

CURRENT SITUATION AND CHALLENGES IN THE IMPOSITION OF PENALTIES AND CASE DISPOSITIONS WITH REGARD TO REHABILITATIVE PERSPECTIVES IN LAO P.D.R.

*Vilaysinh Dainhansa**

I. INTRODUCTION

This is a brief outline of the current situation and challenges that are faced with regards to punishment and the concept of rehabilitation of offenders in Lao P.D.R. Generally, the idea of restorative punishments and the element of rehabilitation is central to the philosophy of punishment in Laos, which is emphasized heavily in the Lao Penal Code 2018. However, the drafting of laws in this area and the effective implementation of the laws are often de facto quite different, presenting several challenges which are outlined below.

II. PRE-TRIAL

In Lao P.D.R. a range of options are available at the pre-trial stage. Historically the idea of restorative justice was seen as very important under local customary law. This has led to a system with a range of options for non-custodial sentences, some of which would help with the rehabilitation of offenders. For less serious offences it is common for the police to act as a mediator between the victim and offender. There is also sometimes mediation at the local village level between the village chief and the parties. The idea of community sanctions plays an important part as well. Typical sanctions include apologies, victim compensation with the advantage of non-prosecution and diversion from criminal proceedings.

In a similar way when the case file is passed on to the Prosecutor's office and formal charges are laid, there is still the possibility of mediation and diversion from criminal proceedings with the prosecutor acting as mediator. Also, at the Area Court level, the lowest level of court in Laos, it is often common for judges to act as mediators with the hope that settlement could be reached. There are issues with this system in that in the past more serious crimes were diverted from more serious criminal sanctions with undue influence placed on the victims to accept an agreement. As sometimes this is quite an informal system relying on the agreement of all parties so the mechanisms to determine non-custodial measures are sometimes reached in an ad hoc way. Article 11 of the Penal Code formalizes this for cases where the loss to property are less than 1 million Lao Kip (approximately \$90US), mediation shall be used to settle these cases except for mugging, robbery, acts of recidivism or acts performed on a regular basis. There is a challenge to get public support where there could be the feeling that some offenders are getting away with the offence and receiving less serious sanctions than they should.

Regarding young offenders, the Law on Juvenile Criminal Procedure 2014, Article 12, states that a juvenile under 18 who commits and confesses to an offence punishable by less than three years' imprisonment to the offence that causes minor damage as described by law and who is not dangerous to society, with the consent of other party to the mediation process, shall not to proceed to formal criminal procedure.

III. SENTENCING

According to the Penal Code the categories of punishment are split into principal, additional and alternative

* Deputy Director General, Office of the Supreme People's Prosecutor, Lao Peoples Democratic Republic.

penalties. According to Article 43 of the Penal Code, penalties are not only aimed at punishing the offenders, but they are also intended to re-educate punished individuals to purify their spirit towards work, to properly and strictly comply with the laws, to respect social rules and to avoid recidivism on the part of the punished offender.

The first four categories of principle punishment – non-custodial, public criticism, and fines and re-education without deprivation of liberty – are limited to less serious offences, while the fourth, expulsion, only deals with foreign nationals. Additional penalties imposed on top of principal penalties include fines, confiscation of property, confiscation of items connected to the offence, deprivation of voting and election rights, house arrest, expulsion when not used as a principal penalty, restoration and withdrawal of license. House arrest is used only as an additional penalty after the custodial sentence has been served up to a maximum of five years. These additional penalties are often used to supplement a principle non-custodial sentence.

Offences under the Penal Code (Article 13) are split into minor offences punishable by public criticism or fines, major offences punishable by re-education without deprivation of liberty or imprisonment from three months to ten years and crimes punishable by imprisonment from five years to life or the death penalty which is de facto life imprisonment.

Alternative non-custodial sentences for major offences are working for public utilities where the law prescribes a maximum penalty of three years' imprisonment. This form of community service should be performed without remuneration and is between 60 and 750 hours working for the public interest or any socially beneficial work that the court imposes. The court should consider in imposing this penalty the nature of the offence and the personality and consent of the offender as a replacement for the principal penalty (Article 59). The other alternative penalty, also where a minor offence is punishable by up to three years' imprisonment, is "Space Restriction", which is the confinement of the offender to a place or area of residence. In sentencing, the judges take into account the nature of the offence and the personality of the offender. An offender is not eligible in cases of recidivism (Article 60). This is another area of challenge as these penalties are not yet implemented in practice, and the Lao Law on Criminal Procedure 2017 does not specify which organization is responsible for implementing these alternative punishments. There are plans in the near future for the prosecutor's office to adapt this law and take on responsibility for its implementation, but presently it is another example of where the law has been drafted with good intention but, in practice, is presently impossible to implement.

Penalties of imprisonment with terms, re-education without deprivation of liberty and fines can be suspended for a period of five years. The suspension of the penalty can be whole or in part (Article 79). In exceptional cases if the defendant acted for the protection of or other people, the sentence can also be suspended for a crime. Again, this is another area of challenge as no clear guidelines are given for the prosecutor or judiciary on the appropriate use of suspended sentences.

One very big problem for Laos is drug crime. For offenders who are addicted to alcohol or drugs who have not been sentenced to imprisonment, the court may apply measures of medical treatment or at specific treatment centres. If the offender is sentenced to imprisonment, the court must apply such measures while the offender is serving his/her sentence, and it is counted towards the term of imprisonment. Also, if the treatment is not completed by the end of the sentence the court can apply measures by sending the offender to rehabilitation centres for alcohol or drug addiction or sending him/her to receive care from local authorities, other State organizations, mass organizations or civil society organizations to continue his/her re-education and medical treatment.

Under Article 320, any person who consumes or possesses for the purpose of consumption a small quantity of drugs, which is defined in the article, shall be regarded as victims and shall be treated or sent for treatment. Article 321 states that for addiction subsequent to treatment that person shall be subject to public criticism and receive a fine ranging from approximately \$10 to \$30US.

While this is very good in principle, in practical terms there is a limit on the number of places available for treatment and the budget is very limited in this area. There is a new national agenda on drug problems, but again this is another challenge as the agenda has yet to be enacted in law. Ideally some form of structured

PARTICIPANTS' PAPERS

rehabilitation programme should be offered to those serving custodial sentences; however, the limited budget prevents this.

IV. POST-SENTENCING

Pardons can be also granted to offenders to reduce the length of remaining sentences. This is a presidential decision based on good behaviour. Article 100 Penal Code. Offenders that have shown signs of reform and repentance, have conducted exemplary work while in detention, changed their attitude and expressed remorse for their past actions are eligible for conditional release on license. This is for juveniles who have served a minimum of half their sentence, for adults two-thirds (2/3) and 15 years for those sentenced to life imprisonment. Article 104 Penal Code.

V. SUMMARY

The State's policy on rehabilitation is well stated and focused on the reintegration of offenders into society, but as we have seen there are issues with the implementation of policy and the law as illustrated by the alternative sentencing options. At all stages, pre-trial, sentencing and post-sentencing, there should be cooperation between all the stakeholders, but in practice this either does not happen or happens in limited ways. As Laos has developed cooperation between the different organizations, ministries and agencies have developed in different areas, but this is one area where cooperation is only just starting, which creates many challenges and where there is still a lot of work to be done. Another big factor is the lack of budget in almost every area, which severely limits alternative options such as the treatment of offenders for addiction. There is also the need to try to establish public awareness of the need to look at alternative options for the rehabilitation of offenders. Unfortunately, presently the public perception is that the offender could be getting away without punishment or receiving a lighter punishment than appropriate.