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Rule of Law for Human Rights in the Asean Region: A Base-line Study



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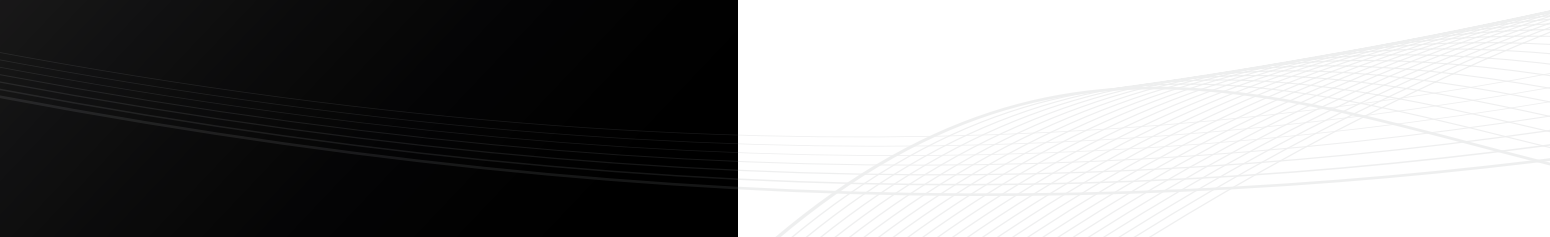
The Asia Foundation



Lao People's Democratic Republic



Lao P.D.R*



Snapshot

Formal Name	The Lao People's Democratic Republic (Lao P.D.R)
Capital City	Vientiane
Independence	on 2nd December 1975
Historical Background	the multi-ethnic Lao People have existed and developed on this beloved land 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 its traditions of ancestors and continuously and persistently fought to gain independence and freedom. Since the 1930's under the leadership of the former Indochinese Communist Party and the present Lao People's Revolutionary party and multi-ethnic Lao People have carried out difficulties and arduous struggles full of great sacrifices until the managed to crush the yokes of domination and oppression of the colonial and feudal regimes and completely liberates country and establishes the Lao People's Democratic Republic and opening the new era-the era of Independence and freedom for the Lao People.
Size	Area: total: 236,800 km ² , land: 230,800 km ² , water: 6,000 km ²
Land Boundaries	total: 5,083 km, border countries: <i>Burma</i> 235 km, <i>Cambodia</i> 541 km, <i>China</i> 423 km, Thailand 1,754 km, Vietnam 2,130 km. Coastline: 0 km (<i>landlocked</i>). Boundaries: N by China, on the E and SE by Vietnam, on the S by Cambodia, on the W by Thailand, and on the NW by Myanmar, with a total boundary length of 5,083 km (3,158 mi).
Population ³	6,368,162 (July 2010 est.) million in early 2010. Most people live in valleys of the Mekong River and its tributaries. Vientiane prefecture had about 740,010 residents in 2008. The country's population density was 27/sq. km
Demography:	(July 2010 est.): 0-14 years: 40.8%; 15-64 years: 56.2%; 65 years and over: 3.1%. Median age: total: 20.7 years; male: 20.4 years; female: 21 years (2010 est.). Population growth rate: 1.712% (2010 est.); Birth rate: 26.57 births/1,000 population (2010 est.); Death rate: 8.28 deaths/1,000 population (July 2010 est.).
Ethnic Groups	49 different ethnic groups were declared as a result of ethnic group reclassification in 2005. The majority of the Laos population is Lao which accounts for 55% of the whole population. 11% are Khmou, 8 % Hmong, Akha, Singkil, Lue, Lamed, Tai, Katu, Triang and Harak, Oy and Brao (Laos population census 2005, National Statistics Centre).
Languages	Lao (official), French, English, and various ethnic languages
Religion	Buddhist 67%, Christian 1.5%, other and unspecified 31.5% (2005 census)
Adult Literacy Rate	73% of the Laos population over 15 can read and write female: 63% (2005 Census). (2009)
Welfare	Laos has social welfare and social insurance system
Gross Domestic Product	\$5.7 billion. Per capita income (2008 est.): \$790.3 [statistics from UN data available at: http://data.un.org/CountryProfile.aspx?crName=Lao%20People's%20Democratic%20Republic]
Government Overview	The administrative system of the Lao PDR consist of the organs of state powers, namely the National Assembly as the legislative branch , the government as the executive branch , the people's courts and the people's prosecutor offices as the judicial branch. The Courts are divided into First Instance, Appellate Instance and Court of Cassation. This division also applies to the Prosecutor's Office. The government is the executive branch of the State. The government administers the implementation of the State's duties in all fields such as political, economic, cultural, social, national defense and security, and foreign affairs. The National Assembly is the representative of the rights, powers and interests of the multi-ethnic people. The National Assembly is also the legislative branch that has the right to make decisions on fundamental issues The judicial branch of the State is the People's Courts which consist of: The People's Supreme Court; the appellate courts; the people's provincial courts and city courts; the people's district courts; and the military courts. In the event that it is deemed necessary, the National Assembly Standing Committee may decide to establish a special court. The People's Supreme Court is the highest judicial organ of the State.

Human Rights Issues	human trafficking-women and children for trades, children prostitute and Family violence.
Membership in International Organisations	Laos is a member of many international organisations: ACCT, ASEAN, AFTA, ESCAP, FAO, G-77, World Bank, ICAO, IDA and others
Human Rights Treaties Ratified ⁵	Laos is a signatory to six Human Right treaties ratified namely: CERD, ICESCR, ICCPR, CEDAW, CRC, OP-CRC-SC, CRPD

Overview

Lao PDR is ruled by the Lao People’s Revolutionary Party (LPRP). It has around 65,000 members and is the country’s only political party. It is governed by a central committee, and headed by the nine-member Politburo, which formulates policy making for virtually every aspect of public life. The Party Congress serves as the highest authority, which serves as a gathering of party cadres that meets to ratify decisions made by the leaders.

The LPRP assumed power from the former Royal Lao regime in 1975 and established the Lao People’s Democratic Republic (Lao PDR). Upon coming to power, the Lao government did not promulgate new laws, and the only piece of legislation in the State was the Prime Minister’s 053-decree on arrest and punishment in 1976. The government adopted the first constitution in 1991. Under the 1991 Constitution, the president was the head of the state and worked on the behalf of the people¹ and under the leadership of a single party — the Lao People’s Revolutionary Party (LPRP). Although the 1991 Constitution contained only a limited notion of the rule of law,ⁱⁱ Chapter III of the Constitution provided for the protection of certain fundamental rights.ⁱⁱⁱ

To further enhance the State’s commitment towards the rule of law, the Constitution was amended in 2003. The 2003 Constitution affirms that Lao PDR is a people’s democratic state where all powers belong to the people and are exercised by the people and for the interest of the multi-ethnic people of Laos. It provides that the rights

of the people are exercised and ensured through the functioning of the political system with the LPRP as its leading nucleus.^{iv} Pursuant to Chapter IV (Articles 34 – 51) of the 2003 Constitution, the fundamental rights and duties of the Lao citizens, including civil, political, economic, social, and cultural rights, are protected.^v

The 2003 Constitution recognises the rule of law and provides for the separation of powers by clearly defining the role of executive, legislative and judicial branches. These branches of the State are respectively defined in Article 52, Chapter V (the national assembly), Article 69, Chapter VII (the Government), and Article 79, Chapter IX (the Judicial Organs) of the Constitution.^{vi}

Although the 2003 Constitution declares the State’s commitment to rule of law and the separation of powers, translating these principles into institutional reality presents a challenge in a single-party state. Under the Constitutional arrangements, the LPRP practically rules all of branches of the State. The members of the government are all members of the Party, making the National Assembly what some observers have called a simple “room of recording” under the supervision of the Party.^{vii} The Party has full power in directing all the sectors of the life of the country: mainly the “Lao Front for National Construction”, the “Lao Women Union”, the “Lao Youth Revolutionary”, the “Federation of the Lao Trade Unions”.^{viii} The Party controls all level of government from the central State to the smallest village.^{ix}

A. Country's practice in applying central principles for the rule of Law for Human rights.

1. The government and its officials and agents are accountable under the law

The ruling Lao People's Revolutionary Party (LPRP) has been in power for the past 30 years,^x and the Constitution is its source of authority. Articles 3 and 5 of the 2003 Constitution affirm that the Party is a "leading nucleus" and "all other state organisations" function by a process of "democratic centralism." In practical terms, the "leading role" reserved to the LPRP under the Constitution is interpreted to authorise it to override the judiciary and other government institutions if necessary.^{xi} Thus, while there is a formal separation of powers in the Lao constitution between the National Assembly (legislature), the executive, and the judiciary, all branches of the State are functionally subordinate to the LPRP.^{xii} As a result, the separation of powers and concomitant checks and balances provided for in the Constitution appear to exist in tension with the provisions of the Constitution that centralise political authority under one roof.^{xiii}

Although no Constitutional provision explicitly states that the government is under the law, Article 85 provides that decisions reached by the people's courts, when final, must be respected by the LPRP and State organisations. The tension in constitutional provisions noted above may present practical problems in implementing the accountability of the government under the law to the extent that the functional separation of powers between the executive and the judiciary may be blurred.^{xiv} Most judges and officials of the ministry of justice are LPRP members. ^{xv} The Office of the Public Prosecutor (OPP) is also an arm of the Party.^{xvi}

Article 64 of the 2003 Constitution provides for the immunity of members of the National Assembly (NA), who cannot be prosecuted in court or detained without the approval of the NA, or the National Assembly Standing Committee (NASC) during the recess of the NA. This immunity extends to cases involving manifest or urgent offences, as Article 64 goes on to provide that in such cases, the organisation which has detained the member of the NA must immediately report to the NA or to the

NASC during a recess of the National Assembly for consideration and decision on further action concerning the member, and investigations shall not be conducted in such a manner as to prevent a prosecuted member from attending NA sessions. The NA thus retains authority to determine when its members shall be held subject to the law rather than assigning this task to one of the other branches of government, following the separation of powers principle.

While some NGOs have argued that this arrangement in practice undermines public confidence in accountability under the law, it has also been suggested that governmental efforts in legal reform, particularly in the areas of economic affairs and land ownership, have helped to raise confidence in judicial institutions.^{xvii} Improvements to the legislative process are currently being supported by a UN joint programme with the NA. As the UN Country team in Laos has observed, "the programme seeks to enhance the effectiveness and efficiency of the National Assembly to further strengthen its legislative, oversight and representational capacities through initiatives involving parliamentarians, the parliamentary committees, committee support staff, and the office of the National Assembly".^{xviii}

Can the fundamental law be amended or suspended only in accordance with the rules and procedures set forth in the fundamental law?

The 2003 Constitution authorises the National Assembly to adopt and amend the existing laws, including the Constitution itself.^{xix} Article 97 of the 2003 Constitution provides that only the NA has the right to amend the Constitution, and any amendment to the Constitution requires the affirmative votes of at least two-thirds of the total number of the NA members. The practical effect of this provision must be seen in relation to the provisions of the Constitution that establish a one-party state. In addition to the broad powers inherent in the legislature to amend the Constitution, there is also no constitutional court or similar institution to review the constitutionality of laws or decisions made by the government.^{xx} The Standing Committee of the NA decides whether or not a law is constitutional or an interpretation is valid.^{xxi} This again indicates the tension between the constitutional provisions for the separation of powers and the structural arrangements that tend towards a unitary state apparatus.

Are government officials and agents, including police and judicial officers, accountable under the law for official misconduct, including abuse of power for private gain acts that exceed their authority and violation of fundamental human rights?

Abuses of power and authority are punishable under the Penal Code, and heavy fines are imposed for violations. Offenders may be punished and imprisoned for three to five years and fined from 2 million kip to 7 million kip (US\$240 to US\$840).^{xxii} The Penal Code provides for punishments for civil servants who abuse their power or authority, but does not appear to cover other Party members.

2. Law and procedure for arrest, detention and punishment are publicly available, lawful and not arbitrary; and preserve the fundamental rights to physical integrity, liberty and security of persons and procedural fairness in law.

A variety of provisions, rather than one comprehensive document, relate to the rights of persons to be secure from arbitrary arrest, detention, or punishment. In the 2003 amendments to the Constitution, Article 29 was inserted, and this has been hailed as a positive development, as it provides guarantees against arbitrary arrest and represents the ongoing evolution towards the rule of law.^{xxiii}

Article 29 provides that “[t]he right of Lao citizens in their bodies and houses are inviolable. Lao citizens cannot be arrested or searched without warrant or approval of the authorised organisations, except in the cases as prescribed by law.”

Article 5 of the Criminal Procedure Law implements the Constitutional guarantees of Article 29. It prohibits any arrest, detention or building search without an order from a public prosecutor or from a people’s court, except in the case of an on-the-spot arrest or in the case of urgency. It goes on to provide that where an arrest or detention has been effected in a manner contrary to law, or constitutes a deprivation of liberty beyond the period provided for in the laws or in a court decision, the public prosecutor shall issue an order to release that person immediately. Further, any individual who arrest, detains or conducts any search of buildings or persons in contravention of the laws shall

be subject to criminal proceedings and shall be criminally liable.^{xxiv} However, the procedural safeguards for making arrests can in practice be revoked for “urgent” cases.^{xxv}

Even so, the law clearly provides for statutory limits for detention, both for detention without being charged, and for detention after formal charges have been brought. Article 61 of the Criminal Procedure Law provides that a suspect may be detained for up to forty-eight hours to allow for further investigations to be conducted. The law provides for a safeguard by requiring the investigating officers to notify the Office of the Public Prosecutor (OPP) of the arrest and detention within twenty-four hours from the time of the detention. Where there is no reliable information to issue an order to open an investigation, the suspect will be released.

If reliable information is found and it is deemed necessary to remand the suspect, the head of the investigation organisation shall issue an order to open an investigation and request an order of remand from the public prosecutor. Upon receiving such a request, the OPP will have up to twenty-four hours to decide whether to release or to charge and remand the detainee.

If the charged person is to be remanded, the safeguards in Article 65 of the Criminal Procedure Law will take effect. “Remand” is defined in that section as a “temporary” detention for the purpose of pre-trial investigation. The maximum period of remand is one year for “major” offences and three months for “minor” offences.^{xxvi} Concerns remain with regard to these detention periods pending trial.^{xxvii} While there have been reports that the statutory maximum periods were not adhered to in practice, further empirical study is necessary before conclusions can be drawn. It bears mentioning that the OPP has reportedly made efforts to ensure that all prisoners were brought to trial within the one-year limit.^{xxviii}

In response to reports of ill-treatment of persons in detention, about treatment and conditions of pre-trial detention, the Laos government has stated that acts of torture and mistreatment are considered criminal offences and that the Criminal Procedure Law does not allow the inhumane treatment of detainees in any circumstances.^{xxix} The Government has further stated that

measures had been taken to improve prison conditions, and that training had been conducted for prison officers and related personnel on the United Nations minimum standards for the treatment of prisoners.^{xxx}

The fundamental rights declared in the Constitution do not include criminal procedural rights. Article 8 of the Criminal Procedure Law provides for the presumption of innocence, and is supported by Article 7 which provides that an accused person shall not be forced to bring evidence to prove his innocence. Some commentators have observed that these protections are often not reflected in actual trial practice. Empirical study through trial monitoring and maintaining case databases would be necessary to provide accurate data for generalisations about the conduct of trials.^{xxxi}

With regard to legal representation for accused persons who cannot afford counsel, the Lao Bar Association has established legal aid programs in Vientiane, Champasak and Oudomsay.^{xxxii, xxxiii} It has been reported, however, that most defendants do not choose to have attorneys or trained representatives.^{xxxiv} Again, in the absence of government statistics, empirical study would be required to determine the percentage of trials in which this is the case.

Articles 51 and 59 of the Criminal Procedure Law, which respectively provide for searches and other coercive measures, are framed in broad terms, giving rise to concerns about the potential for abuse of these provisions.^{xxxv}

3. The process by which the laws are enacted and enforced is accessible, fair, efficient and equally applied.

Are legislative proceedings held with time notice and are open to the public?

The National Assembly ("NA") convenes its ordinary session twice a year in an open session.^{xxxvi} Attendees include members of the NA, the members of the government; the President of the People's Supreme Court; the Supreme Public Prosecutor; representatives of Party and State organisations, the Lao Front for National Construction, mass organisations, and social organisations; and representatives from different social

strata. Participants who are not members of the NA may be authorised to provide opinions and comments to the session but shall have no voting rights.

Are official drafts of Laws and transcripts or minutes of legislative proceeding made available to the public on a timely basis?

Although the Law on the National Assembly provides for consultation, there have been reports that this does not occur in practice; that draft laws and transcripts of minutes of legislative proceeding are not published and only the Ministry of Justice routinely publishes its decrees and some of the other ministries it deems important.^{xxxvii} Empirical studies have to be carried out to determine whether public consultation is routinely embarked on, or whether it occurs for only selected draft laws.

Are the threshold for legal standing before the court clearly specified, not discrimination and not unduly restrictive?

The Criminal Procedure Law defines principles, regulations, and measures on criminal procedure aiming to deal with criminal cases correctly and with justice, to eliminate and prevent offences, to protect the legitimate rights and interests of citizens, to ensure social security and public order, and to create conditions for the multi-ethnic people to participate in the protection and development of the nation.^{xxxviii}

Are judicial hearings and decisions public and ready available to the effect party?

Laotian law provides that all trials in the courtroom shall be conducted openly, except for cases that concern secrets of the State or society, the offences of individuals who are from fifteen years old but under eighteen years old, or some offences that concern the spousal relationship or customs and traditions that shall be conducted in a closed-door hearing. In all cases, the court's decision must be read out openly.^{xxxix}

Are all persons equal before the Law and entitled without discriminatory equal protection to the law?

The Lao PDR is pursuing a policy of building a Rule of Law State and of ensuring a fair trial. The related bodies have taken appropriate measures to ensure the right to equality of the citizens before the law and the court in accordance with the Constitution and laws. The right to a fair trial is ensured in the justice system according to the relevant laws, especially the Law on Criminal Procedure and Law on Civil Procedure. The Lao Bar Association is being strengthened to provide legal aid to ensure a fair trial.^{xi} Some minority ethnic groups, however, have questioned whether equality before the law is consistently applied.^{xii}

Are the laws effectively, fairly and equally enforced, are persons seeking access to justice provided proper assistance?

The accused person in a criminal case and the parties in a civil case have the right of action to litigate their matters personally or to have a lawyer or a legal representative to protect their rights and benefits in proceedings.^{xiii} In theory, it is the duty of the government to provide legal counsel to the accused. However, as stated earlier, there have been reports that most defendants do not choose to have attorneys or trained representatives.^{xiii} It is unclear why this is so, and empirical studies need to be done to determine the cause of this, and of the percentage of cases in which this is the case. As stated earlier, there have been developments in the legal aid framework.

An accused person may defend himself or have a lawyer to provide him legal assistance.^{xiv} Article 28 goes on to provide *inter alia* that the accused has a right to be informed of the charge made against him and to ask to see documents pertaining to his case.

The Law on the People's Court provides for other cases where legal representation must be provided. Advocates must represent the accused or defendant if they are a child under 18 years of age, a deaf or mute person, an insane or mentally ill person, someone who does not know the Lao language, or someone who will receive the death penalty. If such an accused person or defendant has no protector, the people's court is required by law to appoint a lawyer.^{xv} Arrest shall, in every case, be notified to the person's family, [and to the] office, organisation, or

enterprise to which the concerned individual is attached within twenty-four hours, and [they shall also be notified of] his place of detention if it will not hinder the case proceedings.^{xvi}

As the UN Country team in Laos has observed, "the Lao legal system is the practice of appealing against court decisions to the National Assembly, public prosecutors and even local authorities, long after the appeal period has ended. Overall, the rate of judgment enforcement remains very low in spite of a recent Law on Judgment enforcement".^{xvii}

Do the Laws provide for adequate, effective and prompt reparation to victim of the crime or human rights violation for harms suffered? Do these victims have access to relevant information concerning violations and reparation mechanism?

When the police obtain information of victims of crimes, and especially of victims of human trafficking, they are required by law to cooperate with the authority concerned to assist victims and send them to places of safety as defined in Article 28, paragraph 3, 4 and Articles 21-26 of the Law on the Development and Protection of Women and the Law on Criminal Procedure.^{xviii}

Special statutory provisions apply to victims who allege abuse by state agents. They have "the right to bring a petition or claim regarding the performance of duties by the investigation organisations, the Office of the Public Prosecutor, the people's courts, or any person in such organisations who has contravened the laws".^{xix} Article 18 of the Criminal Procedure Law goes on to provide that the perpetrators shall thus "restore the dignity of, and shall compensate for the benefits lost by, the injured party. Any civil servant or individual who violates the laws shall be subject to disciplinary measures or legal proceedings depending on the severity of the offence".

Under the Law on the Development and Protection of Women,^l women who are abused are entitled to the right to ask for help from people nearby, the right to protection and care for their personal safety, right for shelter and reparation.^{li} Although Article 25(6) of the law provides that victims of trafficking may not be prosecuted under the offence of "prostitution" or "illegal migration," there are

allegedly no mechanisms in place to fully implement the law's protections. This arises in part due to lack of capacity in distinguishing trafficking and migration cases with the result that victims of trafficking may not be informed of their rights or resources available to them and may instead wind up in detention.^{lii}

Do the laws provide for and do the prosecutors, judges and judicial officers take measures to minimise the inconvenience to witnesses and victims (and their representative), protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation as that their family and witness before, during and after judicial, administrative, or other proceeding that affect their interest?

Under Article 32 of the Criminal Procedure Law, a witness has the right to "[r]eceive protection under the laws and regulations from any threat to life, health, or property because of giving testimony".^{liii} Yet, there does not appear to be an institutionalised victim or witness protection mechanism. Article 44 of the Law on the Protection of the Rights and Interests of Children ("PRIC") specifically provides that children who are victims and witnesses have the rights *inter alia* to have their privacy protected; to be "protected from coercion, threat, and all types of danger, including their family members"; and to have their dignity and human value respected. In light of the special vulnerability of children, Article 45 of the PRIC provides that interviews of children who are victims and/or witnesses should be conducted by "specially trained investigators and public prosecutors in collaboration with social workers" to ensure that "sensitive and friendly methods" are used towards the children.

4. Justice is administered by competent, impartial, and independence judiciary and justice institutions.

Are prosecutors, judges and judicial officers appointed, re-appointed, promoted, assigned, disciplined and dismissed in a manner that fosters both independence and accountability?

The President of the People's Supreme Court is appointed or removed by the National Assembly based on the recommendation of the President of the State.^{liv} The vice-presidents of the People's Supreme Court are appointed or removed by the President of the State, based on the recommendation of the President of the People's Supreme Court.^{lv} However, Judges can only be arrested or investigated upon the approval of the Standing Committee of the National Assembly.^{lvi}

To combat corruption, the United Nations General Assembly adopted the United Nations Convention against Corruption (UNCAC) in 2003. The UNCAC obliges State Parties to implement an extensive range of anti-corruption measures that focus on the legal framework and the core anti-corruption institutions and practices. The Lao PDR was among the first countries to sign the convention; it then ratified the UNCAC in 2009.^{lvii}

A number of Constitutional amendments passed in 2003 modified and enhanced the judiciary. New tier of courts, the Appellate Courts, was established. Judges are now appointed, transferred and dismissed by the National Assembly Standing Committee on the recommendation of the President of the Supreme Court (formerly a government responsibility). Similarly, the administration of local courts (formerly the responsibility of the Ministry of Justice) now resides with the Supreme Court. Both the Supreme Court and Supreme People's Prosecutor report to the National Assembly.^{lviii}

At present, there are 386 judges in Lao PDR, of which 14 are Supreme Courts judges, 34 are regional court judges, 134 are the provincial and Municipal Courts judges and 138 are Subordinated courts' judges (area courts).^{lx} There is no known data on the number of judges in the Appellate Courts. Village mediation units have been strengthened by the development and issuance of regulations concerning their organisation and operation. These units (currently operating in approximately 90 percent of all Lao villages) provide the option of settling disputes at a village level. This is particularly important, as in many instances such units are the first and only recourse to settlement of disputes for the general population.^{lx}

A person who becomes a judge of the people's court of the Lao PDR must: be a Lao citizen of 25 years of age, have obtained law degree or legal professional skills, have strong political commitment, have good behaviour, be patriotic, safeguard the national interests possess good ethics and be in good health.^{lxi} Article 55 of Law on the People's Court does not give specific criteria for those who become judges at each court level. After all levels of the local courts started to work under the supervisions of the People's Supreme Court in 2003, the People's Supreme Court has played an important role in considering the qualifications and criteria of a specific person proposed to be a judge. After considering the abilities and conditions of such candidates, the president of the court sends a list of the candidates to the People's Supreme Court for consideration. Then, if the candidates meet the criteria to become a judge, the People's Supreme Court will propose the list of candidates to the National Assembly Standing Committee to consider and appoint them as judges.^{lxii}

The Supreme Public Prosecutor is appointed and removed by the National Assembly on the proposal of the President of the State.^{lxiii} Each deputy supreme public prosecutor is appointed and removed by the President of the State, based on the proposal of the Supreme Public Prosecutor.^{lxiv}

Do prosecutors, judges and judicial officers receive adequate training, resources and compensation commensurate with their institution responsibility? What percentage of the state budget allocated for their judiciary and principles justice institution, such courts?

The budgets of the People's Supreme Court and the appellate courts are formulated by the People's Supreme Court and proposed to the government, which in turn submits them to the National Assembly for consideration. The budgets of the people's provincial, city, district, and municipal courts are formulated by each people's provincial, city, district or municipal court and proposed to their respective local administrations for consideration. The budgets of the high military court and regional military courts are formulated by such courts and proposed to the Ministry of National Defense, which in turn submits them to the government after coordination with the People's Supreme Court.^{lxv} The salary of the judges is the same as that of other government officials,' which is pegged to their qualifications. The salary ranges from \$70-120 per month, which is below the country's average per capita income.^{lxvi}

Authoritative information regarding the budget, frequency and scope of judicial training is not readily available.

Are judicial proceedings conducted in impartial manner and free of improper influence by public official or private cooperation?

The People's Court Law articulates the principle of judicial independence, providing that in considering and deciding a case, judges shall be independent and comply with the laws only.^{lxvii} As noted above, however, the Constitution establishes a governmental structure whereby the separation of powers exists alongside provisions which blur or undermine that separation. The continued weak separation of powers between Party and governmental institutions creates a legal basis for potential infringement of judicial independence.

Lao PDR has many laws prohibiting the act of bribery, such as the “Law on Anti Corruption” which was promulgated in 2005. However, they have not always been effectively applied. A report of the Lao PDR anti-corruption committee, a consultative body, found that in 2006-2008 the state treasury lost 120,769 billion kip (Lao currency or \$19.1 million) due to widespread corruption.^{lxviii} The part of this amount involving corruption in the judiciary was not specified.

Are lawyers, representatives provided by courts to the accused persons, witness and victim competent, adequately trained and sufficient number?

There are about 125 lawyers in the Lao PDR, of which 27 were trainee lawyers.^{lxix} As the average lawyer’s income per month is \$50-100, most Lao lawyers have to rely on the contributions of NGOs to supplement their income.^{lxx} After graduating with a law degree, lawyers undergo training for 3-6 months. Most Lao lawyers are relatively young and inexperienced.^{lxxi} Therefore, expertise about laws, legal concepts and judicial processes is very limited and legal drafting skills remain weak.^{lxxii} A new initiative to strengthen the Lao Bar Association (LBA) and thereby the legal profession came into action in 2004.^{lxxiii}

Due to the way in which the Lao judiciary has developed, many judicial actors have a limited legal background.^{lxxiv} Continuing legal education is provided by various legal and judicial institutions such as the Ministry of Justice, the Office of the Public Prosecutor and the Supreme Court.

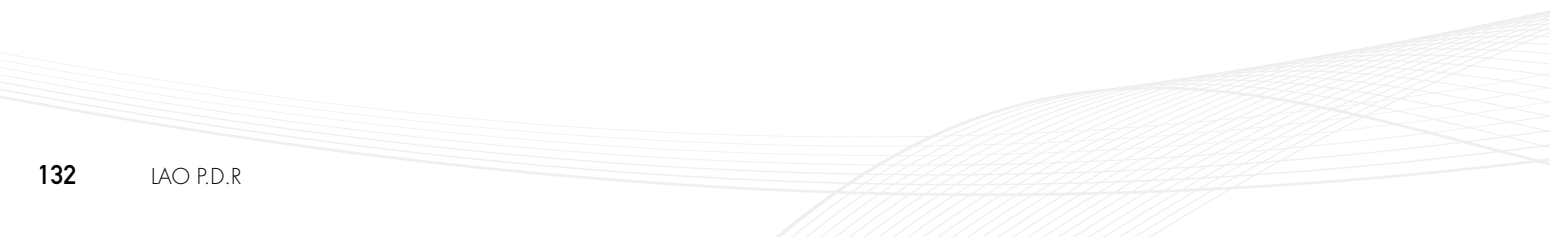
In 2009 the Government finalised the country’s first legal sector plan ‘Master Plan on Development of the Rule of Law in the Lao PDR toward the year 2020’ (LSMP). The Ministry of Justice provides legal training through the Legal and Judicial Training Institute (LJTI). However, in practice the LJTI only organises relatively few training per year (in average 2-3 trainings per year). There have been discussions within the Government to use the LJTI as the focal point for coordinated training among the various legal and judicial training institutions. However, this has not yet been implemented.^{lxxv}

Endnotes

* This report is prepared by the HRRC research team in consultation with in-country expertise

- i. Art 52 of the 1991 Constitution.
- ii. See e.g. Art 6 of the 1991 Constitution.
- iii. The report on law implementation presented by the president of the people's supreme court to the national Assembly on 25th August 2009, p. 12.
- iv. Constitution of Laos , amended 2003, art, 3, Available at http://www.na.gov.la/index.php?option=com_content&task=view&id=27&Itemid=51
- v. Human rights council, working group on the Universal periodic review, eight session ,Geneva 3-4 May 2010, p. 4.
- vi. The Constitution Amended 2003.
- vii. 30th Anniversary of the End of the Vietnam War, Human Rights in Cambodia, Laos, Vietnam: Report prepared by Forum Asia Democracy for the Hearing on Cambodia, Laos & Vietnam European Parliament Subcommittee on Human Rights Brussels, 12 September 2005.
- viii. Bertelsmann Transformation Index 2010, Laos Country Report, p 2, available at: http://www.bertelsmann-transformation-index.de/fileadmin/pdf/Gutachten_BTI2010/ASO/Laos.pdf
- ix. *Id.*
- x. *Supra* note vii.
- xi. Internal Displacement Monitoring Centre, Lao PDR, Arbitrariness and the Weak Rule of Law Remain the Norm in Laos, May 2004, available at: [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/8ADFD0959D668251C12576F8004B707F?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/8ADFD0959D668251C12576F8004B707F?OpenDocument)
- xii. *Supra* note viii, p. 9.
- xiii. *Id.*
- xiv. *Supra* note vii.
- xv. *Supra* note viii, p. 9.
- xvi. *Supra* note vii.
- xvii. *Id.*
- xviii. Contribution by the United Nations Country Team in Laos PDR for the Universal Periodic Review, Eighth Session, 2010, p. 4.
- xix. Art 53(1) and (2) of the 2003 Constitution.
- xx. *Id.*, p. 9.
- xxi. Art 56(2) of the 2003-Constitution.
- xxii. Arts 142 and 143 of the Penal Law, available at: <http://www.mfa.gov.sg/vientiane/Laws/Penal%20Law.pdf>
- xxiii. *Id.*
- xxiv. The Law on criminal procedure, 2004, art 5, available at [http://www.na.gov.la/docs/eng/laws/pub_adm/Criminal%20Procedure%20&%20Decree%20\[2004\]%20Eng.pdf](http://www.na.gov.la/docs/eng/laws/pub_adm/Criminal%20Procedure%20&%20Decree%20[2004]%20Eng.pdf)
- xxv. IDMC, Arbitrariness and the Weak Rule of Law Remain the Norm in Laos.
- xxvi. Article 65 of the Law on Criminal Procedure.
- xxvii. *Supra* note xviii.
- xxviii. 2010 Human Rights Report: Laos, Bureau of Democracy, Human Rights and Labour, p. 4.
- xxix. Draft Report of the Working Group on the Universal Periodic Review Lao PDR 2010, p. 4.
- xxx. *Id.*
- xxxi. *Id.*
- xxxii. The website of the legal aid program is found at <http://www.laobar.org/legal.php>
- xxxiii. *Supra* note xxviii, p. 5.
- xxxiv. *Id.*
- xxxv. Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 , Lao People's Democratic Republic, May 2010, p. 4.

- xxxvi. The Law on National Assembly, 2006, Art 9, para 1.
- xxxvii. Shadow Report on Human Trafficking in Lao PDR: The U.S Approach v. International Law," Anne Gallagher, January 2007, Asian and Pacific Migration Journal 16.1.
- xxxviii. The Law on Criminal Procedure Amended 2004, Art. 1.
- xxxix. *Id*, Art. 13.
- xl. Human right council working group on the universal periodic review eight session, Geneva, 3-14 May, 2010, p. 10.
- xli. The leader of an un-identified ethnic group attended the seminar on the national ethnic group: Human right perspective held by the ministry of MOFA, Justice and Lao Front for Nation construction dated 28/2/-1 /3/22011 at the National culture Hall.
- xlii. The Law on People' Court, Art. 10.
- xliii. *Id*.
- xliv. The Law on Criminal Procedure, Art 7, 28.
- xlv. *Id*.
- xlvi. The Law on Criminal Procedure, Amended 2004, Art. 63.
- xlvii. *Supra* note xviii.
- xlviii. the Law on the Development and Protection of Women, Art. 20.
- xliv. The Law on Criminal Procedure, Amended 2004, Art. 18.
- l. *Supra* note xxxvii.
- li. *Id*.
- lii. *Id*, noting that verification of cases is extremely difficult as case records are kept at each court and not aggregated or stored centrally.
- liii. The Law on Criminal Procedure, Amended 2004, Art. 32, para 3.
- liv. The Law on People's Court, Art. 20.
- lv. *Id*, para 2.
- lvi. *Id*, Art. 54.
- lvii. UNODC available at: <http://www.unodc.org/laopdr/en/Overview/Rule-of-law/Anti-corruption.html>
- lviii. UN Common Country Assessment CCA Lao PDR 2006, p. 8.
- lix. The Summary of the People's Supreme Court 2009-2010, p. 5.
- lx. *Supra* note xviii.
- lxi. The People's Court Law, Art. 3.
- lxii. Interview with the ex-judge of the People Supreme Court of the Lao PDR, 7th August, 2010.
- lxiii. The Law on Public Prosecutor, Art. 25.
- lxiv. *Id*, Art. 27.
- lxv. The Law on People's Court, Art. 62.
- lxvi. The Summary of the People's Supreme Court 2009-2010.
- lxvii. The People's Court Law, Art. 11.
- lxviii. The report on anti corruption movement in Lao PDR 2006-2008 and future guideline plan 2009-2010 conducted by the committee on Anti corruption of Lao PDR dated on 05 January 2009.
- lxix. The summary of the Lao Bar Association on function implementation dated 20 August 2010, p. 2.
- lxx. *Id*.
- lxxi. An interview with Mr Nuanthong Xayvongsa, a lawyer of the Lao PDR on 16th April 2010.
- lxxii. UNODC, Lao PDR, available at: <http://www.unodc.org/laopdr/en/Overview/Rule-of-law/Criminal-Justice.html>
- lxxiii. *Supra* note xviii, p. 9.
- lxxiv. *Id*.
- lxxv. Strengthening Legal Education at the Faculty of Law and Political Science, National University of Laos, 2006.



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