

INTEGRITY AND INDEPENDENCE OF JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS

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I. INTRODUCTION AND OVERVIEW

Since the anti-corruption agency was established in 1982, Laos has constantly endeavoured to control corruption by improving itself in all aspects such as in terms of enhancing organizational structures, management mechanisms, legislation, mandates and power, and human and financial resources. The State Inspection and Anti-Corruption Authority of the Lao PDR (SIAA) is a ministerial level government agency primarily mandated to conduct inspections, prevent and combat corruption, investigate corruption cases and complaints within its scope of rights, duties and supervise such work throughout the country.

Institutionally, there are three levels of state inspection and anti-corruption authorities, that is, the SIAA at the central, provincial and district levels. Sectorally, there are state inspection and anti-corruption authorities at line ministries, organizations and in sectoral bodies of provincial departments, all of which are equipped with appropriate manpower and necessary resources. In order to prevent and curb corruption, the Government of the Lao PDR has endeavoured to improve institutional structures at all levels and sectors, including state enterprises, to make them stronger and more transparent, reduce bureaucracy in public service, eliminate conditions conducive to the abuse of power and corruption. Moreover, the Government has applied modern technology in revenue collection and in public administration and intensified the oversight duties of the National Assembly, the Provincial People's Council on the performance of executive branch, people's prosecutors, the people's court and government authorities.

At the same time, the Government of the Lao PDR has gradually developed legal instruments in all areas of work to ensure effective and efficient state administration. Among others, the government adopted its first National Anti-Corruption Strategy, dated 4 December 2012, which provides for measures to reduce corruption and ensure that property of the state, collectives and individuals are not embezzled directly or indirectly. It stresses the need to provide anti-corruption education, to revise and enforce all related legislation, and promote the development of other measures as necessary. It encourages state organizations to enhance transparency in public administration; strengthen and streamline work procedures and remove outdated bureaucratic red tape; encourage and support full public participation. Further, the Government enacted: (1) the amended Law on Anti-Corruption (AC Law) which lays out principles, regulations and measures, prohibitions for preventing and combating corruption in order that the properties of the state, collectives, society or the legitimate rights and interests of the citizens are not damaged, misappropriated or embezzled; to subject offenders to legal proceedings and protect those who are innocent aiming to make state organizations transparent, strong and capable of

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conducting inspections at all times; (2) the Law on State Inspection (LSI, 2017) (The SIAA also exercises its powers and functions based on the LSI, which was enacted to detect the strengths and weaknesses, investigate violations of the laws and any other wrongdoing in the performance of duties by public officials, persons, legal persons or organizations; and to come up with preventive, countering and corrective measures, aiming to strengthen the effectiveness in public administration); (3) the Law on the Handling of Petitions (LHP) and so forth. In particular, the AC Law and Anti-Corruption Strategy have been elaborated further into many other measures which have contributed tremendously and effectively to curbing corrupt practices in the country in recent years. Such regulations include the Decree on the Early Monitoring and Inspecting of Government Investment Projects, the Decree on Thriftiness and Anti-Extravagance and the Decree on the Declaration of Assets and Income. The most recent measures are related to monitoring of job performance of public officials by the people, media and parliamentarians to strengthen full public participation in the fight against corruption.

II. CODES OF CONDUCT AND OTHER MEASURES FOR CORRUPTION CONTROL

One of the most relevant laws formulated to control corruption and applied alongside the aforementioned measures, more precisely to ensure integrity, transparency and accountability of the government officials in the provision of fair and impartial public service, is the Law on Civil Servants (LCS). Promulgated in 2015, the LCS defines principles, regulations, and measures relating to civil service. The LCS, articles 5 (4, 5, 6) and Chapter III, articles 16-20, spells out in detail the principles and requirements for recruitment, assignment, development and performance assessment of civil servants based on the principle of competency, equality, transparency, accountability and qualifications. The law also defines the rights (art 54) and obligations (art 57) of civil servants.

The Government has issued the Decree on the Ethics of Civil Servants, dated 26 June 2019, to implement the LCS. The Decree, which is binding on all civil servants, defines principles, regulations and measures relating to the ethics of civil servants to be used as a basis for the organizations of the Party, the Government, the Lao Front for National Development, the National Veterans Federation, mass organizations at the central and local levels to govern and educate civil servants for them to have political commitment, firm morality, integrity, a high sense of responsibility, proactiveness, respect and strictly follow the laws and regulations to contribute to the national protection and development.

Both measures stipulate administrative, disciplinary and criminal sanctions for non-compliance based on the gravity of an offence. Another important aspect of the LCS and the Decree on Ethics of Civil Servants is that they all provide remuneration for good performance, such as raises, promotions, health care and additional leave for all civil servants.

A. Monitoring and Inspection

The monitoring and inspection of law enforcement officials in their performance of official duties are carried out based mainly on the Law on State Inspection. The LSI, Article 12, stipulates that inspections are carried out based on regular plans, projects, decisions, orders, notices, citizens' requests, audit findings, National Assembly Resolutions and violations. There are three forms of inspection: regular inspection; inspection based on

orders, decisions and notices; and immediate inspections. The inspection or supervision is to monitor the implementation of policies, laws, regulations, powers, duties and responsibilities in public administration. The subjects of inspection include natural persons, legal persons and organizations.

Inspection was carried out on 153 targets; 70 targets were related to corruption with 196 people found guilty. Similarly, investigations were conducted on 18 targets with 464 offenders involved; among those 380 have faced administrative sanction and 84 were prosecuted criminally. Cases involving 62 alleged offenders have been submitted to prosecutors' offices, and cases involving 37 accused persons have been presented to the court, 34 of which have been adjudicated. The offenders were both public and private employees, while a considerable amount of losses have been recovered. Some of the most prominent forms of corruption include abuse of power; giving and taking bribes; embezzlement, cheating, forging and using forged documents in order to cheat or embezzle and so on. In 2019, the State Inspection Authority received 1,038 complaints, of which 226 have been resolved, 407 transferred to other competent authorities, 52 complaints have been responded to, 104 have been kept for further monitoring, while 249 of them are undergoing fact-checking and collection of information. Most of the complaints are related to dissatisfaction over decisions made by state administration authorities, the job performance of government officials and civil servants and others.

B. Asset Declaration

In line with the AC Law, ever since the first Decree on the Asset and Income Declaration was enacted in 2013, Laos has completed two rounds of asset declarations. All public officials are required to submit asset declarations, whereas the property to be declared includes, among others, land, houses, inheritance, vehicles, industrial machines, precious metals, bonds, gold, shares, payable debts and receivable debts whose value is worth 20 million LAK or more. Salary and other income must also be disclosed.

III. EDUCATION AND TRAINING

Education and training are conducted for law enforcement officials regarding professional responsibility and integrity. Based on the above-mentioned legislation, the National Assembly, the Government, ministries and local administration authorities have actively and regularly conducted awareness-raising programmes for public officials, soldiers, police officers and all citizens to deepen respect for the law and proactively participate in preventing and combating corruption in different ways. For instance, from 2019-2020, Party committees, administration authorities, inspection committees at each level rolled out up to 153 public education campaigns for Party members, civil servants, soldiers, police officers, students and people of all strata to enhance awareness and understanding of the consequences and dangers of corruption. More than 349,869 people participated in the campaigns.

The SIAA, in partnership with Ministry of Education and Sports (MOES), has completed developing integrity education for all levels of schools. Similarly, the SIAA has completed its anti-corruption curriculum to be used to train students and public officials in higher education institutions. The curriculum, which has been taught since 2018, can be adjusted based on the actual needs of each institution and target group. Apart from that, more than 330 dissemination programmes have been broadcast via television and radio,

252 newspaper articles have been published and 5 issues of Inspection Magazine with 26,025 copies have been distributed.

IV. PROCEDURAL SAFEGUARDS

Procedures and internal regulations to avoid conflicts of interest in case assignment (disqualification and recusal of law enforcement officials) have been adopted. Although Lao PDR has no specific regulation that particularly aims at addressing conflicts of interest in case assignment, there are clear provisions prescribed in many different laws in practice. For example, the Law on State Inspection and Anti-corruption defines 8 prohibitions for law enforcement authorities, especially inspectors. For example, inspectors are strictly prohibited from: (1) the abuse of power, duties and rights in all forms for personal gain, for family or relatives; (2) soliciting, demanding or taking bribes; (3) offering a promise or associating with the subjects of inspections/investigations for personal gain; (4) working as an adviser or middleman to businesses, recruiting or assigning one's close associates to positions vulnerable to corruption and so on. All of these prohibitions and practices are intended to deter and avoid any possible conflicts of interest in the performance of official duties by all public officials. Another effective prohibition is clearly described by law. Under Article 15 of the Criminal Procedure Law, which addresses recusal and challenges, "If a judge, public prosecutor, court clerk, interrogator, investigator, expert, or translator is a relative of, or has any interest in or conflict with, any of the parties of the case, [such person] shall recuse himself from the proceedings. If such person does not voluntarily recuse himself, either party has the right to challenge such person [and require that he be] recused from the proceedings."

V. INDEPENDENCE

Article 5, paragraph 4, indicates that the officials of the anti-corruption agency shall perform their duties under five principles. One such principle stipulates that said officials shall ensure that there is no undue interference, obstruction or threat from any person or legal entity. It is further stipulated in article 6 that the officials of the anti-corruption authorities at each level shall perform their duties objectively, transparently and rightfully, based on its the scope of rights and duties, accountable to the law and under the oversight of the people and National Assembly, while article 45 further indicates that officials must exercise their mandate independently.

VI. INVESTIGATION, PROSECUTION AND ADJUDICATION OF CORRUPT LAW ENFORCEMENT OFFICIALS

Corruption poses negative effects on the national development, as it corrodes the scarcely limited government funds badly needed for development. Corruption is found in the public and private sectors. In Laos, corruption usually occurs in development projects (infrastructure), revenue collection, etc. The most common forms of corruption include the abuse of power, bribery, embezzlement, cheating and falsification of standards in construction, design and calculations. Corruption poses enormous negative effects on, and impedes the socio-economic development of, each country, big or small, poor or rich, and it threatens the stability of public and private institutions like never before, especially as

the world is struggling to cope with the Covid-19 pandemic that has already lasted over a year – eventually giving rise to social unrest and injustice. Corruption is eroding national income, draining funds for state development projects, resulting in low quality projects; it is also plundering revenues of the collectives and people in a most sophisticated way, causing huge losses to the state and citizens every year. Corruption reflects the reality of the lack of integrity, ethical values of civil servants, soldiers, police in public institutions and employees in private entities.

A. Investigation and Prosecution

As an investigative body, the SIAA is empowered to investigate corruption cases. Upon inspection and/or investigation, if sufficient evidence of a corruption offence is found, with the value of damages amounting to 5 million LAK, the SIAA shall finalize the investigation findings and submit the case to the Prosecutors' Office for prosecution.

The SIAA investigators perform their functions based on Article 41 of the Law on Anti-Corruption (ACL 2012) and the Criminal Procedure Law (CPL), which include, among others, the right to receive and record complaints and reports of acts of corruption; propose decision-making authority to issue summonses, arrest and detention warrants, order seizure or freezing of assets, etc. Other rights include the right to seize and maintain seized items relating to corruption, including together with other authorities the right to conduct household and vehicle searches, make arrests based on the order issued by the Head of the Prosecutors' Office or the Head of the People's Court.

The procedures for investigation consist of (1) issuing an order to open an investigation, (2) carrying out investigation and (3) developing case files to submit to the Prosecutors' Office who shall then prosecute the accused in open court. The president of the SIAA is mandated to issue an order to open or not to open an investigation.