

**PREVENTING CORRUPTION:
EFFECTIVE ADMINISTRATION AND CRIMINAL JUSTICE MEASURES:
A LAO PERSPECTIVE**

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I. INTRODUCTION

As we are all aware, corruption is a very serious crime because it concerns government officials, some in high-ranking positions. Corruption results in serious social concern. It erodes the rule of law; undermines good governance; hampers economic growth; inhibits property reduction; impinges upon competitive and fair business conditions, and undermines democracy and human rights. Fighting and eliminating corruption is a very necessary, difficult and complex process. Fighting corruption requires determination and persistence from political leadership; support from citizens; and cooperation and support from the region, international community and international organizations.

Like other countries, the Lao PDR is experiencing the serious problem of some negative activities within the bureaucracy. While striving for economic excellence and rapid infrastructural development, we are not immune from corruption. Malpractice within Government offices, especially when poorly supervised and controlled, is a real concern for any government.

II. THE LEGAL FRAMEWORK TO FIGHT CORRUPTION

A. Laws

Recognizing the damage caused by corruption, the government has issued various decrees, orders, regulations, instructions and laws in order to prevent and eliminate malpractice within government offices. An important step was enacting the law on anti-corruption, dated 25 May 2005. This law had been applied as a basic legal instrument in connection with the penal law for effectively combating and preventing fraud and corruption in the country.

According to the Anti Corruption Law, “Corruption is the act of an official who opportunistically uses his position, powers, and duties to embezzle, swindle [or] receive bribes or any other act provided for in Article 10 of this law, [which act is committed] to benefit himself or his family, relatives, friends, clan, or group and causes damage to the interests of the State and society or to the rights and interests of citizens. The official stipulated in this law means leaders at all levels, administrative staff, technical staff, the staff of State enterprises, civil servants, soldiers, [and] police officers, including chiefs of villages and persons who are officially authorized and assigned to exercise any right or duty”.

The law in connection with Penal law also determined acts of corruption which can take the following forms:

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1. Embezzlement of State property or collective property;
2. Swindling of State property or collective property;
3. Taking bribes;
4. Abuse of position, power, and duty to take State property, collective property or individual property;
5. Abuse of State property or collective property;
6. Excessive use of position, power, and duty to take State property, collective property or individual property;
7. Cheating or falsification relating to technical construction standards, designs, calculations, and others;
8. Deception in bidding or concessions;
9. Forging documents or using forged documents;
10. Disclosure of State secrets for personal benefit;
11. Holding back or delaying documents.

B. Other Legal Acts

The Prime Minister's Instruction No. 016/PM 31 August 1998 informs the ministers, provincial government and mayor of the Vientiane Municipality, that they must educate public servants and Lao citizens on more thrifty and cost-effective practices. The instruction included but was not exclusive to: saving time, saving money, saving labour and material.

The Decree No 95/PM 5 December 1995 and the instruction from the Ministry of Finance have been followed by civil servants when procuring items or services (i.e. construction maintenance or repairing services).

III. MEASURES FOR PREVENTION OF CORRUPTION

A. Disciplinary Measures

The Law on Anti Corruption clearly regulated measures for prevention of corruption. However, the implementation of this law has not been effective. The law coordination between the prosecutors' offices and the state inspection authority at the central and local level is very poor. Only a few minor cases of corruption reach the court. Many cases are solved using the disciplinary measures.

The following measures are stipulated in the law:

1. Role Model of Leaders, Art. 22 Law on Anti-Corruption

Government staff at all levels, especially the leaders, shall act as role models in the strict implementation of the laws and regulations, and shall lead in having transparent lifestyles and no corruption.

2. Duties of the State, Art. 23 Law on Anti-Corruption

In the prevention of corruption, the State has the following duties:

1. To educate [the public] to respect and strictly comply with the laws and regulations;
2. To improve governance mechanisms to ensure [that they are] good, effective and transparent;
3. To define and implement policies toward government staff at each level clearly

- and to ensure proper living conditions;
- 4. To strictly and immediately impose discipline and punishment on offenders charged with corruption;
- 5. To promote the public, mass media, and social organizations to participate in the prevention and countering of corruption according to regulations.

3. Obligations of other Organizations, Art. 24 Law on Anti-Corruption

Party Organizations, State organizations, the Lao Front for National Construction, mass organizations and social organizations, at all levels from central to local level, including State-owned enterprises, shall implement their assigned roles, rights, and duties completely, strictly, [and] immediately, shall provide evaluation and feedback to each other on the performance of functions by their government staff, shall conduct regular education campaigns, and shall coordinate with concerned sectors to prevent, counter and deal with corruption within the scope of their responsibilities.

4. Prohibitions for Persons who have Position, Power and Duty, Art. 25 Law on Anti-Corruption

It is prohibited for persons with position, power and duty to commit any of the following acts:

1. To receive money, material items, or other benefits from any individual or organization that relates to this functions which causes damage to the interest of the State and society, or the rights and interests of citizens;
2. To cause difficulty, hold back, delay, or interfere in dealing with any activities;
3. To open bank accounts outside the Lao PDR without informing the concerned authority;
4. To act as a consultant to private enterprises in relation to his decision-making power for personal benefit;
5. To act as a broker to individuals or organizations for personal benefit; for instance, by lobbying in legal proceedings, or for projects or quotas;
6. To use his position to borrow the money of any collective that is under his responsibility for other persons, or to provide any guarantee to other persons to borrow money from the bank;
7. To recruit, post, or appoint one's own wife, husband, children or close relative in leading positions in those functions under his responsibility that would create conditions for corruption, such as positions in organizational and control activities, finance and accounting, treasury function, warehouse keeping, procurement, and contracting;
8. To incorrectly possess or use any house or land belonging to the State or collectives in order to benefit himself or his family, relatives, groups, or clan;
9. To disclose any State or administrative secret;
10. To use money or property of the State or collective to organize parties, to use as gifts or to allocate to staff or other persons in contravention of laws and regulations;
11. To suppress, threaten, or obstruct any person who brings a claim, or provides feedback, including a person who provides negative information to concerned persons;
12. To refer to the reputation, position, power and duty of a higher authority or other person for personal benefit.

Any government official who infringes any of the above-mentioned prohibitions will be subject to re-education and disciplinary measures; and if the infringement constitutes an offence, the offender shall be punished as provided in the laws and shall pay compensation for the damage he has caused.

5. Property Declaration, Art. 265 Law on Anti-Corruption

Before or after receiving a position, power, or duty, the person who holds such position, power, or duty as provided in art. 8 of this act, must declare his or her own property and debts, and that of the person's husband or wife and children who are under his or her charge, accurately, faithfully, and honestly and must be accountable under the law for the contents of the declaration.

The government has issued detailed regulation on the declaration of property and debts.

Most of these above-mentioned measures are very important to combat corruption. However, asset declaration is a crucial foundation for the action of the Inspection Authority. As yet, such asset declaration has not yet been implemented in the Lao PDR, and the drafting process is underway.

B. Administrative Reform

The Government, with the support of various international organizations, has undertaken many reform initiatives aimed at restructuring the state apparatus; improving government mechanisms, working conditions and administrative procedures; and minimizing the steps involved in granting licenses. The introduction of new reform initiatives are helping to minimize administrative paper work. The reduction of the extensive paperwork trail or number of "doors people have to go through" is helping to minimize and eventually, eliminate, conditions in which corruption can exist. Another major area of reform is the introduction of new mechanisms, such as auditing and inspection, which demand more open and accountable work practices.

The aim of the aforementioned measures is to efficiently combat and eliminate corruption across the bureaucracy. During the process of reform, the government intends to build a bureaucracy of good and honest civil servants. New civil service recruits will be elected fairly through open examinations. Civil service managers will be elected and appointed through more open, equitable and democratic processes.

A major issue that currently exists in the government staff is poor salary, compensation and benefits for civil servants. To improve the overall administrative reform, the government intends to reform salaries and other compensation of civil servants to ensure that civil servants can maintain a decent standard of living.

In 2009, the Lao PDR ratified the convention and took a step forward in successfully fighting corruption.

Most importantly, people can access information about anti-corruption measures and efforts. All the State organizations have to put the opinion boxes in front of their offices or in public places to ensure that people who would like to report the illegal activities of any person or organization, can exercise their rights without any fear or report if they saw the Government officials do something unlawful

Very important is the hotline of the National Assembly during its plenary sessions. There are many callers and their names are protected and not disclosed to the public. There is a committee responsible for the inspection of the report. Then the concerned

minister or authorities have to explain or reply to the question or concerns.

Moreover, the Law on State Inspection (2007) has been adopted by the national assembly and is an instrument to allow the state inspection authority to successfully inspect and investigate corruption, including creating the rule on asset re-declaration.

The Central Committee of the Party (CCOP) has also issued a party resolution for all party members to avoid and not partake in corrupt or fraudulent activities. More recently, the political bureau of the Central Committee issued a regulation stipulating 14 prohibitions for high-ranking officials — outlining activities that they must not be involved in; defining their responsibilities; and specifying the accountability that falls under their political leadership.

In addition, in the regulations, the government has established an organization that is responsible for preventing corruption — the state inspection authority. This organization is responsible for fighting corruption in the bureaucracy; and ensuring transparency and fairness in the management of public resources, as well as prevention and investigation of corruption.

The government has established the State Audit Office, which is responsible for auditing the usage of state resources and public finances across the country. To help monitor corruption of state SOEs, the government has established the Office for Business Promotion and Implementation. Within the Ministry of Finance, the Department of Inspection of Finance operates and is responsible for internal auditing and monitoring the implementation of the state budget.

C. Awareness Raising

Important measures for prevention are raising the anti-corruption awareness of the government officials and the public as a whole; without the participation of the public, fighting corruption would not be successful. Anti-corruption awareness includes anti-corruption awareness at school, colleges and universities. The anti-corruption campaign for the public can be conducted through news agencies, and print and broadcast media. In addition, anti-corruption awareness includes seminars for government officials.

IV. MEASURES FOR COUNTERING AND DEALING WITH CORRUPTION

There are three types of measures to deal with corruption:

1. Educational Measures
2. Imposition of Disciplinary [Measures]
3. Case Proceedings

The use of measures to counter the corruption of any government staff who commits an offence [relating to corruption] is based on the severity of the offence. If it is a minor offence, there will be educational measures and imposition of disciplinary [measures]; if it is a serious offence, it will be subject to legal proceedings as provided under the laws.

A. Education Measures

If, through the inspection, a minor offence is found, and the offender honestly reports [the offence], and admits to the concerned organization that he or she committed

the offence and returns all assets that he or she took away, he or she will be subject to educational measures and a warning.

B. Imposition of Disciplinary [Measures]

Any government staff member who commits an offence [relating to corruption] which is not serious, but who does not willingly report or who escapes from the offence, shall be subject to the following disciplinary [measures]:

1. be criticized, and be admonished by the recording of a note in his or her biographical file;
2. be suspended from receiving any promotion, [raise in] salary level, or reward;
3. be removed from his or her position or be demoted;
4. be dismissed from office without receiving any emoluments.

The person who is subject to the imposition of disciplinary [measures] must return completely all of the property that was unlawfully taken.

C. Case Proceedings

If, after the inspection and investigation, there appears to be solid information and evidence, the counter-corruption organization shall make a summary of the inspection result, complete the file of the case and then send it to the public prosecutor to consider bringing a prosecution in court.

In the event that the public prosecutor fails[,] without reason[,] to prosecute the case in court within 30 days from the date of receiving the case file, the counter-corruption organization has the right to submit the file to the higher level of public prosecutor to consider and deal with the issue.

V. THE ORGANIZATIONS INVOLVED IN FIGHTING CORRUPTION

A. Party Control Committee (PCC)

As the Lao PDR has a one party system, all organizations are under the leadership of the Lao People's Revolutionary Party. The PCC was formerly the main inspection agency in Laos. It operates across all levels and branches of government, often with assistance of the State Inspection Authority. After the creation of the State Inspection Authority and State Audit Office the role of PCC changed its focus to the party's activities. However, some legal and regulatory provisions still provide this organization with a dominant role.

B. The State Inspection Authority (SIA)

The State Inspection Authority was established on 30 May 2001 by the decree of the Prime Minister, No. 98/pm but was replaced by the new decree No 10/PM. The principle functions of SIA are to prevent corruption and to undertake the investigation on corruption. The SIA inspects: the State's management; the ministries and equivalent organizations; the provinces; and capital city; state owned enterprises, and joint venture private and public enterprises to ensure that they are operating in accordance with the laws and regulations. This organization is attached to the Prime Minister's Office and reports directly to the Prime Minister.

C. State Audit Office (SAO)

The SAO was set up by the Prime Minister's Decree No 174MP (5 August 1998). This was considered a major step toward strengthening the supreme audit function in Lao PDR. The SAO is responsible for auditing the accounts and certifying the appropriateness of the accounts of the organizations under state administration, in addition to state owned enterprises, joint ventures and projects funded by the state budget or international grants and loans. This organization is also attached to the Prime Minister's Office and reports directly to the Prime Minister.

D. The Organ of the Supreme People's Prosecutor of the Lao PDR (OSPP)

The OSPP of the Lao PDR is a supervisory State Organ and is responsible for monitoring and inspecting the proper and uniform adherence to laws by all ministries, ministry-equivalent organizations, government organizations, the Lao Front for National Construction, mass organizations, social organizations, local administration enterprises, and citizens and for exercising the rights of prosecution.

E. The National Assembly

The National Assembly is theoretically a legislative body, and oversees the executive and judiciary organizations. The Commission on Economic and Financial Affairs oversees the preparation and implementation of the State budget. The National Assembly adopts, revises and oversees the implementation of the national annual budget.

VI. PROSECUTION OF CORRUPTION FROM 2009 - 2011

According to the report of the Criminal Department of the Office of the Supreme People's Prosecutor, there were the six following cases relating to corruption in 2009:

1. Three cases of embezzlement of state property or collective property;
2. A case of swindling of state property or collective property;
3. Forging documents and using fraudulent documents;
4. One case of bribery.

In 2010, there were 15 cases:

1. Two cases of embezzlement of state property or collective property;
2. Five cases of abuse of state power;
3. Eight cases of forging documents and using fraudulent documents.

In 2011, there were eight cases:

1. A case of embezzlement of state property or collective property;
2. Two cases of swindling of state property or collective property;
3. Three cases of abuse of state power;
4. Two cases of forging documents and using fraudulent documents.

The most important cases are the illegal logging or timber smuggling cases in 2011 and investigations in those cases are underway:

According to KPL news, tax officials confiscated 30 cubic metres of dalbergia wood, locally known as Mai Khayoung, valued at over 270,000 USD in Donesay area,

Pakading District, along the road No. 13, on 25 and 27 August 2011.



More than 840,000 cubic metres of kayoung were confiscated in Champassak in August 2011; the authorities arrested 106 people reportedly involved in illegal logging and the investigation is ongoing. Four of the arrested are identified as Vietnamese and another one as Chinese. Twenty-eight cars and six motorcycles used by the loggers were also confiscated.

Of the seized wood, over 526,000 cubic metres was confiscated in Pathoumphone District; 235,163 cubic metres in Mounlapamok district; 43,153 cubic metres in Paksong district and 38,346 cubic metres in Khong district.

The Provincial State Inspection Authority said that illegal logging and trafficking of endangered wood in Chmappsassack province has been widespread since 2010, especially in Laos-Cambodia border areas or areas between Sekong - Attapeua, and Attapeu – Champassack. Loggers are locals and foreigners.

Corruption is widespread in Laos' forestry sector, explaining why national laws are widely flouted. In 2010, a Government prosecutor admitted that the number of forestry officials charged with taking bribes was increasing, with payments being made to inspectors to allow cutting in excess of quotas. It has been estimated that 20 per cent of logging companies' total overhead in Laos is comprised of bribes to senior officials to secure quotas.





V. CONCLUSION

The Law on Anti-Corruption clearly regulated measures for prevention of corruption. However, the implementation of this Law is not effective. The coordination between the prosecutor's office and the State Inspection Authority at the central and local level is very poor. Only a few minor cases of corruption reach the Court. Many cases are solved using the disciplinary measures.

The Lao PDR has enough organizations involved in anti-corruption but coordination is still not sufficient. Currently, many of the organizations duplicate or overlap their work. Each organization is facing a limited budget and has very few staff to be able to perform the necessary tasks involved with stamping out corruption.

Although the Law is a major step forward, there is still poor implementation of the law. Fighting corruption is still complex and challenging and corruption remains difficult to detect. Fighting corruption requires, first of all, determination and persistence from the political leadership and participation from citizens. It is of great importance that civil servants involved are educated in a moral and ethical code of conduct.

Therefore, to fight corruption successfully, the following conditions are necessary:

1. Political commitment: political leaders must not partake in corruption activities and need to provide a good example to their future counterparts;
2. An effective anti-corruption strategy;
3. An efficient anti-corruption system: this includes a basic legal framework to prevent and punish those involved in corrupt activities;
4. A rule on asset declaration for persons of power, duty and position must be in place and must apply to such persons before and after they receive such position, power, or duty;
5. Anti-corruption awareness-raising must be continuous and must include government officials, prosecutors, judges, lawyers and the public. There is much to be done through the organization of seminars, workshops, newspapers, magazines and other possible and effective propaganda means;
6. Joint agreement on coordination between the Office of the Supreme People's Prosecutor and the State Inspection Agency and other organizations concerned must be in place to restructure, strengthen and better coordinate among those institutions involved with detecting, investigating and prosecuting corruption;
7. Governance and administrative reform across the country is to be continued to help promote transparency, accountability and eradicate all kinds of autocracy;
8. Civil servants need to be honest to their country and to the population and those people employed in the area of finance and accountancy needs to abide by the rules and regulations that pertain to finance;
9. Finally, to prevent corruption, public participation is necessary and all state activities need to be open and transparent.