

ENHANCING INVESTIGATIVE ABILITY IN CORRPTION CASES

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It is my great honor and pleasure to participate in this seminar on enhancing investigative ability in corruption cases, held by UNAFEI in Kuala Lumpur, Malaysia. On behalf of the Government Inspection Authority of Lao PDR, I would like to take this opportunity to express my deepest, sincere thanks to the Malaysian Anti-corruption Academy and especially UNAFEI for the invitation and for their great support for our participation in this important event.

I. INTRODUCTION

Corruption is a widespread phenomenon across the world, in both developed and developing countries. Corruption results in serious and social concern, it erodes the rule of law; undermines good governance; hampers economic growth; inhibits the enjoyment of property; 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 co-operation and support from the region, international community and international organizations. Corruption became and is becoming harmful to the stability and security of each country. It is a problem that countries and international organizations must fight together.

Lao P.D.R is in particular experiencing the harm of corruption occurring at different levels and in many areas of activity such as in public management, in investment on infrastructure construction, use of governmental fund properties, collecting tax and duties for the public treasury, abuse function and position by public officers-civil servants, accepting and giving bribes, etc., including in 12 behaviors of corruption under identified law of anti-corruption of Lao P.D.R. The corruption could not fully ensure the quality of various investment projects. It becomes an obstacle for development missions of the country, affects negatively the public governance and administration, as well as obstructs and slows the growth of our Lao People's Democratic Republic.

Due to danger of the said corruption, investigating corruption cases is a difficult and complex process so the government of Lao PDR puts importance and is very attentive to obstruct and fight against corruption.

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II. ISSUING AND IMPROVEMENT OF LEGISLATION.

Over the last several years, the National Assembly and the Lao government issued many laws to counter corruption and prevention, for example: (1) in 2005, the government issued the decree on the economy and to counter the dissipation of government assets, (2) in 2012, the National Assembly amended the law on anti-corruption by adding provisions covering the Lao population, including foreigners living in Lao PDR, and by assigning the Anti-Corruption Authority to fully investigate corruption cases and to interrogate suspects. The government also approved the strategic plan of Anti-Corruption to 2020, issued a decree on property declaration by public civil servants that will be effective from 2014, and some other legislation.

III. PREVENTION AND ANTI-CORRUPTION ACTIVITIES

1. The administration authorities and the Government Inspection Authority at different levels are attentive to educating public civil servants, soldiers, policemen and villagers to grasp deeply the laws, regime regulations relating to anti-corruption, strategy and action plan for implementation of strategy until the year 2020 under various forms and methods such as: organizing seminar workshops at different levels and promoting anti-corruption efforts via the media, including the print media and others. After education, public civil servants and the general public will recognize, understand and be more conscientious of respecting the laws and regulations and will participate in the prevention of and the fight against corruption.
2. We are attentive to improving organizational structures at different levels and have regulations to manage and close the gaps causing corruption. This will make the government structure more transparent and powerful. We have also improved the benefits regime, including salaries and bonuses for civil servants, in order to respond to their necessary livelihood needs.
3. The Government Inspection and Anti-Corruption Authority at all levels ensures regular monitoring as planned under the order, request and recommendations of citizens about the performance of officials and civil servants in different sectors. Previously, the Government Inspection and Anti-Corruption Authority at the national level has collaborated with the Governmental Inspection and Anti-Corruption Authority of concerned Ministries and some Inspection Committees at the local level to realize inspection of certain targets as follows:
 - In 2007, an investigation into the timber business in Savannakhet province was done, and some government officers and private businessmen accomplices who illegally harvested 1,400 m³ of prohibited timber (Nile wood) were identified. Eleven public officers were fired. An officer of the National Treasury at the Champassak affiliate and his accessory embezzled State property in the amount of more than LAK 5.1 billion, and these persons were prosecuted. In Khammouane province, a difference of 12 billion kips of the construction project's value was identified after inspection of a road construction project in one of the province's municipalities.
 - The 2010-2011 investigation of a construction project to serve the 25th SEA GAMES identified damages at a cost of more than \$US 1.5 million and many hundreds of millions of kips. In some provinces, we conducted an investigation for embezzlement

and identified damages at a cost of more than 10 billion kips that involved more than 50 government officials. Currently, we are using our regulations and laws to collect these moneys on behalf of the Government.

- During 2012-2013, the national and local authorities inspected 104 targets and identified damages amounting to more than 80 billion kips. Some of these funds were collected, and there were 472 wrongdoers. The offences included 178 embezzlements, 62 frauds, 50 briberies, 88 abuses of power, 22 cases of public officials exceeding their authority, 64 counterfeiters of documents. These wrongdoers have been prosecuted under the regulations and laws.

These investigations confirm the application of prevention and anti-corruption measures that have been implemented in Lao PDR.

IV. THE GOVERNMENT INSPECTION AND ANTI-CORRUPTION AUTHORITY'S ORGANIZATIONAL STRUCTURE

The organizational system of the Government Inspection and Anti-Corruption Authority includes:

- 1) Government Inspection and Anti-Corruption Authority;
- 2) Department of Ministerial and Organizational Inspection
- 3) Government Inspection Service at the provincial level and the Vientiane Capital Inspection Service;
- 4) Inspection Office of District, Municipality and Inspection Sections under the Provincial Service and the Vientiane capital

The roles, duties and rights of the Government Inspection and Anti-Corruption Authority at different levels are identified in the law concerning anti-corruption, the law on Government Inspection, the law on resolving complaints and other related laws.

V. THE AGENCIES AND ORGANIZATIONS INVESTIGATING CORRUPTION CASES

In Lao PDR, there are many organizations that investigate corruption cases, especially the government inspection authority, which coordinates with other investigation organization such as:

1. The investigation organization of the police
2. The investigation organization of military officers
3. The investigation organization of customs officers
4. The investigation organization of forestry officers

5. The investigation organization of counter-corruption organizations

Investigating corruption cases is the duty of counter-corruption organizations at the central level and provincial level, if there are reports of corruption cases at the central level, provincial level or organization sector. Each organization will inspect its own officers who engage in corrupt practices.

A. Counter-Corruption Organization

The Counter-Corruption Organization is a state organization that has the role to prevent and counter corruption within the country by assigning to the State Inspection Authority at the central level and state inspection authorities at the province level to implement (this task). The Counter-Corruption Organization is an investigative organization and performs its duties independently.

B. Rights and Duties of Investigation Officers

The staff of each investigative organization consists of the head, deputy heads, and investigators. The head of each investigative organization has the following rights and duties:

1. To direct and lead the overall activities of the investigative organization;
2. To issue orders to open or not to open investigations, to issue orders to suspend or dismiss criminal cases, and to issue orders to detain or release any person from detention;
3. To propose to the public prosecutor to issue orders to arrest, remand, or release before sentencing any person, to extend the period for investigations, and to extend the period of remand;
4. To summarize and prepare the case file to submit to the public prosecutor for consideration after the completion of the investigation;
5. To exercise such other rights and perform such other duties as provided by law.

Each deputy head of an investigative organization has the responsibility to assist the head of the investigative organization in the implementation of activities and will be assigned to perform specific tasks as assigned by the head. When the head of the organization is engaged in other matters, the assigned deputy will act on his behalf.

Each investigative officer has the following rights and duties:

1. To receive and record complaints, reports or claims relating to offences;
2. To take testimony from the injured party, civil plaintiff, accused person, witnesses, and other concerned persons;

3. To inspect the site of the incident, to conduct “inspections of dead bod[ies]”, to conduct searches of buildings, vehicles, and persons, and to collect evidence relating to the offence;
4. To look for, arrest, and escort accused persons, according to the order of the people’s courts or public prosecutors;
5. To implement orders and to report on the status of proceedings in criminal cases to the head of the investigative organization;
6. To exercise other rights and perform other duties according to the order of the head of the investigative organization and as provided by law.

The exercise of rights and performance of duties of the staff of an investigative organization shall be carried out according to the scope of its authority as provided by law.

To ensure the exercise of the rights and the performance of the duties mentioned above, each investigative officer shall have strong political commitment, have good character, be truly faithful to the interests of the nation and the rights and interests of the people, have ethics, and have received education or training in law and in technical subjects relating to investigation.

VI. CORRUPT ACTS AND MEASURES FOR INVESTIGATING CORRUPTION CASES

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 12 of the 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 officials 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.

Acts that constitute corruption can take the following forms:

- Embezzlement of State property or collective property;
- Swindling of State property or collective property;
- Taking bribes;
- Abuse of position, power, or duty by taking State property, collective property or individual property;
- Abuse of State property or collective property;

- Excessive use of position, power, or duty by taking State property, collective property or individual property;
- Cheating or falsification relating to technical construction standards, designs, calculations, and others;
- Deception in bidding or concessions;
- Forging documents or using forged documents;
- Disclosure of State secrets for personal benefit;
- Holding back or delaying documents.

A. Abuse of Position, Power or Duty

Abuse of position, power or duty by taking State property, collective property or individual property is the use of one's position, power, or duty in order to benefit oneself, or one's family, relatives, or clan that causes damage to the interests of the State and collectives or the rights and interests of citizens.

B. Excessive Use of Position, Power or Duty

Excessive use of position, power, or duty is the intentional use of position, power, or duty beyond the scope of the authority provided by the laws and regulations in order to benefit oneself, or one's family, relatives, or clan that causes damage to the interests of the State and collectives or the rights and interests of citizens.

C. Measures for Dealing with Corruption

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

D. 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 committed the offence and returns all assets that he took away, he will be subject to education measures and a warning.

VII. THE OUTLINE OF INVESTIGATIVE PROCEDURES

Corruption is the act of an official who opportunistically uses his position, powers, or duties to embezzle, swindle or receive bribes. The following factors often lead to the opening of a corruption investigation:

- when firm information and evidence that an act constituting corruption has been committed is found;

- when there is a notification, submission, proposal, report, or claim regarding corruption;
- when any government employee, or husband, wife or child under the charge of such government employee, appears to be unusually rich.

A. 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 case to a higher-level public prosecutor to consider and deal with the issue.

B. Order to Open an Investigation

In the case where there is sufficient information relating to the offence of corruption, the head of the investigative organization of a counter-corruption organization, or a public prosecutor, shall issue an order to open an investigation within the scope of their respective authorities. The contents of that order shall set out the date, time, and location of the issuance of the order, the name, surname, position, and title of the issuer and the investigator, the information that is the basis for opening the investigation, the location of the offence, and the relevant article of the Penal Law.

If the investigator issues an order to open an investigation, he shall immediately report that fact to the public prosecutor. If there is insufficient information to open an investigation or there is cause for the dismissal of the criminal case, the head of the investigative organization or the public prosecutor shall issue an order not to open an investigation and shall also inform the individuals or organizations that have brought the claim or complaint of such order.

Parties on either the plaintiff's or the defendant's side can appeal to the public prosecutor against an order not to open an investigation issued by the head of an investigative organization. Parties on either the plaintiff's or the defendant's side can appeal to a higher-level public prosecutor if such order not to open an investigation is issued by the public prosecutor within seven days from the day they have been informed of such order.

Types of investigative measures are:

- Taking testimony;
- Questioning, interviewing and interrogating;
- Inspection of the incident site;
- Inspection of bodies;

- Search of buildings, vehicles, or persons;
- Seizure and sequestration of assets;
- Re-enactment;
- Identification and confirmation.

First, when an inspection official receives a report of corruption, the inspection official will summarize the information for the head of the relevant anti-corruption agency to consider. If the head of the anti-corruption agency agrees with the report and authorizes an inspection, the inspection official will conduct inspections in accordance with the procedures specified by law. If the inspection reveals firm evidence, we will conduct an investigation and coordinate the investigative police handling the corruption case.

VIII. PROBLEMS OF INVESTIGATING CORRUPTION CASES

- Legislation on inspection, investigation of corruption cases and anti-corruption operations remains insufficient, and we need to continue to take more legislative action. The existing laws are not rigorous enough, and the practice is equally insufficient.
- The conscience of civil servants and citizens regarding regulation and law compliance, as well as their practice of discipline, are not really serious. In practice, some leaders and many administration authorities violate the laws and regulations.
- Inefficiencies in government organizational structure, mass organizations and the roles of civil servants remain one of the problems that must be actively solved, especially in terms of the delay of the performance of duties, incoherence of anti-corruption regulation, non-transparency in the performance of some officials' duties and other issues causing a negative image of leadership and governance.
- Within our Inspection Authority, despite our effort to amend, we still have many difficulties, such as, in reality, we are the sole authority with many responsibilities, a limited number of staff, budget and other conditions to ensure adequate performance; limited training and experience on government inspection, investigation of corruption cases and anti-corruption efforts, and other difficulties that we need to successively and actively improve.

IX. SOLUTIONS TO INVESTIGATING CORRUPTION CASES AND IMPROVING ANTI-CORRUPTION EFFORTS IN LAO PDR

1. Continue to strengthen political and conceptual education, build awareness, build consciousness on respect for the rule of law and provide good recognition and understanding about prevention and anti-corruption.
2. Consider, disseminate and implement deeply and entirely different legislation relating to prevention and anti-corruption, and apply them in all sectors of society.

3. Consider the amendment of prevention and anti-corruption legislation already in use but underutilized. At the same time, we could consider the creation of new rigorous and coherent legislation, and coherent with international treaties to which Laos is a member, build regulatory mechanisms and conditions allowing the public and all citizens to become involved in prevention and anti-corruption.
4. Improve and strengthen organizations and officials working on corruption investigations, in particular their roles, duties, rights frameworks, mechanisms, regimes and procedures of activities practiced by the Government Inspection and Anti-Corruption Authority; train and upgrade their degrees, professional skills and capacities, behaviour, professional consciences of the staff working on corruption investigations at the central level and provincial level.
5. Continue to strengthen relationships, collaboration and exchange experiences on corruption investigations and anti-corruption activities with friendly countries and importantly the member countries of SEA-PAC, and regional and international organizations
6. Strengthen the responsibilities of the government, administration authorities at all levels for the inspection, investigation of corruption cases and anti-corruption efforts. Once the corrupt behaviours are identified, we must respond rigorously, absolutely and on time as determined under the law.
7. The governmental organizations, private sector and citizens must be actively responsible to participate strongly and efficiently in inspection, investigation of corruption cases, prevention and anti-corruption activities by prioritizing prevention.

X. CONCLUSION

Lao PDR has laws and procedures for investigating corruption cases, but coordination between government inspection authority and each investigative organization is poor. Furthermore, reporting of corruption cases by citizens and other organizations to the State is low. Therefore, I would like to learn about the experiences of each participant in order to enhance investigation at my organization.