

THE ROLE AND FUNCTION OF PROSECUTION IN CRIMINAL JUSTICE

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I. POSITION OF THE PROSECUTION SYSTEM WITHIN THE NATIONAL ORGANIZATIONAL STRUCTURE AND ITS INDEPENDENCE AND NEUTRALITY

The state apparatus of Lao PDR is composed of three main groups of State bodies:

- (1) The National Assembly as the legislative body;
- (2) The government and local administrative authorities as the executive body; and
- (3) The judiciary, which is composed of the court system and the public prosecution system. This is somehow different from the common understanding of the word "judiciary". Nonetheless, the court system and the prosecution system exist as different bodies having their own position and tasks. However, both are connected to the National Assembly, to which they must report their activities every three months.

The Office of the Public Prosecutor has the role of monitoring and inspect the proper and uniform adherence to the law by ministries, State committees, offices, enterprises, other State organizations and local administrative authorities, civil servants and citizens.

The duties of the Office of the Public Prosecutor also include ensuring justice, regularizing (and systematizing) society and preserving the just rights and benefits

of all ministries, State committees, offices, enterprises, other State organizations, local administrative authorities, civil servants and citizens.

Additionally, the Office of the Public Prosecutor contributes to the education and training of civil servants and citizens to make them aware of and respectful of laws and regulations in their daily lives.

The Office of the Public Prosecutor also has a duty to:

- (1) Monitor and inspect the performance of laws of all State agencies, offices, enterprises, other State organizations, civil servants and citizens (general monitoring and inspection);
- (2) Monitor and inspect the performance of laws by the investigation-interrogation agencies;
- (3) Monitor and inspect the performance of laws in case processing in the courts and the court's decision-making;
- (4) Monitor and inspect the performance of laws in places of arrests, imprisonment, at the time that the deprivation of liberty and other court enforcement measures are being applied;
- (5) Undertake prosecution against crime and other violations of the law to dispose of and terminate the causes and the conditions which cause such wrongdoing to arise;
- (6) Ensure complete, thorough investigation and interrogation of all criminal cases according to their merits, and issue measures to preempt wrongdoing by coordinating with State agencies and other societal organizations;

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- (7) Ensure that offenders receive punishment according to the law and not allow innocent people to be punished; and
- (8) Undertake investigation and interrogation of all or some portions of any case within its authority as provided by law.

Within the scope of its powers, a lower level of the Office of the Public Prosecutor has the right to undertake investigation and interrogation of cases according to and order from a higher-level public prosecutor.

In such investigations and interrogations, the public prosecutors may assign civil servants to undertake investigation and interrogation matters in their place.

The Office of the Public Prosecutor at various levels consists of a uniform and centralized system, lead by the Public Prosecutor General.

Public prosecutors at the local levels (province, prefecture and district) and military prosecutors perform their duties independently and are not subject to the authority of local State agencies. They are only subject to the authority of the Public Prosecutor General.

The Office of the Public Prosecutor of the Lao People's Democratic Republic undertakes its activities based upon legal acts in accordance with the Constitution and the laws of the Lao People's Democratic Republic. It ensures the proper and uniform performance of the laws without being subject to the local administrative authorities; issues the necessary measures in search of violations of the law and seeks to eradicate all violations of the law; seeks to restore the violated rights of the citizenry; and prosecutes offenders in court. As indicated above the prosecutors are independent in performing their duties, relying only on the laws and the instructions of the Public Prosecutor General.

Although public prosecutors are the representative of the State and the society, struggling against law violations and supervising the respect of laws, it would not be correct to consider them a corporation which blindly protects the State and the society. Carrying out their duties, prosecutors must rely on the facts, the actual situation, the evidence and the laws. They have to be guided by a sense of neutrality, truth and justice. No interference from outside can not be admitted.

II. APPOINTMENT AND TRAINING OF PUBLIC PROSECUTORS AND THE GUARANTEE OF THEIR STATUS

The Public Prosecutor General is appointed by the National Assembly according to a proposal from the Standing Committee of the National Assembly and has a term of office equal to the term of the National Assembly. He is responsible for reporting the activities of the Office of the Public Prosecutor to the National Assembly. When the Assembly is not in session, he reports to the Standing Committee of the National Assembly.

The Public Prosecutor General is dismissed by the National Assembly according to a proposal from the Standing Committee of the National Assembly, and when the Assembly is not in session, the position may be suspended temporarily by the Standing Committee of the National Assembly.

Deputy Public Prosecutors General are appointed and dismissed by the Standing Committee of the National Assembly according to a proposal from the Public Prosecutor General.

Such prosecutors are responsible for reporting their activities to the Public Prosecutor General and the prosecutors below him, but perform according to the

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orders of the Public Prosecutor General and higher-level prosecutors only.

Up to now there is no special training institution for public prosecutors in our country. For the entire country, there is only one law school, located in Vientiane. Created at the end of 1986 with about 30 students for each entry, the law school now has about 1150 students. From its beginning to July 1997, it was under the Ministry of Justice. From July 1997, it became the law faculty of the National University. Students who graduate from the law school work as judges, public prosecutors, police officers, lawyers, etc.

Some of our public prosecutors graduated from foreign universities, e.g., in the former USSR and Viet Nam. Many efforts are made to upgrade the knowledge and skills of public prosecutors by organizing for them seminars and study tours for exchange experiences.

Actual field inspection and instruction on the work of lower public prosecutors is commonly used. Particularly groups of two to three members of the Public Prosecutor General's Office travel throughout the country in order to know how provincial and district public prosecutors carry out their work and, if necessary, give them instruction.

III. INVESTIGATION

In Laos, the investigation-interrogation agencies consist of:

- (1) The investigation-interrogation agency of the police;
- (2) The investigation-interrogation agency of the military;
- (3) The investigation-interrogation agency of customs; and
- (4) The investigation-interrogation agency of forestry.

The investigation-interrogation agency of the police is under the Ministry of Interior; that of the military is under the Ministry of Defense; that of customs is

under the Ministry of Finance; that of forestry is under the Ministry of Agriculture and Forestry. In many cases, the police assist other investigation-interrogation agencies to carry out their work. Most criminal cases examined by the courts originated with the police. But only the prosecutor has the authority to send offenders before the courts.

A. Rights and Duties of Investigation-Interrogation Agencies

Investigation-interrogation agencies have the following rights and duties:

- Accept and record complaints regarding offenses;
- Report to the public prosecutor regarding offenses;
- Issue an order to commence investigation-interrogation and to immediately send a copy of the order to the public prosecutors;
- Proceed with investigation-interrogation;
- Make use of preventative measures as provided for in the law;
- Send a request to cancel an order of the public prosecutor to a higher-level public prosecutor; and
- Summarize the investigation-interrogation and compile a case dossier to be sent to the public prosecutor.

In the exercise of such rights and duties, the investigation-interrogation agencies must adhere to the scope of their rights and authorities as determined by their respective divisions.

B. Methodology Utilized by Investigation-Interrogation Agencies

1. The Rendering of Statements

An investigation-interrogation official or a civil servant investigator-interrogator

must take a statement from the accused immediately after the commencement of an investigation-interrogation. If the rendering of such statement is impossible to obtain immediately, such must be documented immediately along with reasons (for such impossibility).

The rendering of a statement by the accused must be performed at the Office of the Investigation-Interrogation Agency of the Civil Servant Investigator-Interrogator. However, if necessary, such may be performed at the house of the accused or at some other location.

Initially, in the rendering of that statement, the investigating-interrogating official or the civil servant investigator-interrogator must notify the accused of the change, and explain to the concerned individual his rights and obligations.

Each rendering of a statement must be recorded in writing by the investigating-interrogating official or the civil servant interrogator.

2. Questioning in the Presence of Others

When statements are non-conforming, the investigating-interrogating official or the civil servant interrogator has the right to question those persons who gave their statements together. However such questioning shall involve no more than two people at any time. Documentation of the questioning of persons giving statements in the presence of other persons who have given statements shall be performed in accordance with Article 35 of the Law on Criminal Procedure.

3. Incident Site Report

To search for evidence of an offence and material evidence, and to allow that conditions of an offence be clear, investigating-interrogating officials or civil servant interrogators must make an incident site report and (gather) materials and other documents.

The incident site report may be made before the commencement of the investigation-interrogation.

The incident site report must be made the same day as the incident, except in necessary and urgent cases only.

At the time of the making of the incident site report, there must be at least two witnesses. The investigating-interrogating official or the civil servant interrogator has the right to summon for the making of the incident site report the accused, a suspect, an injured party, witnesses and experts.

In the incident site report, the investigating-interrogating official or the civil servant interrogator must make a sketch of the location of the incident, take physical evidence or take photographs.

4. Death Reports

Investigating-interrogating officials or civil servant interrogators must make a death report at the location where the incident arose in the presence of at least two witnesses and the doctor involved or may make use of some other expert for their preparation of the death report.

5. Document of the Report

In the incident site report or the death report, the investigating-interrogating official or the civil servant interrogator must state the location, date, time of initiation and the time of termination of the inspection; the name and surname, address, profession, the position and the title of the investigating-interrogation official or the civil servant interrogators and of the individuals involved in the inspection; all things observed or occurring at that time and anything seized.

After the documentation and reading of the report, involved individuals in the making of such inspection must sign such report.

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6. Appointment of Experts to Conduct Inquiry

When it is deemed necessary to inquire specifically into such issues in a case of death by unclear causes or suspicions regarding majority age, or the inability of the accused to understand the charges or circumstances in which he finds himself, the investigating-interrogating official or the civil servant interrogator must issue an order to appoint an expert to conduct such inquiry.

That order must state the name and surname of the expert or the relevant agency, the matter and the material or goods which must be proved, the time required for the inquiry, the rights and obligations of the expert, and a statement of the expert's liabilities involved in the inquiry.

The investigating-interrogating official or the civil servant interrogator must notify the accused, the injured party, the civil plaintiff, or a civilly liable party of such order. After the inquiry is concluded, the expert must summarize his opinions and send such to the investigating-interrogating official or the civil servant interrogator in accordance with the time limits assigned.

An expert's inquiry may be performed many times.

7. Searches

Searches may be conducted only when there is an order in writing from the Public Prosecutor General or a court, except in necessary and urgent cases. However, there must be a reporting to the public prosecutor within twenty-four hours after such search has been concluded. Before and after such search, the individuals involved in such search must demonstrate their (honesty and) integrity toward the owner of the searched premises.

a) Building searches

Building searches must be made in the presence of a village-level authority, the house owner and at least two witnesses. In the case that there is a search of an office, an agency or an enterprise, it must be conducted in the presence of a representative of such office, agency or enterprise.

Searches of places of worship or temples must have the participation of a temple administrator.

Searches of buildings shall be performed from six a.m. to six p.m.

In the case that searches are conducted, but have still not ended, they shall continue until completion.

Materials and documents can be seized as objective evidence only so long as there is a relationship and such evidence has been used in the wrongdoing or such materials or documents are illegal.

b) Searches of an individual

The search of an arrested person or an imprisoned person suspected of concealing objects can be made without an order (for such search). Officials conducting searches must be individuals who are of the same sex as the person being searched.

The search of a female must be conducted at enclosed premises.

c) Documentation of a search

When a building or an individual search is concluded, the officials who conducted such search must document the search and account for such items according to description, quantity and quality in detail.

Two copies of the documentation of such search must be made and the document must be read in the presence of the participants and then signed by all as evidence. One copy of such documentation becomes a part of the

case dossier and the other copy is given to the relevant house owner or the representative of the office, agency, enterprise or individual searched.

8. Seizure and Sequestration of Assets

In the case that the type, quantity, and location of materials related to the case are clearly known and such can be beneficial in the processing of the case, the investigating-interrogating official or the civil servant interrogator must issue an order to seize such assets. For materials which are movable, there shall be an order to seize such. For materials which are immovable, there shall be an order to sequester such.

9. Re-examination of Information

In order to inspect and confirm the accuracy of any information, an investigating-interrogating official or a civil servant interrogator can re-examine information.

In such re-examination, the investigating-interrogating official or the civil servant interrogator may take photographs, take measurements and make sketches.

The re-examination of information shall be made so long as it is deemed that such is not endangering life or the environment and does not cause damage to human dignity.

In such re-examination, there must be at least two witnesses involved and there may be the involvement of a suspect, an accused, witnesses and injured parties. In necessary cases, experts may also be involved.

Documentation of the re-examination shall be performed according to Article 41 of the Law on Criminal Procedure.

10. Identification of Persons and Confirmation of Property

In necessary cases, investigating-interrogating officials or civil servant interrogators may allow witnesses, injured parties, suspects or accused parties to identify individuals or confirm materials and corpses.

Before identification or confirmation, the person identifying individuals or confirming materials or corpses must make a statement regarding the conditions of their observations, along with having seen and having been aware of what they were seeing, describing the physical features, and other special points of the individual or material.

In the identification process, the person to be identified must be in the presence of at least three other individuals who have similar physical features.

In the confirmation of property, the property to be confirmed must be placed generally with at least three other goods which have similar characteristics and are of the same type.

The documentation of the identification of a person or the confirmation of property shall be performed in accordance with Article 41 of the Law on Criminal Procedure.

IV. INSTRUCTION AND SUPERVISION OF THE POLICE AND THE COOPERATION BETWEEN PUBLIC PROSECUTORS AND THE POLICE

In carrying out their duties concerning the investigation-interrogation of the criminal cases and particularly those which are complicated, the police receives instructions and is under the supervision of the public prosecutor, who has the authority:

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- To instruct in writing regarding the investigation-interrogation, preventative measures, evaluation of an offense, performing investigative-interrogative measures and the search of offenders;
- To demand the criminal case dossier, documents and information regarding the offense from the investigation-interrogation agency for inspection;
- To participate in the investigation-interrogation of the criminal case and in necessary cases he investigate and interrogate on his own;
- To send the case dossier back to the investigation-interrogation agency along with instructions in writing to allow additional investigation-interrogation;
- To terminate an order from the investigation-interrogation agency or a civil servant interrogator which is illegal or is unreasonable;
- To order that the investigating-interrogating official or a civil servant interrogator who has violated the law during the case proceedings be removed from the investigation-interrogation;
- To commence investigation-interrogation, suspend case proceedings, close a case or refer a suit to court; and
- To authorize a defender to participate in a case from the date of the order to commence the investigation-interrogation.

Cooperation between public prosecutors and the police is very significant for the success of criminal proceedings. Experiences show that these two institutions must cooperate.

V. ROLE OF PUBLIC PROSECUTORS IN ARRESTING AND DETAINING SUSPECTS

A. Arrest

The arrest of any individual must be accompanied by an order in writing from the public prosecutor or the court, except in cases where an offense is seen being committed or in urgent cases.

Before the issuance of an order to arrest, the public prosecutor or the court must consider the following conditions:

- (1) The wrongdoing must be a criminal offense upon which the law determines the penalty to the deprivation of personal freedom (liberty); and
- (2) The evidence which supports the case must be weighty.

B. Detention

The detention must be accompanied by an order from the public prosecutor or the court and must reference the conditions mentioned above concerning arrest. The public prosecutor must issue an order of release for the accused immediately if the detention has exceeded one year and there is not sufficient evidence for a court case.

C. Indictment

1. Authorized Agency to Indict and the Methodology

In Laos, there is no examining judge as in France or other countries, who initiates criminal proceedings against the accused before the trial. We have public prosecutors, one of the duties of whom is to refer the criminal case to court.

The court shall accept a criminal case for consideration only so long as there is an order for such to be referred to the court from the public prosecutor.

The victim can not refer by himself (herself) directly a criminal case to the court. Before referring the criminal case to court, the public prosecutor must

research the case which has been sent from the investigation-interrogation agency or from the civil servant interrogator and if it is deemed that the basis for referring the case to court (indictment) is sufficient, the public prosecutor must issue an order referring the matter to the courts. In practice, indictment is composed of two separate documents. The first is called "order to refer the accused to court". It is a short document which contains the indication "Public Prosecution of...", first and last names of the accused, charges and violated articles of penal law, and the criminal procedure law serving as the basis for the indictment. The second document called "public prosecutor's statement" contains the same items as the first one, but it also gives details concerning the accused and the crime committed by him. For example, in this document, there is a description of the crime from the beginning to the end; the evidence concerning the crime; the personality of the offender; and how he should be punished by court.

The public prosecutor's statement must be convincing in all aspects that the offender has committed the crime with which he is charged. For that the evidence must have been gathered at the level it is sufficient to confirm the accused is guilty.

2. Degree of Certainty Regarding Guilt Required to Indict a Suspect

It seems that our criminal procedure and our mentality require a high degree of certainty regarding guilt in order to indict a suspect. The courts, public prosecutors, civil servant investigators or investigating-interrogating officials must submit their evaluation or evidence with their belief in (acceptance of) such evidence based upon thorough and complete consideration of the case, and based upon objectivity. In short, there must be no doubt about the guilt of the offender sent to trial. That does not mean the offender is the "queen of proof".

By law and in practice, the court in many cases declares guilty and sentences the accused without the accused's guilty plea. Sometimes the guilty plea of the accused leads to an error.

The evidence in criminal proceedings has great significance. The decision of courts depends on how is the evidence gathered.

3. Exercise of Discretion in Prosecution

The Law of Criminal Procedure of Laos stipulates the following:

In the case that officials are investigating or interrogating or the Public Prosecutor has found evidence of an offense, an investigation or interrogation must be commenced within the boundary of their authority. There must be usage of measures provided for in the law in order to search for offenses and offenders and then send such offender to the courts for sentencing according to the law.

So there can not be any discretion in prosecution. According to the law, the public prosecutor has no choice. If he/she becomes aware of an offense, he/she must initiate criminal proceedings against the offenders.

4. Plea Bargaining

In our law, there is no plea bargaining. There can not be an agreement between the prosecution and the defense or between the judge and the defense. If the accused pleads not guilty and there is not sufficient evidence as to his/her guilt or there is cause for of an exemption, the accused must be acquitted. On the contrary, if there is sufficient evidence indicating that the accused has committed the crime and there is no exemption of penal liabilities, he/she will be punished. Moreover, if there is cause conductive to mitigation of penal

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responsibilities, the penalty can be less severe. In Lao law, there are ten causes conducive to mitigating penal responsibilities. However in the prescription of penalties, the court might take into consideration other factors as well.

D. Trial Proceedings

1. Proof of Criminal Facts

Criminal facts can be proved by different means, e.g., witness statements, statements of injured parties, statements of suspect, statements of the accused, opinions of experts, material evidence, investigation-interrogations documents, court activities, and other documents which relate to the case.

2. Cooperation for Speedy Trial

The criminal case referred to the court from the public prosecutor must be considered within one month from the date of having received the case dossier from the public prosecutor.

In practice, it is difficult for the courts to comply with this time provided for by law. Only a few criminal cases can be considered within one month from the date that they arrive at the courts. Currently courts face criminal cases dossiers not being complete or unclear, and thus, they must be given back to the public prosecutor for additional investigation-interrogation. Some common problems include that all the offenders who committed the same crime are not referred to the court; the offender has not been charged with all crimes committed by him; and the evidence is unclear.

3. Securing Appropriate Sentence

Before all there are laws serving as a basis for imposing the sentence. The court prescribes penalties on the punishment of infractions. In prescribing penalties, the court must consider the features and nature of the social threat generated by the

infraction, the personality of the offender and the circumstances of penal responsibilities. In the law, there are causes conducive to the litigation of penal responsibilities and circumstantial causes conducive to the increase of penal responsibilities. In prescribing penalties, the court must also take in account the fact that the infraction committed is at the preparation stage or is attempted due to abuse, incitement or recidivism; the accused is the first offenders; and so on.

4. Supervision of the Fair Application of the Law

As mentioned above, the Public Prosecutor General and lower-level prosecutors monitor and inspect the performance of the law at the courts so that cases are processed properly, completely, according to their characteristics, for proper, legal and reasonable final judgments.

Concerning sentences at the first or second instance that the public prosecutor consider unfair or illegal, they will be "attacked" by the public prosecutor. In order for the public prosecutor to monitor and inspect the judgments of the courts, these are sent regularly to the prosecutor's office. Now the monitoring and inspection by the public prosecutor of court judgments is on the increase. Many criminal and civil court judgments are attacked by the public prosecutor.

E. Execution of Punishment

The organizations with the duty to enforce decisions and court judgments are:

- (1) Judgment enforcement personnel of the court regarding civil damages in criminal cases;
- (2) Correction personnel regarding punishment entailing the deprivation of personal liberty;

- (3) Governmental authorities or public organizations, an office or an enterprise related to education and training.

A prison exists in each province. There prisons are in a bad situation. Some of them are in Savannakhet and Khammouane provinces, which were built in the French time. However those built recently are not much better. Sometimes there is not enough room for all prisoners, so "floors" are added for prisoners to sleep on.

There is no trained personnel for the re-education of offenders.

F. Public Prosecutor's Involvement in National Criminal Justice Policy

National criminal justice policy in our country is included in the five-year plan of socio-economic development adopted by the National Assembly. Each year, on the basis of this five-year plan, the government will work out an annual plan of socio-economic development. The Office of the Public Prosecutor General, the Supreme Court and the Ministry of Interior play an important part in the conception of national criminal justice policy. Now for example, Laos is struggling against bad phenomena occurring in our society: corruption, embezzlement of State properties, narcotics, and trafficking in women and children.