will not act in any way which might jeopardize its own progress with Vietnam. The same argument probably applies to the United States embargoing Thailand because Thailand also shares a strong relationship with Vietnam.

Convincing Congress or another country’s equivalent body of the urgent need for an embargo may also be difficult. By the time an embargo could be established, Thailand would have already repatriated the Hmong, based on the timeline in the Lao-Thai bilateral agreement.

If a trade embargo on Laos is not a realistic option, perhaps the United States should consider restricting just one type of transaction in Laos. In conflicts with other countries, the United States prohibited investments beginning after the date of embargo. Unfortunately, restricting one type of transaction in Laos is unlikely to happen, as the United States continues to promote foreign investment in Laos despite the disappearance of three Hmong-Americans traveling to Laos for investment purposes in 1997.

A travel restriction against Laos or Thailand might promote change by damaging reputations of either of these tourist-dependent countries. However, in the end, a travel restriction may be more detrimental to the Lao or Thai citizens, depending on the distribution of tourist-related income, than beneficial to the Hmong. Travel restrictions may also foster negative attitudes toward future travelers from the restricting country, potentially causing additional problems or future violence against that population. Further, preventing travelers from entering either country may make foreigners aware of the fact that something is going on in the country but does little to raise awareness to the actual circumstances if journalists and humanitarian activists are prevented from entering.

Instead of threatening Laos into allowing humanitarian monitors, perhaps Laos can be encouraged to cooperate by

342 See LUM, supra note 339.
receiving increased funding on the condition that international organizations are able to provide aid. With the improvement of Hmong conditions within Laos, perhaps fewer Hmong would be tempted to flee to Thailand and the Lao government could persuade more Hmong to leave the jungles and safely rejoin Lao society.

E. Ineffective Solutions Specific to the Hmong Awaiting Repatriation

Solutions for the Hmong awaiting repatriation also present problems. For many of the same reasons as above, holding Thailand responsible for violating the customary international law of nonrefoulement will be difficult.

In addition, the more opposition of the Hmong, perhaps the more harshly they will be treated upon return to Laos. In the unlikely event that the Hmong from the refugee camps are resettled in third countries, more Hmong will flee into Thailand as soon as the previous refugees have left. It is probable that Thailand would see an influx of Hmong similar to the group of 4,000-6,000 that crossed the Mekong after the 1994 resettlement of 10,000-15,000 in the United States and other countries. This scenario could repeat itself for decades to come, as it has occurred for decades past. While offering a permanent solution for those currently in Thailand, this is not a permanent resolution for all of the parties involved.

IX. Conclusion

Former U.S. Coordinator for Refugee Affairs, Ambassador H. Eugene Douglas asks the ultimate question:

More than thirty years after cessation of hostilities in Southeast Asia, decades after the normalization of relations between the United States and the Governments of Laos and Vietnam, how could we have failed so badly to resolve the issue of the permanent resettlement of the relatively small remaining population of Laotian and Hmong still confined to refugee camps in Thailand?345

The struggle of the Hmong will continue in the jungles of Laos and in the refugee camps of Thailand until measures are taken to ensure a permanent, safe solution. While punishment for historical violations, if feasible, might discourage future crimes, it will likely not be effective as a means to encourage desirable future behavior or find a safe and permanent home for the 23,000 men, women, and children affected by this situation.

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