

# THE CRIMINAL JUSTICE SYSTEM AND CORRUPTION CASE PROCEDURE IN THE LAO PDR

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## I. STRUCTURE AND FUNCTION OF THE CRIMINAL JUSTICE SYSTEM

The main parties involved in the Lao criminal justice system are investigation agencies (Police investigation agency, Military investigation agency, Customs investigation agency, Forestry investigation agency, Government Inspection and Anti-Corruption investigation agency and others), and prosecutors, judges and defence lawyers. Each has a distinct structure and function (in this paper the writers will present only about the criminal justice system).

### A. The Government Inspection and Anti-Corruption Authority Organization

#### 1. The Responsibilities of the 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 this task to the State Inspection Authority at the central level and to the state inspection authorities at the provincial level. The counter-corruption organization is an investigation organization and performs its duties independently.

The organizational structure of the counter-corruption organization consists of:

- The counter-corruption organization at the central level;
- Counter-corruption organizations at the provincial level.

The counter-corruption organization at the central level has status equal to a ministry. The head of such organization is appointed and removed by the same procedure as a member of the government.

The counter-corruption organizations at the provincial level have status equal to a provincial division. The heads of the counter-corruption organizations at the provincial level are appointed or removed by the head of the counter-corruption organization at the central level, after coordination with the provincial governor, city mayor, or chief of special zone.

The support mechanisms for such organizations shall comply with general regulations on public administration.

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2. Causes for Conducting an Inspection

The causes that result in an inspection by the counter-corruption organization are as follows:

- When firm information and evidence that an act constituting corruption has been committed are found;
- When there is a notification, submission, proposal, report, [or] claim regarding corruption;
- When any government staff, [or] husband, wife or child under the charge of such government staff, appears to be engaged in corruption.

3. Inspection Procedure

- Examine the notification, submission, proposal, report, or claim and, if deemed necessary, collect data in the field;
- Prepare and establish a plan for the actual inspection in coordination with concerned sectors and local administrations;
- Inspect all documents and assets of concerned individuals or organizations, especially to inspect the financial situation and accounts, revenue, and expenses, and the use of grants and loans;
- Call and invite the representative of the organization or the individual concerned to come to give explanations and clarification;
- Summarize, evaluate, and decide on the result of the inspection.

4. The Decision on the Result of the Inspection

The counter-corruption organization shall conduct inspections according to the following procedure:

If, through the inspection, firm evidence of corruption is found, the counter-corruption organization has the right to decide as follows:

- In the case of a minor offence not causing substantial damage as provided for in Articles 32 and 33 of this law, it shall submit the matter to the concerned organization, which has the rights and duties to educate, warn or impose disciplinary measures on the offenders;
- In the case of a serious offence as provided in Article 34 of this law, it must undertake investigation, and when there is firm or solid evidence, it should summarize the case and send it to the public prosecutor to consider prosecution of the offenders in court.

5. The Limitation of Investigation Proceedings

The Anti-Corruption Organization must begin investigation proceedings, summarize the investigation and open a case file including evidence to be submitted to the People's Prosecutor within two months for major offences and three months for crimes, from the date of the order to open an investigation.

If it is necessary to continue the investigation, the leader of the Anti-Corruption Organization shall make such a proposal to the People's Prosecutor. The People's Prosecutor may take more time for investigation: two months for each, but not more than six months for major offences and three months each, but not more than one year for crime. The proposal to continue the investigation must be submitted 15 days before the completion of the investigation.

If the file is returned to the Anti-Corruption Organization for more investigation, the time limit for investigation is two months from the date that the Anti-Corruption Organization received the case file. In case more review is necessary to investigate the case of suspension or storage, the investigation must be conducted within the time limit defined in paragraphs 1 and 2 of the above-mentioned Article from the date it is ordered for more reviewing to investigate.

**B. Public Prosecutor's Office**

The Office of the Supreme People's Prosecutor is the highest state organ of legal supervision with prosecution as its main function; the Supreme People's Court is the highest judicial organ in the country. The Lao National Bar Association is under the Ministry of Justice and is in charge of the administration and supervision of lawyers. The Investigation Agencies, Prosecutor's Offices, courts at various levels and the Lao National Bar Association are established to fulfill their respective duties in their own jurisdictions

1. Function of the Public Prosecutor's Office

The Public Prosecutor's Office is an executive agency which is to monitor and control the proper and unified enforcement of laws by ministries, equal ranking agencies, state agencies, the Lao Front for National Construction, mass organizations, social organizations, local administrative authorities, enterprises and citizens, and perform the right to prosecute.

2. Organizational System of the Public Prosecutor's Office

The organizational system of the Public Prosecutor's Office is composed of:

- The Office of the Supreme Public Prosecutor;
- The Appellate Public Prosecutors' Offices (North, South and Central);
- The Province/Vientiane City Public Prosecutors' Offices;
- The District/Chief-Town Public Prosecutors' Offices (Zone Prosecutor's Office);
- The Military Prosecutor's Office.

The Appellate Public Prosecutors' Offices, the Province/Vientiane City Public Prosecutors' Offices and the District/Chief-Town Public Prosecutors' Offices are referred to as local Public Prosecutors' Offices.

The organization and activities of the Military Prosecutors' Offices are governed by separate regulations. The Public Prosecutors' Offices at all levels compose a uniform and centralized system under the supervision of the Office of Supreme Public Prosecutor. The Public Prosecutors' Offices at all levels conduct their activities independently from administrative authorities in accordance with legal principles, laws and the constitution of the country to ensure correct and unified implementation of the law, and to carry out criminal proceedings, to identify offences in an urgent, complete and overall manner, to bring offenders to face prosecution and ensure proper and fair enforcement of the laws, preventing any evasion from justice and the punishment of innocent persons.

The Supreme Public Prosecutor is appointed or removed by the National Assembly based on the recommendation of the President.

The Deputy Supreme Public Prosecutor is appointed or removed by the President of the State based on the recommendation of the Supreme Public Prosecutor

Public prosecutors and deputy public prosecutors at the appellate level, provincial level, and district level and military prosecutors are appointed, transferred or removed by the Supreme Public Prosecutor.

### **C. The People's Court in the Lao PDR**

The people's courts are the judicial organs of the State, which have the roles to adjudicate cases, aiming to educate the citizens to be patriotic to the nation and the regime of the people's democracy; to protect and maximize the outcomes of the revolution, the political regime, the society and economy, party organs, State organ, the Lao Front for National Construction, the mass organization, and the social organization; to protect the legitimate right and benefits of the citizen; to ensure fairness and justice; to maintain the public order and peace throughout society and to increase equity and eliminate and prevent the violation of the laws.

The system of the People's Court in the Lao PDR comprises:

- The People's Supreme Court;
- The appellate courts;
- The people's capital city and provincial courts;
- The people's zone courts
- The military court;

The appellate courts, capital city and provincial courts and the people's district courts are local courts. The people's courts make decisions at the following three levels:

- At first instance;
- On appeal or at second instance
- On cassation

The judicial tribunals are made up of the judges of the People's Supreme Court, the judges of the appellate courts, the judges of capital city, provincial and district courts; each such tribunal comprises three judges, one of them taking on the role of presiding judge, and the other two as members of the tribunal. The order of each tribunal shall be given effect in accordance with the opinion of the majority of its members and the deliberations of the judicial tribunal shall be secret.

#### **D. Lao National Bar Association**

The Lao National Bar Association was established in accordance with the Prime Minister's Decree No 94/PM Dated 12 December 1992. The Lao National Bar Association is under the Ministry of Justice; Licensed lawyers are appointed or removed and certified by the Minister of Justice based on the recommendation of the committee of the Lao National Bar Association after their first year of training. There are about 250 licensed lawyers in Lao PDR and few lawyers have standard legal knowledge or specialize in criminal defence

The organizational structure of the Lao National Bar Association

- Members (Lawyers);
- Lawyer Session;
- Administration and Management Committee;
- Inspection Committee;

#### **E. Cases**

The state inspection authority or the counter-corruption organization at the central level by collaboration with line ministries, equivalent ministries, other organizations concerned and local governments, had conducted an inspection on the implementation of the social-economic development plan, infrastructure projects, and income and expenditures of the state last year. As a result of this inspection, there were several projects that involved corruption by state officials. Below are some of the corruption cases.

##### **1. Corruption in Houaphanh Province**

In 2013, the Counter-Corruption Organization at the central level had received a report from the people and organizations in Houaphanh province that there were government officers working for the Education Budget Division who were involved in corruption, such as:

- Embezzlement of State property;
- Swindling of State property or collective property;
- Abuse of position, power, and duty to take State property;
- Abuse of State property;
- Excessive use of position, power, and duty to take State property.

We researched the report and firm evidence of corruption was found in coordination with sectors and local administrations concerned. An inspection was conducted on the Budget Division in Houaphan province and a report was submitted to the chief of the Counter-Corruption Organization.

In this case there were 10 officers involved in embezzling State property, which caused the state a loss of 2.8 billion kip (\$350,000) and was prosecuted by the Public Prosecutor in the People's Court of Houaphanh Province on May 2014.

#### **Problems that occurred during the investigations stage**

When we ordered the opening of investigations into the state officials who were involved in the corruption, some of them left their provinces to live other provinces so it was difficult for investigating officials to find information and evidence. It took a long time to find them; besides that some of them destroyed documents that would have been relevant to their offences.

Seizures were difficult to conduct because we had to separate the property related to the corruption from the property that belonged to their families.

#### 2. Bribery of National Public Officials

This case occurred in Khammouan Province in the central part of Laos. The National Anti-Corruption Committee, by collaboration with other organizations concerned and Khammouan Province, had conducted an inspection of the project on road construction No. 7 in Thakhek District, Khammouan Province. After inspection, they found that state officials and company staff were involved in corruption by creating expenditures beyond the original plan, procurement without bids, and bribery, which caused the state lost income in the amount of 12.7 billion kip, which is equivalent to 1.5 million US dollars. In this case, we prepared summaries of the information and evidence, which we sent to the public prosecutor for prosecution.

#### **Problems that occurred during the investigations stage**

The project was conducted so it was difficult to summarize information and evidence. Some information and evidence that was sent to the public prosecutor was sent back to us because it was not clear. For example, there was some concern that several documents were forged documents or prepared using forged documents, so we had to collaborate with the police for trial.