Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration
Lao People’s Democratic Republic
**LAO PEOPLE’S DEMOCRATIC REPUBLIC**

**TABLE 1**

**SNAPSHOT**

<table>
<thead>
<tr>
<th>Formal Name</th>
<th>Lao People’s Democratic Republic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital City</td>
<td>Vientiane</td>
</tr>
<tr>
<td>Independence</td>
<td>2 December 1975</td>
</tr>
<tr>
<td>Historical Background</td>
<td>The multi-ethnic Lao people have existed and developed on this territory for thousands of years, starting from the middle of the 14th century, during the time of Chao Fa Ngoum, who founded the unified Lane Xang country. Since the 18th Century, the Lao land has been repeatedly threatened and invaded by outside powers. The Lao people enhanced the heroics and unyielding traditions of its ancestors, and continuously and persistently fought to gain independence and freedom. Since the 1930’s under the leadership of the former Indochinese Communist Party until the present Lao People’s Revolutionary party, the multi-ethnic Lao people have carried out difficult and arduous struggles until they managed to crush the yokes of domination and oppression of the colonial and feudal regimes and completely liberated the country—establishing the Lao People’s Democratic Republic and opening a new era of independence and freedom.</td>
</tr>
<tr>
<td>Size</td>
<td>Surface Area: 236,800 km²; land: 230,800 km²; water: 6,000 km²</td>
</tr>
<tr>
<td>Land Boundaries</td>
<td>Total: 5,083 km</td>
</tr>
<tr>
<td></td>
<td>Border countries: Burma 235 km, Cambodia 541 km, China 423 km, Thailand 1,754 km, Vietnam 2,130 km</td>
</tr>
<tr>
<td></td>
<td>Coastline: 0 km (landlocked)</td>
</tr>
<tr>
<td></td>
<td>Boundaries: North by China, on the East and South East by Vietnam, on the South by Cambodia, on the West by Thailand, and on the Northwest by Myanmar, with a total boundary length of 5,083 km (3,158 mi)</td>
</tr>
<tr>
<td>Population</td>
<td>6.7 Million (est. 2015) (increase of .3M from 2010); Urban population 37.6%.</td>
</tr>
<tr>
<td>Demography</td>
<td>0-14 years: 37%; 15-64 years: 59%; 65 years up: 3% (2012); Male: 49.9%; Female 50.1% (2012)</td>
</tr>
<tr>
<td></td>
<td>Population growth: 1.6% p.a.; Life expectancy: 68.2 years</td>
</tr>
</tbody>
</table>

1  Preamble, Constitution of The Lao People’s Democratic Republic, No. 25/NA, 6 May 2003 (Lao PDR) (hereinafter “2003 CONSTITUTION”).
| Ethnic Groups | 49 different ethnic groups were declared as a result of ethnic group reclassification in 2005. The majority of the population in Lao PDR is Lao which accounts for 55% of the whole population; 11% of the population are Khmou; 8% Hmong; and the rest is comprised of various groups, including the Akha, Singsil, Lue, Lamed, Tai, Katu, Triang and Harak, Oy and Brao. (2005 Population Census) |
| Languages | Lao (official), French, English, and various ethnic languages |
| Religion | Buddhist 66.8%, Other (Animist) 30.9%, Christian 1.5%, No Answer 0.7%, Muslim 0.03%, Bahai 0.02% (2005 census)
| Adult Literacy | Youth (15-24 years) literacy rate (%) 2008-2012: male 89.2%, female 78.7%
| Gross Domestic Product | US $12.00 billion (2014) (from $5.7 billion in 2008) |
| Government Overview | Lao PDR is a single-party democratic state with the following organs of state power: The National Assembly as the legislative branch; the Government as the executive branch headed by the President; the People’s Courts and the People’s Prosecutor Offices as the judicial branch. |
| Human Rights Issues | Enforced disappearance; human trafficking; freedom of religion or belief; freedom of expression, association and peaceful assembly; and right to participate in public and political life |
| Membership in International Organizations | Asian Development Bank; Association of South-East Asian Nations; Food and Agriculture Organization; Group of 77; International Atomic Energy Agency; International Civil Aviation Organization; International Committee of the Red Cross; International Fund for Agricultural Development; International Finance Corporation; International Criminal Police Organization; International Labour Organization; International Monetary Fund; International Telecommunications Union; Multilateral Investment Guarantee Agency; Organisation Internationale de la Francophonie; Permanent Court of Arbitration; United Nations; United Nations Conference on Trade and Development; United Nations Educational, Scientific and Cultural Organization; United Nations Industrial Development Organization; UN World Tourism Organization; World Customs Organization; World Health Organization; World Intellectual Property Organization; World Trade Organization |

4 Lao Statistics Bureau. The Lao PDR Population and Housing Census 2005, Table 1.5, 14.
8 The list of Lao PDR’s membership to international organizations is not exhaustive.
I. INTRODUCTION

The Lao People's Democratic Republic (Lao PDR) has undergone rapid economic and legal development since 2011, consistent with its intention towards regional and international integration and increased democratic governance.

Lao PDR is a single-party state established in 1975 and governed by the Lao People's Revolutionary Party (LPRP). Between 1975 and 1991, there was no constitution and very few laws were adopted by the Lao Government, with no established hierarchy of laws.\(^{11}\) The promulgation of the 1991 Constitution as the country’s fundamental law signified the country’s move towards becoming a “rule of law state.”\(^{12}\) It defined the state’s political regime, socio-economic system, fundamental rights and obligations of citizens, defence and foreign affairs, the system of organization of the state apparatus, and for the first time, guaranteed the people's right to self-determination.\(^{13}\)

The Constitution declared Lao PDR to be a People's Democratic State where “(a)ll powers are of the people, by the people and for the interests of the multi-ethnic people,” whose rights are exercised and ensured

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12 Ibid.

through the political system, with the LPRP as “its leading nucleus.” The National Assembly, composed of representatives elected by the people, oversees the activities of the executive and judicial state organs, with the three branches operating under the principle of “democratic centralism.” In 2003, the Constitution was amended to further enhance the state’s commitment towards the rule of law, with new and revised articles that expounded on the socio-economic system and laid down the powers and functions of each state organization.

In 2009, Lao PDR launched its Legal Sector Master Plan (LSMP) with the view to develop Lao PDR as a rule of law state by the year 2020. The LSMP sets out four central pillars for the development of the Laotian legal system:

- **Pillar One:** Framework of laws, decrees and regulations;
- **Pillar Two:** Law-related institutions that implement the legal framework;
- **Pillar Three:** Means for educating and training on the use of the system;
- **Pillar Four:** Means for ensuring that all laws and regulations are accessible to both state agencies and citizens.

The LSMP, which was implemented with the assistance of the United Nations Development Programme in Lao PDR, has made much progress towards its objectives over the past five years.

Between 2011 and 2015, important laws were passed by the Lao PDR Government in accordance with its five-year law-making master plan, under Pillar One of the LSMP. This includes the amendment of the Law on Civil Procedure and the Law on Criminal Procedure in 2012, supersedes the procedural laws that were passed in 2004. The Baseline Study on the Law-Making Process in Lao PDR at the end of 2015 considered that the Lao legal framework could be said to be “complete,” when compared to laws in ASEAN countries, “with the understanding that more work still needs to be done to make the framework “law in action” as opposed to “law on books.”

A legislation of particular importance for rule of law is the Law on Legislation, enacted in 2012, which addressed the lack of transparency and systemization of laws in the country. This Law clarifies the hierarchy of normative legal documents and provides a general format and content of laws. It also provides detailed requirements in the law-making process, including the posting of drafts, public consultations, and impact

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17 See 2003 Constitution.
19 Ibid. See also United Nations Development Programme Lao PDR, SPLSMP Project in Brief, November 2015.
20 These amendments were published in the Lao PDR Official Gazette website on 5 February 2014 and 21 February 2014, respectively.
21 Supra note 11, ii.
22 Law on Legislation, No. 19/NA, 12 July 2012 (Lao PDR) (hereinafter “LAW ON LEGISLATION”). This law is also referred to as the Law on Making Legislation and the Law on Laws.
assessment reports prior to its submission to the National Assembly for consideration. It also mandates that all laws be published before they come into force, which spurred the launch of the Lao Official Gazette website in late 2013. This marked a significant step towards greater transparency in the country’s legal system.

On 8 December 2015, the seventh National Assembly passed the second amendment to the Constitution. The new Constitution was signed by the President of State on 15 December 2015 and came into force on 19 February 2016.23 While retaining the fundamental principles and structure of government, this Constitution contained amendments that clarified the role of the different authorities and limited the tenure of the President and other government officials to two consecutive terms. It also introduced three new chapters: Local People’s Assembly, State Audit and the Election Committee.24

Lao PDR is a party to seven (7) core international human rights conventions. Subsequent to the Human Rights Resource Centre’s Rule of Law for Human Rights in the ASEAN Region: A Baseline Study25 the Lao Government ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2012. In addition, it is reported to be preparing to ratify the Convention on the Protection of All Persons from Enforced Disappearance (CED), which it signed in 2008.26 It also joined the World Trade Organization in 2013,27 and this was viewed as another step towards developing a stronger legal system and stronger institutions to achieve integration into the global economy.28

With these developments, a substantial portion of the Lao PDR legislation referred to in the 2011 Rule of Law Baseline Study29 has been amended or superseded.

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23 The amended Constitution became effective 15 days from its publication on the Lao PDR Official Gazette on 04 February 2016, in accordance with the publication requirement set forth in Art. 80 of the Law on Legislation.
24 Constitution of the Lao People’s Democratic Republic, No. 63/NA, December 2015 (Lao PDR) (hereinafter “2015 Constitution”). Note: Only the official Lao language document of the 2015 Constitution was available at the time of writing; an unofficial English translation of the document was used as reference for this report.
29 Supra note 25, 121-129.
TABLE 2
ADMINISTRATION OF JUSTICE GRID

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Figure</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of judges in country</td>
<td>375 judges and 29 military judges (as at 2011)</td>
</tr>
<tr>
<td>No. of lawyers in country</td>
<td>188 (as at December 2015)</td>
</tr>
<tr>
<td>Annual bar intake (including costs and fees)</td>
<td>No information available</td>
</tr>
<tr>
<td>Standard length of time for training/qualification</td>
<td>Lawyers: A Bachelor of Laws degree; has professional training as a lawyer; has undergone law internship and experience in legal works (12 months of training with the Lao Bar Association); passed examination for lawyers; not a civil servant, soldier or police in active service</td>
</tr>
<tr>
<td></td>
<td>Judges: A law degree; trained according to the curriculum for judges; natural born Lao citizen; at least 25 years of age; has strong political commitment; has good behaviour, loyal to the nation, good deontology, honest in performance of duty, in good health</td>
</tr>
<tr>
<td>Availability of post-qualification training</td>
<td>Short training courses are provided to judges and other staff in legal and judicial institutions</td>
</tr>
<tr>
<td>Average length of time from arrest to trial (criminal cases)</td>
<td>No information available</td>
</tr>
<tr>
<td>Average length of trials (from opening to judgment)</td>
<td>No information available</td>
</tr>
<tr>
<td>Accessibility of individual rulings to public</td>
<td>Judgments and decisions are available to the litigants</td>
</tr>
</tbody>
</table>

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32 Art. 9, Law on Lawyers, No. 10/NA, 2011 (Lao PDR).

33 Art. 46, Amended Law on People’s Court, No. 09/NA, 2009 (Lao PDR) (hereinafter "LAW ON PEOPLE’S COURT").

II. COUNTRY PRACTICE IN APPLYING THE CENTRAL PRINCIPLES OF RULE OF LAW FOR HUMAN RIGHTS

A. On Central Principle 1
   (Government and its officials and agents are accountable under the law)

Definition and Limitation of the Powers of Government in the Fundamental Law

The 2015 Constitution defines the powers and structure of the Lao PDR government. The second amendment retained the political regime defined under the 1991 and 2003 Constitutions but introduced amendments that further clarified the mandate of the three state powers (legislative, government/executive, and judiciary) and the roles of the country’s top leaders.36

The new Constitution expressly declares the National Assembly (NA) as “the highest state organization.”37 Consistent with this pronouncement and with the principles of democratic centralism, the Constitution grants this legislative branch with extensive powers “to endorse the Constitution and laws, to make decisions on fundamental issues of the country, and to monitor and inspect the respect of and the compliance with

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35 Arts. 20-27, Law on People’s Court.
37 Art. 52, 2015 Constitution. This express declaration under Art. 52 is an amendment not previously contained in the 1991 and 2003 Constitutions.
the Constitution and laws by other state organizations.” Of particular importance is the power of the NA to elect or remove key state officials such as the President and Vice-President of the State, the Prime Minister, the President of the Supreme People’s Court, the Supreme Public Prosecutor, the President of the Government Inspection Authority, Vice-Ministers and other government members. It also has a duty to adopt the country’s socio-economic plans and the state budget, as well as the power over the organizational structures of the executive branch, including ministries, provinces and cities.

In addition, the amended Constitution provides the NA with new roles, including the right to adopt the appointment, transfer, or removal of the Judge’s Council of the People’s Supreme Court, the power over the organizational structure of the National Assembly, including the power over the National Assembly Commission and its personnel, and the right to consider matters of war or peace (based on the recommendation of the President of the State). It is also given the power to dissolve the newly-created Provincial People’s Assembly (PPA) if the PPA causes “material damage” to the nation and the people.

The National Assembly Standing Committee, a body elected by the National Assembly to carry out duties on its behalf during the recess of the National Assembly, also holds important functions under the 2015

38 Ibid. There is an apparent change in wording from the power to “oversee activities” of “executive organs, people’s courts and the Office of the Public Prosecutor” under Art. 52 of the 2003 Constitution to the power to “monitor and inspect” compliance with the Constitution and laws by “other state organizations” under the 2015 Constitution (unofficial translation).

39 The National Assembly’s rights and duties under the previous Constitution that were retained in Art. 53 are as follows:

(1) to consider and adopt the Constitution and laws;
(2) to consider and adopt socio-economic plans, the State budget, as well the power to adopt, exempt from or abrogate taxes and duties;
(3) to elect or remove key State officials:
   a. the President or Vice-President of the National Assembly Standing Committee,
   b. the President and Vice-President of the State, based on recommendation of the NA Standing Committee
   c. the Prime Minister, the President of the Supreme People’s Court, the Supreme Public Prosecutor, the President of the Government Inspection Authority, based on recommendation of the President of the State;
   d. Government vice-ministers and government members, based on the recommendation of the Prime Minister;
(4) to consider and adopt the organizational structure of the Government (executive branch) on recommendation of the Prime Minister, including the establishment, dissolution incorporation and division of ministries, provinces and cities, as well as the adoption of boundaries of provinces and cities.
(5) To consider and adopt the granting of amnesties based on the recommendation of the National Assembly Standing Committee;
(6) To consider and adopt the secession from and the cancellation of accession in international conventions that Lao PDR is a party, international treaties based on the recommendation of the Prime Minister.

40 The National Assembly’s new rights and duties under Art. 53 of the 2015 Constitution are:

(1) To consider and adopt the appointment, the transfer or the removal of the President and the Vice President of the National Assembly Commission and Secretariat, based on the recommendation of the National Assembly Standing Committee;
(2) To consider and adopt the appointment, the transfer or the removal of members of Judge Council of the People’s Supreme Court based on the recommendation of the President of the People’s Supreme Court;
(3) To consider and adopt the organizational structure of the National Assembly, the establishment, dissolution, incorporation and division of the National Assembly Commission and Secretariat;
(4) To consider to dissolve a Provincial People’s Assembly in the event that such People’s Assembly causes material damages to the benefits of the Nation and the People;
(5) To consider and adopt the matters of war or peace based on the recommendation of the President of the State;
(6) To cancel agreement of relevant parties that are contrary to the Convention and the laws, except for an decision in relation to a trial made by the Office of the Public Prosecutor and the People’s Court; and
(7) To assign the right to the National Assembly Standing Committee to agree upon necessary and urgent works, and report to the National Assembly sessions.
Constitution. Consistent with the 2003 Constitution, it retains its duty to prepare for and summon the NA into session and to appoint, transfer or remove judges of people's courts (now conditioned on the recommendation of the President of the People's Supreme Court).

Interestingly, the amended Constitution grants the NA Standing Committee expanded rights and duties, to: (1) propose provisions of the Constitution and the laws, in addition to its right to interpret and explain the same; (2) propose draft presidential edicts to the President of the State; (3) appoint the National Election Committee; (4) agree on the accession to international conventions and international treaties based on the recommendation of the Prime Minister; and (5) receive and consider requests for justice made by citizens.41 It is also noteworthy that Art. 53.21 of the amended Constitution expressly grants the National Assembly the latitude to assign to the National Assembly Standing Committee the right to agree upon necessary and urgent works, and report to the National Assembly sessions.

An important innovation in the 2015 Constitution is the introduction of the Local People's Assembly (LPA), the local legislative organization tasked with the approval of legislation, decision-making on local issues, and the supervision of the local state organization. The LPA is described as consisting of people's assemblies at the provincial, district and village levels (with the latter two assemblies established upon the agreement of the National Assembly, which basically leaves the provincial assemblies as the main component of the LPA).42

The Provincial People's Assembly (PPA) mirrors at the provincial level most of the rights and duties of the NA, including to: (1) approve legislation at the provincial level; (2) approve the socio-economic plan and provincial state budget plan; (3) supervise local state organizations as to compliance with the Constitution and laws; (4) elect or remove the provincial governor/mayor, chief of the public prosecutor and president of the local people's court; (5) power over the organizational structures of the provincial/district level state organizations, including the establishment or cancellation of, and the determination of territories of districts, municipalities, or the capital; and (6) repeal or cancel agreements or legislation under their sector or lower that contradicts the law, except decisions with regard to prosecution of the office of the public prosecutor and people's court.43 Similarly, the Standing Committee of the Provincial People's Assembly has duties resembling that of its counterpart in the NA.44

The broad powers invested in the legislature by the Constitution are further supplemented by the grant of immunity from suit to members of the legislative body. Art. 64 states that “(m)embers of the National Assembly shall not be prosecuted in criminal court, or arrested or detained without the approval of the National Assembly, or the National Assembly Standing Committee. In cases involving manifest or urgent offences, relevant officers must immediately report to the National Assembly or to the National Assembly Standing Committee for consideration. Investigations shall not [be conducted in such a manner as to] prevent a prosecuted member from attending National Assembly sessions.” The same immunity from

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41 Art. 56, 2015 Constitution.
42 Art. 76, 2015 Constitution.
43 Art. 77, 2015 Constitution.
44 Under Art. 79 of the 2015 Constitution, the rights and duties of the Standing Committee of the PPA are follows: (1) Prepare and convene provincial people's assembly session; (2) Propose to appoint, reshuffle, and remove vice provincial governor and vice mayor; (3) Consider and approve the proposal of president of provincial people's court in province and capital in regards to appointment, reshuffle or removal of vice president and judge of local people's court; and (4) Derive and consider any request for justice made by people in the area of their own responsibility.
criminal prosecution is granted to members of the Provincial People's Assembly. It is observed that the immunity granted to legislative body pertains to all criminal prosecution, not only limited to acts committed in relation to duties as a legislator. Moreover, while prosecution should be a judicial function, the legislature retains authority and appears to hold the discretion over the prosecution of its own members, a power that may be open to misuse especially in a single-party state.

On the other hand, as part of its power of supervision, the legislative branches have the power to call on and interrogate members of the executive and judiciary. The National Assembly has the right to interrogate the Prime Minister, members of the government, the Supreme Public Prosecutor, the President of the People's Supreme Court, and the President of the Government Inspection Authority. Persons interrogated must give oral or written answers at the National Assembly session. In the same vein, the Provincial People's Assembly has the same power of interrogation over officials of the government and the judiciary in the local level.

The functions and powers of the President of State are also defined in the amended Constitution. The President is the Head of State and the representative of the Lao people within the country and abroad. He is also the Chairperson of the National Defence and Security Council and the Commander of the People's Armed Force. While the functions of the President is substantially retained in the present Constitution, the power to appoint, transfer, or remove provincial and city governors is now held by the Prime Minister and the PPA. It is also interesting to note that under the present Constitution, the NA Standing Committee has the right to propose draft presidential edicts to the President of State.

The Constitution provides that the government is the executive branch of the state, and has the role of managing and administering the state's duties. It is responsible to the National Assembly and the President of the State. It is headed and represented by the Prime Minister, who manages the work of the government and local administrations.

It must be noted that the term of office of the President and other government leaders is now limited to two consecutive terms under the new Constitution. This is a positive modification that will prevent entrenchment in power and encourage new leaders in government. No similar term limit is provided for members of the legislature.

**Amendment or Suspension of the Fundamental Law**

Article 118 of the 2015 Constitution provides that only the National Assembly has the right to amend the Constitution. Any amendment to the Constitution requires the affirmative vote of more than two-thirds of the total number of NA members. The amendment or suspension of the Fundamental Law requires the affirmative vote of more than two-thirds of the total number of NA members. Any amendment to the Constitution requires the affirmative vote of more than two-thirds of the total number of NA members. Any amendment to the Constitution requires the affirmative vote of more than two-thirds of the total number of NA members. Any amendment to the Constitution requires the affirmative vote of more than two-thirds of the total number of NA members. Any amendment to the Constitution requires the affirmative vote of more than two-thirds of the total number of NA members. Any amendment to the Constitution requires the affirmative vote of more than two-thirds of the total number of NA members.

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45 Art. 84, 2015 Constitution.
48 Art. 65, 2015 Constitution.
49 Art. 67, 72 & 77, 2015 Constitution.
50 Art. 66 & 71, 2015 Constitution.
51 Art. 118 amends Art. 97 of the previous Constitution, which requires "at least two-thirds of the total number of National Assembly members" for any amendment of the Constitution.
Articles 15 and 16 of the Law on Legislation meanwhile provide that the Constitution may be made or amended only by the National Assembly, by a vote of at least two-thirds of the total number of its members. The National Assembly is empowered to enact detailed regulations on the procedure to make or amend the Constitution. A National Committee for making or amending the Constitution shall be established to collect information and conduct public consultation in a manner broader than the one carried out for making or amending laws.

Laws Holding Public Officers and Employees Accountable

Public officers are accountable for offences committed in relation to or in breach of his/her duties, under the Penal Law of 2005. The Law provides for penalties for the following offences:

1. Chapter 8 of the Penal Law punishes Breach of Civil Servants’ Responsibilities, including abuse of power (Art. 153), abuse of authority (Art. 154), abandonment of duty (Art. 155), negligence in the performance of duty (Art. 156), bribery and corruption (Art. 157);

2. Article 174 specifically punishes Corruption committed by any leader, staff, civil servant, soldier or police officer who breaches his duty by abusing his status, position or power, or by embezzling, swindling, receiving bribes, misappropriating state or collective property, or abusing power for the benefit of himself, or any other person, causing damage to the interest of the state or collectives or the rights and benefits of citizens;

3. Chapter 3 of the Penal Code punishes Offences against Civil Rights and Freedoms committed by any person, such as Duress (Art. 97), Unlawful Arrest and Detention (Art. 99), Taking of Hostages/Abduction (Art. 101), Violation of an individual’s freedom to engage in lawful speech, writing, gathering, meetings and other freedoms (Art. 102), and Trespass to Residence (Art. 103).

To further strengthen the State’s anti-corruption efforts, the National Assembly also amended the Anti-Corruption Law in 2012, wherein the National Assembly added provisions covering foreigners living in Lao PDR, and assigning the Anti-Corruption Authority to fully investigate corruption cases and conduct interrogation.52

The 2015 Constitution introduced a new Chapter on State Audit and defined the rights and duties of the State Audit Organization. The State Audit Organization, mandated to carry out independent audit to verify all financial documents, has the duty to report the results of its audit on the implementation of the state budget to the National Assembly and propose measures against units violating the law on the management of the state budget, finance and assets based on the results of the audit.53

Special Courts and Prosecutors of Public Officers and Employees

The Constitution and existing laws such as the Law on People’s Court do not provide for specialized or dedicated courts and prosecutors to handle cases against public officers and employees.


53 Articles 104 to 107, 2015 Constitution.
However, the State Inspection Authority (also translated as Government Inspection Authority) is the country's central level counter-corruption organization tasked with the role of preventing and countering corruption in the country. It conducts an inspection if acts of corruption are found or claims of corruption are made. If the inspection results in strong evidence of corruption, it then forwards its findings either to: (a) the concerned organizations for disciplinary measures in case of minor offences; or (b) to the public prosecutor to consider prosecution in court, in case of serious offences. Thereafter, further investigation, filing of complaint, and prosecution is conducted in the appropriate court which has jurisdiction of the offence charged against a public officer or employee.

B. On Central Principle 2

(Laws and procedures for arrest, detention and punishment are publicly available, lawful, and not arbitrary)

Publication of and Access to Criminal Laws and Procedures

In accordance with the Law on Legislation, the Lao PDR Official Gazette was launched online in October 2013. All legislation, including criminal laws and procedures, are now available for viewing online in the Lao language through this website. This may be regarded as the most up-to-date and reliable source of Lao laws as existing legislation not posted in the Gazette website by January 2015 shall no longer be considered valid under the Law. Prior to this breakthrough, Lao laws were not readily available and there were at times uncertainty on the existence of or prevailing version of laws or decrees. There have been instances when older versions of a law continued to be used as reference when an amendment has already been passed. However, the level of awareness of the Official Gazette website amongst the general population is still unknown. Moreover, individuals with Internet access in Lao PDR remain low at only 12.5 per cent of the population in 2013.

Aside from publication via electronic format in the Official Gazette website, the Law also requires that printed copies of the promulgated legislation be sent to each sector and organization of the state at the national and local levels. The authority in charge of the enacted law and the government organizations at the national and local levels are given the task of dissemination and education on the law through different means and methods, including dissemination in ethnic languages, to ensure the effective implementation of the law. Again, there is currently no data to determine if these requirements for dissemination are being implemented, especially in the local levels.


56 Art. 80 & 83, Law on Legislation.


58 Art. 83, Law on Legislation.

59 Ibid.
Accessibility, Intelligibility, Non-retroactivity, Consistency, and Predictability of Criminal Laws

Art. 6 of the 2015 Constitution, replicating Art. 6 of the 2003 Constitution, mandates all state organizations and government officials to disseminate and create awareness of all policies, regulations and laws among the people, and together with the people, organize their implementation in order to guarantee the legitimate rights and interests of the people.60

The Law on Legislation, as discussed above, has introduced provisions that promote accessibility and consistency in all legislation. Aside from identifying the hierarchy of normative legal documents, it mandates the application in the event of contradiction in laws, and provides for the simultaneous amendment of several laws in a single document when necessary.

Prior to this Law, Presidential Ordinance No 02/President, dated 3 October 2003, on the drafting and adoption of legislation was in effect. This Ordinance set the basic procedures for drafting, proposing and adopting laws as well as the hierarchy of laws.61 However, it was observed in the past that the application of a law “was a complex difficulty for those who actually implement the laws, because many laws are generally defined and require the implementing decrees for detailed elaboration on one hand, and on the other hand the law is effective from the date of promulgation.”62 Likewise, it was noted in 2009 that laws were not widely applied, with people still placing more emphasis on customary law than implementing laws; the active implementation of laws by various sectors was not strict and effective; the society’s legal awareness was not improving; and violations of laws by the agencies, officials and civil servants themselves, as well as businesses in all sectors were widespread.63

While steady progress has been made towards accessibility, awareness and consistency in the law at present, constraints continue to exist. The Lao government, in its submission to the Human Rights Council for the 21st session of the Universal Periodic Review, acknowledged that the “dissemination of laws and legal instruments, human rights conventions including the information on the UPR has not been widely covered throughout the country due to state budget constraints, limited national capacity and limited resources provided by the international community. Thus, awareness and understanding of some officials and the general public about laws and regulations as well as the human rights obligations and commitments of the Lao PDR remain limited and are not sufficiently in depth.”64

As to retroactivity of penal laws, Article 5 of the Penal Law states that any law stipulating heavier punishment than that provided in an earlier law shall not have retroactive effect while a new law calling for lighter penalties or eliminating any offence in former laws shall have retroactive effect. Meanwhile, Article 81 of the Law on Making Legislation specifically provides that penal laws shall have no retroactive effect. In other cases, laws are retroactive only when expressly provided in the legislation, and will be applied only if reasonable and will respect the legitimate interests of concerned persons.

60 Article 6, 2015 Constitution.
61 Lao PDR Ministry of Justice, Office of the Supreme People's Prosecutor, People's Supreme Court and Ministry of Security, 'Master Plan on Development of the Rule of law in the Lao P.D.R. Toward the Year 2020,' (Lao PDR), August 2009 (hereinafter "LEGAL SECTOR MASTER PLAN 2009").
62 Ibid, 125.
63 Ibid, 128.
64 Supra note 26, par. 65.
Detention Without Charge Outside an Emergency

Article 42 of the 2015 Constitution provides thus:

The right of Lao citizens in their lives, bodies, honour and houses are inviolable.

Lao citizens cannot be arrested, detained, or searched without the order of the Public Prosecutor or the people’s courts, except if otherwise provided by the laws.

Art. 12 of the Law on Criminal Procedure, meanwhile provides thus:

It is not authorized to detain a person without an order of the head of investigation-interrogation organization or of the chief of office of prosecutor.

It is not authorized to arrest, imprison or search the building where the crime is occurred without an order of the chief of office of prosecutor or of the court, except for the arrest, search of building in case of offence committed in confrontation or in case of urgency only.

In the case when the detention, arrest, imprisonment are carried out in contradiction with the laws or the imprisonment is beyond the period provided in the laws or is not in compliance with the decision of the court, the chief of office of prosecutor must issue an order to release immediately.

The first sentence of Art. 12 prohibiting the detention of a person without an order from the head of investigation-interrogation organization or of the chief of office of prosecutor is a new insertion in the 2012 Law on Criminal Procedure. The second sentence of Art. 12 prohibits arrest, imprisonment or search of a building where the crime has occurred without an order of the chief of the Office of the Prosecutor or of the court, except if the crime is in the act of commission or in the case of “urgency.” However, reviewing this article in context with the other articles under this Law raises concern that certain provisions may be violative of the right against arbitrary or unlawful detention.

First, the term “offences in urgent case” is defined in Article 140 as either: “(1) an individual suspected to have committed an offence who has bad history or uncertain residence; or (2) individual suspected to have committed an offence who is fleeing.” This is the same definition used in the previous Law. These definitions of “urgency,” however, do not pertain to a genuine state of emergency that justifies warrantless arrests and appears to violate the right of presumption of innocence of a person, as it authorizes detention based mainly on previous acts, residence, or the act of flight.

Second, it appears that the instances and length of preventive detention as ordered by the head of the investigation-interrogation organization or the chief of office of prosecutor could be for prolonged periods even if there is no formal charge of an offence before a court of law. Under Art. 135, in relation to Art. 136, the issuance of warrants, detention, arrest, remand, or house arrest can be used as a preventive measure “in order to timely prevent the offence or when there is the basis leading to the belief that the accused person will create difficulties to the investigation-interrogation.”
Under Art. 138, a suspect may be detained for forty-four (44) hours to allow the conduct of an investigation-interrogation, with the detention reported to the chief of the office of the prosecutor within twenty-four (24) hours from the time of detention. Within forty-eight (48) hours, the investigator or the public prosecutor must issue its finding based on the evidence gathered and request the chief of the office of prosecutor for either: (a) the order of release of the detainee if there is no evidence to support the opening of an investigation; (b) the order to open an investigation-interrogation, when reliable evidence is found to support the case; or (c) an order of remand (or temporary imprisonment before the final imprisonment of the court), to proceed with the investigation-interrogation.

This third option presents a cause for concern as it appears to authorize the continued detention of a detainee even while investigation is on-going. Art. 111 of the Law effectively allows a person under investigation-interrogation to be legally incarcerated for months and even up to one year, an inordinately prolonged period of detention without any formal charge in court.

Rights of the Accused

Freedom from Arbitrary or Extra-legal Treatment or Punishment, and Extra-Judicial Killing

Article 42 of the 2015 Constitution provides thus:

The right of Lao citizens in their lives, bodies, honour and houses are inviolable.

Lao citizens cannot be arrested, detained, or searched without the order of the Public Prosecutor or the people’s courts, except if otherwise provided by the laws.

While Art. 42 mostly adopted similar wording found in the 2003 Constitution, it is important to note that the “right to life” is now guaranteed in the first sentence of the current article, which is a welcome development in the new Constitution, and is in accord with Article 6 of the ICCPR.

The right against arbitrary arrest, detention and search is also guaranteed in Art. 42. The inclusion of the phrase “except if otherwise provided by the laws” provides an interesting point of discussion as it subjects these fundamental rights to interpretation provided by the law. As examined in the immediately preceding section, the Law on Criminal Procedure of 2012, which implements these Constitutional rights, contains articles that seemingly restrict the fundamental guarantee.

In addition, the writ of habeas corpus or any similar petition does not appear to be an available remedy under Lao laws. However, a petition or “claim” may be made to a judicial body such as a prosecutor or court to request for the authorities to decide on a matter that the petitioner believes infringes and affects the interests of the state, community or rights and legitimate interests of the petitioner. Likewise, under Articles 56 and 79 of the 2015 Constitution, the National Assembly Standing Committee and the Provincial

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65 Art. 111 presents the time limit for temporary remand in conducting investigation-interrogation as: (a) two months, which may be extended up to an aggregate of six months, for minor offences; and (b) three months, which may be extended up to an aggregate of one year, for major offences. If there is still insufficient evidence after the period of temporary remand, an order of release must be sought for the accused person.

66 Supra note 18, 11.
People's Assembly is empowered to receive petitions or “requests for justice from citizens.” The Standing Committee, in light of the NA’s power of supervision over the judiciary, may request the prosecutor or the people’s court to review or reconsider a court decision or instruct the government to address the grievance. There is thus a possibility of using these avenues as a remedy for urgent cases of arbitrary or illegal detention.

Nevertheless, the Law on Criminal Procedure also provides assurance that persons who violate these fundamental rights will be subject to prosecution. Art. 7 thereof declares that “(i)n criminal procedure, citizens shall receive protection for their life, health, honour and dignity or property. All acts of the organizations and person conducting criminal proceedings, such as beating, torture, coercion and threat which cause damages to the citizens shall be subjected to punishment in accordance with the laws.” Moreover, Article 12 of the Law on Criminal Procedure improved on the 2004 Law by including an express prohibition on the use of force, threats, beatings or torture against the accused or defendant. Any individual who detains, arrests, imprisons, conducts an illegal search shall be subjected to case proceedings and shall be criminally liable and pay compensation for damages.

**Presumption of Innocence**

Art. 15 of the Law on Criminal Procedure accords to a suspect, accused or defendant the presumption of innocence until conviction by a final decision of the court. Further, Art. 14, par. 3, assures that a suspect, accused person, or defendant will not be forced to present evidence to prove their innocence. However, in the U.S. Department of State 2014 Human Rights Report on Lao PDR, it noted that “judges at times decided guilt or innocence in advance, basing their decisions on police or prosecutorial investigation reports. Most trials, including criminal trials, were little more than pro forma examinations of the accused and reviews of the evidence. Juries are not used.”

**Legal Counsel and Assistance**

Art. 96 of the 2015 Constitution provides that “(a)ccused offenders have the right to defend themselves, or by their parents, or lawyers.” Article 14, par. 1 of the Law on Criminal Procedure introduced the right to defence of accused persons or defendants, either “by themselves, lawyers or other protectors who shall provide them with legal assistance.” In addition, Articles 65 (2) and 66 (2) provide accused persons and defendants, respectively, the right to receive an explanation on their rights and obligations in the defence of the case. Art. 71 of the Law on Criminal Procedure and Article 19 of the Law on Lawyers both expounded on the defence lawyer’s rights and duties in a criminal case, and in the process indirectly provided and clarified the rights of an accused to counsel. This includes, among others, the right to be informed of the allegations and to participate in listening to his client's statements; the right to review the case dossiers, make copies or record the contents of documents; to present evidence and witnesses; and to give comments and ask questions to other participants during case investigation or court hearing.

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68 Supra note 18, 11.
69 Supra note 57, 5.
However, the right to counsel and defence appears to be limited in practice and under the law. There are only 188 members of the Lao Bar Association in 2015\(^1\) in a population of 6.5 million persons. It was noted that, “(a)uthorities provided defence attorneys at government expense only in cases involving children, cases likely to result in life imprisonment or the death penalty, and cases considered particularly complicated, such as ones involving foreigners.”\(^2\) There was also a report in 2012 of a human rights defender who was allegedly denied legal aid and requests to meet with his family and lawyers.\(^3\)

**Knowing the Nature and Cause of the Accusation**

Under Article 64.1 of the Law on Criminal Procedure, suspects have the right to be informed of the suspicion towards them. Similarly, Article 65.1 provides that accused persons are accorded the right to be informed of the accusations against them and to respond to such accusations, while Article 66.1 accords defendants the right to be informed of the order of prosecution and to respond to accusations.

Art. 138, in an improvement on the previous version of the article on detention, introduces the requirement that the investigator-interrogator or the public prosecutor read out the order of detention and inform the detainee of his/her rights and obligations and then notify the detainee's family, office, office, organization or enterprise of the place of detention within twenty-four hours.

Article 193, meanwhile, introduces the requirement for the order to prosecute to be read to the accused person before conducting the trial of the case.

The 2015 Constitution does not directly guarantee an accused the right to counsel, but instead gives lawyers the right to provide assistance to an accused, with the last sentence of Art. 96 stating that “(l)awyers have the right to provide assistance to complainants and accused offenders.” Articles 65.7 and 66.3 of the Law on Criminal Procedure, on the other hand, grants accused persons and defendants the right to take or meet a lawyer or other protector for the purpose of the defence of the case. There is no legal right to adequate time and facilities to prepare a defence.\(^4\)

**Guarantees during Trial**

The right to speedy trial is not granted as a right of accused persons or defendants under Lao law.

Article 175 requires the participation of the defendant in the trial of his case according to the summons of the court. If an accused fails to appear in his trial without sufficient reason, the court may issue a warrant of arrest to bring the person to court.\(^5\)

Article 14, par. 3 provides that the “suspect, accused person and defendant shall have the right to respond to the claim, to debate, to present evidence in order to defend themselves.” During trial, a lawyer or other protector may place questions to witnesses or other participants when granted the authorization to do so.

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\(^1\) Supra note 31.  
\(^2\) Supra note 57, 5-6.  
\(^3\) Supra note 10, par. 21.  
\(^4\) Supra note 57, 5-6.  
\(^5\) Art 137, Law on Criminal Procedure.
by the presiding judge.\textsuperscript{76} However, the judges lead the trial, questioning witnesses on issues to complete and clarify the case,\textsuperscript{77} as well as verifying evidence presented in court for correctness, inconsistencies and relevance to the case.\textsuperscript{78}

It has been reported that “(t)here is no legal right of the accused to examine government-held evidence, but a defendant may request to view such evidence if the arresting authority has completed its investigation report. In more serious cases (such as drug cases with a life-imprisonment penalty), the arresting authority generally does not allow the accused to examine government-held evidence.”\textsuperscript{79} Further, “defendants have the right to refuse to testify, although authorities sometimes imposed harsher penalties on defendants who did not cooperate.”\textsuperscript{80}

\textbf{Appeal}

Art. 66.11 of the Law on Criminal Procedure includes the right of the defendant to “submit the application for appeal or for cassation against the decision of the court.” This is mirrored and expanded in Art. 212 of the Law, which states that, “the defendant, the lawyer or other protector of the defendant shall have the right to apply for appeal against the decision of the court.” This right must be exercised within twenty (20) days from the date of pronouncement or from the date of being informed of the decision of the court.\textsuperscript{81}

\textbf{Freedom from Double Jeopardy}

Article 7.9 of the Law on Criminal Procedure provides that a case will be discontinued in the event that there is already an order to dismiss the case or there is a final decision of the court regarding the same case.

\textbf{Remedy before a Court for Violations of Fundamental Rights}

Article 12 mandates that “any individual who detains, arrests, imprisons, conducts the search of building or of person in contravention of the laws shall be subjected to case proceedings and shall be criminally liable and pay compensation for damages which are occurred.” The right to file a complaint is guaranteed by Article 25, stating that “(i)ndividuals or organizations shall have the right to file the complaint against the investigation-interrogation organization, the office of prosecutor, the court or the concerned persons who perform the duties in contravention to the laws. The claim shall be submitted to the organization of the next higher level or to the organization where such persons work. The organization which has received such complaint must examine and consider such document in a timely manner, and must notify the result of the examination in writing to the individual or organization which had submitted the complaint within thirty days from the date of receipt of the complaint. The relevant organizations or individuals who have violated the laws must restore the dignity of, and compensate for the damage to the injured party. Such relevant individuals may be subjected to disciplinary measures or to legal proceedings, depending on the severity of the offence.”

\textsuperscript{76} Art. 194, Law on Criminal Procedure.
\textsuperscript{77} Art. 197, Law on Criminal Procedure.
\textsuperscript{78} Art. 199, Law on Criminal Procedure.
\textsuperscript{79} Supra note 57, 5-6.
\textsuperscript{80} Ibid.
\textsuperscript{81} Art. 214, Law on Criminal Procedure.
C. On Central Principle 3: 
(The process by which the laws are enacted and enforced is accessible, fair, efficient and equally applied)

Law Enactment

Openness and Timeliness of Release of Record of Legislative Proceedings

The Law on Legislation details the principles, regulations and procedures for legislation with the objective of ensuring effective, transparent and uniform legislation process and laws that are complete, easy to understand, implementable, and reflect the realities in Lao PDR but at the same time enable regional and international integration.

Possibilities for public participation exist under the Law in the local, regional and central levels. This takes place before the drafts are submitted to the National Assembly, with the line ministry of the organization taking the lead-role in drafting the law and having the responsibility of organizing public consultations. However, participation in such consultations tends to be by invitation only.

In the recently released Baseline Study on the Law-Making Process in Lao PDR issued by the United Nations Development Programme and the Ministry of Justice, it was noted that there were still no meetings or workshops of the drafting committee that were opened to the public at large. There has also not been any public consultation by the NA Standing Committee as required under Art. 53 of the Law.82 This notwithstanding, it was reported that public participation and consultation is increasing. Since 2008, the National Assembly has operated a telephone “hotline,” allowing the public to call and ask questions about NA actions during periods when it is in session, and also has televised certain National Assembly sessions. A variety of other mechanisms are now available, such as the process for complaints and petitions, and holding public hearings on policy as it tries to obtain broader public participation in legislative activities. These mechanisms have not yet included opening up the law making process itself by means of organizing public hearings or consultations for a discussion of specific draft legislation (as opposed to hearings on general policy) or putting draft laws on its website.83

Timeliness of Release and Availability of Legislative Materials

Under the Law on Legislation, drafts of proposed legislation must be made available to the public by website, print media or other means to ensure easy access to the public for at least 60 days for comments (Art. 8, par. 2). Individuals, legal entities and organizations in both the public and private sector may provide their comments on the draft legislation by sending their comments to the authority in charge of the proposed legislation according to defined times and procedures (Art. 8, par. 1). However, the UNDP Baseline Study noted that the requirement of posting drafts of normative legal documents on diverse websites is not being implemented in any significant degree at present.84

82 Supra note 11, 6.
83 Ibid, 13, 15.
84 Ibid, 11.
Art. 37 of the Law on Legislation also requires that the law drafting committee take minutes during law-making meetings, particularly on policies, principles, terminologies, timeframe and other important matters. Similarly, the Law on the National Assembly requires that minutes of each National Assembly session be taken and certified by the Chief of the Secretariat and the Chairman of the National Assembly session. 85

Equality before the Law

The Lao PDR Constitution guarantees that Lao citizens are all equal under the law irrespective of their gender, social status, education, beliefs and ethnic group. Rights of non-citizens, on the other hand, are protected under the laws of Lao PDR.

The state’s promotion of equality and non-discrimination is reflected in the Penal Law, which penalizes with both imprisonment and fine accused persons who are found guilty of: (a) keeping another person from, or preventing, or restricting a person from participating in any activity or who discriminates against another person based on ethnicity (Art. 176); and (b) discrimination against women, or keeping any woman separate from or preventing or restricting the participation of any woman in, any political, economic, socio-cultural or family activity based on gender (Art. 177).

Law Enforcement

Effective, Fair and Equal Enforcement of Laws

Despite the progress towards establishing rule of law in recent years, the weak implementation and enforcement of law remains to be a challenge for the country. 86 As stated above, the Lao government itself admits that due to limited budget and human capacity, there has been limited dissemination of laws, resulting in limited awareness and understanding of some officials and the general public about laws and regulations. 87 The limited knowledge of the laws consequently limits their effective, fair and equal enforcement.

D. On Central Principle 4:
   (Justice is administered by competent, impartial, and independent judiciary and justice institutions)

Appointment and Other Personnel Actions in the Judiciary and among Prosecutors

Under the 2015 Constitution, appointment and removal in the judiciary is made as follows:

(1) The National Assembly elects or removes the Supreme Public Prosecutor and the President of the People’s Supreme Court, based on the recommendation of the President of the State; 88

87 Supra note 26, par. 65.
(2) The President of the State appoints, transfers or removes the Vice-President of the People's Supreme Court and the Deputy Supreme Public Prosecutor, based on the recommendations of the heads of these organizations.89

(3) The National Assembly Standing Committee appoints, transfers or removes presidents, vice-presidents and judges of the People's Supreme Court and the People's Courts, based on the recommendation of the President of the Supreme Court;90

(4) The Supreme Public Prosecutor appoints, transfers, or removes public prosecutors and deputy public prosecutors.91

It is interesting to note that Art. 48 of the Amended Law on People's Court specifically mandates that judges can only be arrested or investigated on the approval of the NA Standing Committee, except in case of a “flagrant offense and urgency of the matter.” Such arrest must be reported to the Standing Committee immediately and approval for further investigative measures must be obtained. Moreover, the arrest of any judge in the people's courts must be reported to the President of the People's Supreme Court, while an arrest of any judge in the military court must be reported to the President of the People's Supreme Court and the Minister of National Defence.92

The system of appointment of the judiciary requiring legislative and executive agreement is placed to ensure check-and-balance between the state powers in theory. Also, the power of the NA Standing Committee to approve or stop the arrest or investigation of judges is intended as a safeguard for judges in the performance of their duties. However, this system may also compromise the independence of the judiciary and may be a possible shield from investigation or prosecution of erring members of the judiciary. It is reported that while institutionally differentiated from the legislative and executive branches under the Constitution, the judiciary is still not independent of the ruling party as most judges and senior officials from the Ministry of Justice are party members.93

Training, Resources, and Compensation

The Law on People's Courts enumerates that one of the rights and duties of judges and other court officers is to receive training and to upgrade their knowledge for their work.94 To this end, the Judicial Research and Training Institute under the People's Supreme Court holds trainings for judges and other court personnel. The Institute's main structured training is for judge's assistants, which is held for six weeks and follows a training curriculum under two main components: (1) Ethics and Code of Conduct; and (2) Judicial Technique and Skills. It is reported that in the year 2013, around 20 judges were appointed and 67 qualified to become judge assistants following these trainings. Special training seminars are also held by the Institute for judges, with curriculum dependent on the topic and the organizer of the seminar.95

89 Art. 67.5, 93 & 102, 2015 Constitution.
90 Art. 93 & 56.4, 2015 Constitution.
91 Art. 102, 2015 Constitution.
92 Art. 48, Law on People's Court.
93 Supra note 2, 9.
94 Articles 40, 42, 43, 44, Law on People's Courts.
95 See Supra note 34, 44-47.
In a similar vein, the Legal and Judicial Training Institute of the Ministry of Justice provides short-term training courses on specific themes for different categories of staff in legal and judicial institutions.\textsuperscript{96} More recently, the government established the National Institute of Justice, which is designed for systemic human resource development in the justice sector and for promoting the role of professionals such as lawyers and prosecutors.\textsuperscript{97}

There is no authoritative data on the compensation provided to prosecutors and members of the judiciary. In HRRC's \textit{2011 Rule of Law Baseline Study}, it was mentioned that salaries of judges are the same as that of other government officials, with salary ranges below the country's average per capita income.\textsuperscript{98} Prior assessments made in a study funded by the World Bank indicated that in general, civil service pay in Lao PDR was low and compressed although there remains a high level of interest in civil service jobs. The average regular monthly compensation in the civil service appears lower across all positions than compensation for similar jobs in the private sector or state-owned enterprises. However, civil servants may receive other benefits such as per diem, shorter work weeks, and other non-monetary compensation such as free housing or land allotments.\textsuperscript{99}

**State’s Budget Allocation for the Judiciary and Other Principal Justice Institutions**

Authoritative information on the budget allocated for the judiciary and other principal justice institutions is not readily available. According to Art. 60 of the Law on the People's Court, budget at all levels of the people's courts is formulated by the People's Supreme Court, and a request for approval of the same is submitted to the National Assembly. The budget of the military courts, on the other hand, is allocated through the Ministry of Defence.

**Impartiality and Independence of Judicial Proceedings**

The 2012 Law on Civil Procedure\textsuperscript{100} and the 2012 Law on Criminal Procedure\textsuperscript{101} articulate the requirement for judicial tribunals to be impartial and independent in mediating, trying and deciding cases. According to reports, however, impunity and corruption continued to be problems in the judiciary, with some judges reportedly accepting bribes.\textsuperscript{102} While the judiciary is institutionally differentiated, it is reportedly not independent of the ruling party. Most judges and senior officials from the Ministry of Justice are party members.\textsuperscript{103} The judiciary has been depicted as subservient to the dictates of the party leadership, in particular in the prosecution of dissidents.\textsuperscript{104}

\textsuperscript{96} Ibid, 45 - 47.
\textsuperscript{97} Supra note 86, 18.
\textsuperscript{98} Supra note 25, 128.
\textsuperscript{100} Articles 12, 13, 195, Law on Civil Procedure (2012) (Lao PDR).
\textsuperscript{101} Articles 10 & 19, Law on Criminal Procedure (2012) (Lao PDR).
\textsuperscript{102} Supra note 57, 5.
\textsuperscript{103} Supra note 2, 9.
\textsuperscript{104} Supra note 7, par. 20.
Provision of Lawyers or Representatives by the Court to Witnesses and Victims/Survivors

There appears to be no requirement under the law to provide lawyers for witnesses or victims. Free legal assistance in Lao PDR is provided by the Lao Bar Association, especially in criminal matters or in administrative disputes. With the help of partners such as the Asia Foundation and UNDP, the LBA has seen continued institutional strengthening and professional capacity development over the past years, raising the profile of LBA and lawyers in general.\(^\text{105}\) Currently, seven legal aid clinics have been established in Lao PDR, which are located in Vientiane, Oudomxay, Champasack, Xayabouly and Xiengkhouang. Despite this, there is still a dearth of lawyers in the country (with only 188 members in 2015\(^\text{106}\)), with some provinces not having a single lawyer.\(^\text{107}\) Also, due to several reasons, including the general perception that attorneys cannot affect court decisions, most defendants chose not to have attorneys or trained representatives.\(^\text{108}\)

Safety and Security of the Judiciary, Prosecutors, Litigants, Witnesses, and Affected Public

A judge may use necessary protection measures under Art. 70 of the Law on Criminal Procedure to protect and ensure the safety of witnesses and their close relatives. A security officer is also provided under the law to maintain order and execute the order of the president of the judicial tribunal during court sessions. Moreover, under Articles 21, 23 and 25 of the Law on People’s Court, the People’s Supreme Court, People’s Regional Courts, and Provincial, City and Juvenile Courts have the duty to set out necessary measures on the issue of organization, improvement and administration of courts. Thus, it is submitted that it is entirely within the power and function of the courts to issue administrative orders to ensure adequate access and safety measures in proceedings of courts within their respective jurisdictions.

Specific, Non-Discriminatory, and Unduly Restrictive Thresholds for Legal Standing

Art. 71 of the Law on Civil Procedure provides the requirements for litigants before a civil court. In general, litigants in the case must be persons 18 years old and above and are not insane. Minors or insane persons are required to have the parents or guardians act on their behalf in the case proceedings. Organizations may become litigants in the case if such organizations are registered as legal persons in accordance with the laws of the Lao PDR or the laws of the relevant countries.

Art. 13 of the Law on Criminal Procedure guarantees equality of all citizens before the laws and courts without discrimination on the basis of gender, race, ethnicity, socio-economic status, language, education level, occupation, belief, and place of residence. Further, the investigation-interrogation organization, the office of prosecutor and the court is mandated to “create the conditions to enable the citizens, especially the suspect, accused person, defendant, injured party, civil plaintiff, civil liable person to exercise their rights in accordance with the laws in order to ensure that criminal proceedings are conformed with the facts and are objective.”

\(^{105}\) Supra note 18, 14.
\(^{106}\) Supra note 31.
\(^{107}\) Supra note 86, 18.
\(^{108}\) Supra note 57, 6.
Publication of and Access to Judicial Hearings and Decisions

Art. 96 of the 2015 Constitution requires that cases be conducted in open court proceedings, except where otherwise provided by the laws. In the same vein, Articles 10 and 21 of the Law on Criminal Procedure espouses the open trial of a case as a basic principle, and Art. 15 of the Law on Civil Procedure mandates that trials be conducted openly. In both civil and criminal cases, certain exceptions are acknowledged that necessitate closed hearings, such as cases concerning state secrets, sensitive family matters, human trafficking, or juvenile cases (children under 16). In all cases, the court's decision is required to be read out openly.

Reasonable Fees and Non-arbitrary Administrative Obstacles to Judicial Institutions

Article 10 of the Law on Civil Procedure assures "equality of Lao citizens, foreigners, aliens, persons having no nationality before the laws and the court without discrimination on the basis of gender, races, ethnicity, socio-economic status, languages, education levels, occupation, beliefs, place of residence and others. The people's courts provide facilities to Lao citizens, foreigners, aliens, persons having no nationality, particularly the litigants in the case, to exercise equal rights in defending the case by presenting and providing the information and evidence to the court fully and inclusively in order to ensure that the decision on the case is correct and conformed with the facts and laws." Article 10 of the Law on Criminal Procedure similarly guarantees equality of all citizens before the law and the courts without discrimination.

Assistance for Persons Seeking Access to Justice

Persons seeking access to justice through formal mechanisms can be given assistance through the free legal aid services offered by the Lao Bar Association.

In the Access to Justice survey in 2011, 14.8 per cent of the respondents (20 per cent in Vientiane and 11 per cent in Oudomxay) were aware of legal aid services. Of these, 16.2 per cent said they were available in their area but only 1.5 per cent of those surveyed used the services. Fifteen per cent of respondents said that a mobile legal clinic came to their community and 14.7 per cent availed of their services. Those who had used them mentioned grievances such as domestic conflicts, land disputes, accidents, trespass of animals, or theft of livestock as issues they referred to legal aid.109

General Public Awareness of Pro Bono Initiatives and Legal Aid or Assistance

Awareness of legal aid is certainly on the increase since 2011. According to the LBA, it has provided free legal assistance in more than 1,700 cases over the past three years, with 96 parties receiving free legal aid. In total, it is estimated that 3,000 individuals and legal entities have received assistance from the association's lawyers. The LBA President, Mr. Khamsay Soulinthone expressed that LBA was ready to respond to problems of the poor in ensuring court cases were dealt with fairly, although lawyers still continue to struggle with the implementation of professional rights of defence lawyers in their pursuit of justice for clients.110

110 Supra note 31.
III. INTEGRATING INTO A RULES-BASED ASEAN

Progress towards Achieving a Rules-Based ASEAN Community

On Mutual Support and Assistance on the Rule of Law

Lao PDR became a signatory of the ASEAN Mutual Legal Assistance Treaty in Criminal Matters (AMLAT) in 2004, which provides for mutual legal assistance in investigations, prosecutions and proceedings in criminal matters, subject to the domestic laws of each signatory. It is reported that a draft law on mutual legal assistance will be submitted to the National Assembly for its consideration.

Lao PDR and Vietnam maintain close cooperation and assistance, with continuing programs and technical exchanges in building the state apparatus, legal systems and personnel training. In November 2010, the two countries entered into an agreement for Cooperation in Preventing and Combating Trafficking in Person and Protection of Victims of Trafficking. The two nations have boosted their judicial cooperation in the past years, and have agreed to prioritize training of judicial personnel. In a ceremony marking 30 years of judicial cooperation between the two countries in September 2012, five cooperation agreements between the judicial sectors of the two countries were signed.

On Legislative and Substantive Changes Promoting the Rule of Law

The country promulgated its Extradition Law on 1 August 2012, which provides the principles, rules and remedies for extradition and also names the Office of the People's Supreme Prosecutor as the central authority for extradition. This enforces the extradition treaties it has signed with two other ASEAN countries, Thailand and Vietnam.

On Enactment of Laws relating to the ASEAN Community Blueprints and Similar Plans

Lao PDR is committed to realizing the ASEAN Economic Community. To implement its tariff commitments, the Prime Minister issued the Decree on the Issuance of the Tariff Nomenclature based on the ASEAN

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114 However, there is no available data on the actual programs for judicial cooperation implemented between the two nations.


116 Supra note 112.
Harmonized Tariff Nomenclature 2012 (AHTN 2012) on 10 January 2013, and the country has applied the preferential tariff rates under the ASEAN Trade in Goods Agreement to goods imported from ASEAN countries from January 2015. Likewise, as part of the Lao PDR’s ASEAN commitment to create a trade repository, the Lao Trade Portal, an online platform to boost transparency on trade-related regulations, has been established.

On Integration as Encouraging Steps toward Building the Rule of Law

One of the objectives of the government of Lao PDR in the development of laws by the year 2020 under its Legal Sector Master Plan is to encourage the function and effectiveness of laws for regional and international integration. To achieve this objective, it envisioned the development and improvement of a complete legal framework on civil and economic laws between 2015 and 2020, which must include laws on regional and international integration, implementation of international treaties, and contracts where Lao PDR is a party. Particular attention is enjoined on, among others, the development of a legal framework that harmonizes with ASEAN framework agreements by incorporating these international treaties into a domestic legal framework.

Prospects and Challenges

Challenges to a Strengthened Commitment to the Rule of Law

Despite the developments achieved in the past five years, Lao PDR still faces a lot of challenges in its push to build a rule of law state. Greater participation in legal reform activities is still needed from various stakeholders such as the Ministry of Public Security, and a broader cross-section of civil society, the private sector, and the public. Other constraints include the difficulty to access justice due to limited knowledge in the justice system, limited availability of legal aid and legal professionals, poverty, physical barriers, and lack of judgment enforcement. There is also a need to harmonize the informal with the formal justice system.

Commitments and Plans/Initiatives in relation to ASEAN-wide Commitments and Declarations on Human Rights

In its National Report to the Human Rights Council for the 21st session of the Universal Periodic Review, the Lao PDR government declared that over the past years, the country has contributed to the development of human rights in ASEAN in terms of institutional building and standard setting. It enumerated its activities

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120 Supra note 61, 157, 189, 192.

121 Ibid, 160.

122 Supra note 18, 15-18.
within ASEAN thus: “The Lao PDR actively participates in the work of the ASEAN Intergovernmental Commission on Human Rights (AICHR), the ASEAN Commission on the Promotion and Protection of Rights of Women and Children (ACWC), the ASEAN Committee on Women (ACW), and the ASEAN Committee on Migrant Workers (ACMW). The Lao PDR has contributed to the drafting of the ASEAN Human Rights Declaration, the ASEAN Declaration on the Elimination of Violence Against Women, the ASEAN Declaration on the Elimination of Violence Against Children, among other regional human rights instruments. At the moment, the Lao PDR participates in the drafting process for an ASEAN Instrument on Migrant Workers and an ASEAN Convention on Anti-Human Trafficking. Under the AICHR framework, the Lao PDR is leading in the conduct of Thematic Studies on the Right to Peace, the Right to Education and the Right to Health.”

IV. CONCLUSION

Lao PDR is a country in the process of transition. The Lao government is actively taking steps to improve its legal system and achieve its objective to build a Rule of Law State by 2020, with its commitment towards ASEAN integration as one of its motivations in achieving this objective, as is reflected in its Legal Sector Master Plan. Accordingly, key reforms have been instituted in the past four years in an effort to strengthen rule of law.

Foremost of these reforms is the recent amendment of the Constitution. The 2015 Constitution introduced a two consecutive term limit for the President of the State and government officials. Decentralization of state power and more inclusive governance is also envisioned with the introduction of the Local People’s Assembly. New chapters for the State Audit Organization and the National Election Commission effectively bestows these organizations the status of constitutional bodies, indicating the state’s aspiration for good governance and democratization. Moreover, the “right to life” is incorporated in the Constitution for the first time, in consonance with the ASEAN Declaration on Human Rights and the ICCPR. Rights and responsibilities of the different state organizations are also clarified and defined in the amended Constitution, although the primacy of the National Assembly over executive and judicial branches remained.

The written legal framework has been improved with the introduction of new laws or amendment of existing laws, which includes laws promoting fundamental rights, socioeconomic reforms, and accountability. The Lao legal framework could be said to be complete by the end of 2015, when compared to laws in other ASEAN countries. Furthermore, the adoption of the Law on Legislation clarified the law-making process, emphasizing the requirements of transparency, public participation and consultation, impact assessment, and systemization in the legislative process.

The capacity of the legal sector is gradually being improved with the help of international institutions such as the UNDP. Notwithstanding the scarcity in legal professionals, the number of legal aid clinics established around the country has increased, and an increasing number of persons are now aware and use their services. More recently, a National Institute of Justice has reportedly been established for the systemic human resource development in the justice sector.

123 Supra note 26, par. 14.
124 Supra note 11, ii.
While gains have been achieved, a lot of challenges still exist that hamper the full realization of the country’s ambition to be a rule of law state. There is a critical need for stronger government institutions, improved human capacity, and public understanding of legal rights throughout the country. As can be reflected in the various reports referenced in this update, while laws and rules are in place, its enforcement is another matter as lack of knowledge of and disregard of the law are still prevalent in practice.

Undoubtedly, more work still needs to be done to fully enforce the laws enacted and make the legal framework a “law in action” as opposed to having only “law on the books.” Despite the challenges and constraints, Lao PDR continues to exert genuine efforts towards reforms to achieve its ambition of building a Rule of Law State by 2020. For indeed, rule of law provides the platform that will help Lao PDR achieve its goals of integrating into the 2015 AEC and achieving long-term sustainable development.

125 Ibid, ii.
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