

# MEASURES TO FREEZE, CONFISCATE AND RECOVER PROCEEDS OF CORRUPTION, INCLUDING PREVENTION OF MONEY-LAUNDERING

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## I. COUNTER-CORRUPTION ORGANISATION

### A. Status and Role

The counter-corruption organisation is a State organisation that has the role to prevent and counter corruption within the country by assigning to the State Inspection Authority at central level and state inspection authorities at provincial level to implement [this task]. The counter-corruption organisation is an investigation organisation and performs its duties independently.

### B. Organisational Structure

The organisational structure of the counter-corruption organisation consists of:

1. [Counter-corruption organisation] at central level;
2. [Counter-corruption organisation] at provincial level.

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

The counter-corruption organisation at the provincial level has a status equal a provincial division. The head of the counter-corruption organisation at the provincial level is appointed or removed by the head of the counter-corruption organisation at the central level, after coordination with the provincial governor, city mayor, or chief of special zone.

The supporting mechanism of such organisation shall comply with general regulations on public administration.

### C. Rights and Duties of the Counter-Corruption Organisation at Central Level

The counter-corruption organisation at the central level has the following main rights and duties: policies, directives, plans, laws, regulations, and measures

1. To study relating to the prevention and countering of corruption, and thereafter to submit to the government for consideration;
2. To direct and inspect the implementation of activities relating to the prevention and countering of corruption within the entire country;
3. To conduct activities to prevent and counter corruption among government staff within the entire country, especially government staff under the supervision and management of the central level and other government staff of organisations at the central level;
4. To conduct investigations into corruption by using measures that are defined in the law on criminal procedure;
5. [During the period] when the inspection has yet to be completed, to propose the temporary suspension [of a person under inspection] from his position or duty or [to propose that a person under inspection] not be removed, appointed, or have his job swapped;

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6. To liaise, coordinate, and cooperate with concerned sectors at the central and local level to perform its rights and duties;
7. To consider, decide, and use measures against the inspected person as provided in the laws;
8. To summarise the results of activities for the prevention and countering of corruption, and then to periodically report to the Prime Minister and the National Assembly Standing Committee;
9. To exercise such other rights and perform such other duties as provided by laws and regulations.

#### **D. Rights and Duties of Counter-Corruption Organisations at Provincial Level**

Counter-corruption organisations at the provincial level [each] have the following main rights and duties:

1. To implement policies, directives, plans, laws, regulations, and measures relating to the prevention and countering of corruption;
2. To conduct activities to prevent and counter corruption among government staff who are within the scope of its responsibility and are not under the supervision of the [counter-corruption organisation at the] central level;
3. To conduct investigations into corruption by using measures that are defined in the law on criminal procedure;
4. [During the period] when the inspection has yet to be completed, to propose the temporary suspension [of a person under inspection] from his position or duty or [to propose that a person under inspection] not or have his job swapped; be removed, appointed,
5. To liaise, coordinate, and cooperate with concerned sectors to perform its rights and duties;
6. To consider, decide, and use measures against the inspected person as provided in the laws;
7. To summarise the results of activities for the prevention and countering of corruption, and then to periodically report to the head of the counter-corruption organisation at the central level, the provincial governor, the city mayor, the chief of special zone, and the chairman of the members of the National Assembly in such constituency ;
8. To exercise such other rights and perform such other duties as provided by laws and regulations

## **II. OVERALL ANTI-CORRUPTION STRATEGY OF LAO PDR**

Over recent years the implementation of new policies has achieved great results; the economy has developed; foreign relations have greatly improved; there has been an increase in domestic and foreign investment; and the GDP has increased by 7%. Under Lao PDR's comprehensive reform, the society has stabilized and striving to reach the national goals of: "rich people, a strong nation, and an equal and civilized society". We are now in a position where we can reduce unnecessary public expenditure, improve government service delivery to citizens and improve the living conditions of the population. However, achieving our national goals remains difficult. There are still many obstacles to overcome. Laos has just entered the free market economy, from a traditional centrally planned economy (which is characterized by a severe lack of laws). Because of the previous economic model and simultaneous lack of regulations, the country has become a breeding ground for corruption. The government understands that corruption poses a major threat to Lao PDR's poverty reduction plan and the nation's development. Corruption has caused major losses of state properties and created a general disrespect from the public towards the government.

### **A. National Strategy**

Recognizing the damage caused by corruption, the government has issued various degrees, orders, regulations, instructions and law in order to prevent and eliminate malpractice within government offices.

## 1. Legal Instruments

At the national level, three of the priority key measures taken are: issuing rules and orders (i.e. the law on anti-corruption in 2005), establishing anti-corruption authorities and the public administration reform.

Important legal instruments have been adopted:

- ◆ Law on anti-corruption in 2005  
This law has been applied as a basic legal instrument for combating and preventing fraud and corruption.  
The Law on Anti Corruption clearly regulated measures for prevention of corruption. However, the implementation of this law is not effective. The coordination between the prosecutor offices and the state inspection authority at the central and local level is very poor. Only few and small cases of corruption reach the court. Many cases are solved by using the disciplinary measures.
- ◆ Law on State Inspection in 2007  
Law on State Inspection (2007) is newly adopted by the National Assembly and is an instrument for the implementation of the activities of State Inspection Authority to successfully carry out the inspection and investigation of corruption, including the creating rule on asset re-declaration.
- ◆ Party resolution on 14 prohibitions for high ranking officials- outlining activities that they must not be involved in corruptions; defining their responsibilities; and, specifying the accountability that falls under their political leadership.
- ◆ Set of civil service regulations clearly defined certain practices to combat corruption.  
For the rest of civil service a set of civil service regulations, clearly defined certain practices to combat corruption. For example, Article 32 states that civil servants can not partake in any business activities that represent a conflict of interest (i.e. a civil servant's member running a business in the sector under the civil servants management).
- ◆ The Prime Minister's Instruction No 016/PM (31 August 1998) on more thrifty and cost effective practices.  
The Prime Minister's Instruction No 016/PM(31 August 1998) informed the Ministers, the Governors of the Province and Mayor of the Vientiane Municipality, that they must educate public servants and Lao citizens on more thrifty and cost effective practices. The instruction included but was not exclusive to: saving time, saving money and material.
- ◆ The Decree No 95/PM (5<sup>th</sup> December, 1995) and the instruction from Minister of Finance has to be followed by civil servant's when procuring items or services (i.e. construction maintenance or repairing services).

## **B. Institutions Involved in Fighting Corruption**

The main aim of the institutions involved in preventing and combating corruption is to increasingly strengthen the effectiveness of financial law and regulation; and improve State management through monitoring and controlling process. In the long run the government believes these organizations will help increase government revenue and improve internal auditing processes.

The government has indicated its commitment to strengthen its policies, regulations and practices in order to improve integrity within the government, this includes: ensuring the rule of law, improving the efficiency, effectiveness, accountability of the public service; and ensuring accountability of the management of foreign aid.

In order to achieve the above-mentioned goals the party and the government decided to establish the following organizations.

Today the main organizations in charge of auditing, inspection, monitoring, investigating and prosecuting corruption activities in Laos are: The Party Control Committee (PCC), The State Inspection Authority (SIA), the State Audit Office (SAO), the Department of Finance Inspection, the ministry of Finance and the Offices of the People's Prosecutor at the central and local level and National Assembly. The Department of Inspection exists in various ministries and the departments understate and party control,

at the provincial and district levels. In the central level the National Assembly supervises and monitors the executive and judiciary organization. The Office for Business Promotion supervises state owned enterprises and joint ventures.

#### 1. Party Control Committee (PCC)

As Lao PDR is a one party system, all organizations are under the leadership of the Lao People's Revolutionary Party. The PCC was formerly the main inspection agency in Laos. It operates across all levels and branches of government, often with assistance of the State Inspection Authority. After the creation of the State Inspection Authority (SIA), and State Audit Office (SAO) the role of PCC changed its focus onto the party's activities. However, some legal and regulatory provisions still provide this organization with a dominant role.

#### 2. State Inspection Authority (SIA)

The State Inspection Authority was established on May 30, 2001 by the decree of the Prime Minister No. 98/PM but was replaced by the new decree No 10/PM.

The State Inspection Authority (Anti-Corruption Authority) is attached to the Prime Minister Office and report directly to the Prime Minister and responsible for:

- ◆ fighting corruption in the bureaucracy;
- ◆ ensuring transparency and fairness in the management of public resources and;
- ◆ prevention and investigation of the corruption.

So far, The State Inspection Authority and other involved organizations have recorded great success in their duties and responsibility to combat corruption. Many serious cases of corruption have been discovered and sanctioned, primarily in the area of tax collection, wood extraction and import of vehicles. Those public servant's involved have been sanctioned/prosecuted accordingly.

In 2007-08 investigations in the fields of forestry, procurement, immigration, Business Bank and so on were undertaken and found that some organization and officials have misused the power and function more then the law is allowed and issued illegal permission for cutting trees 61, 184.92 m<sup>3</sup> without the permission from the government, issued permission on exporting woods 5,263.381 m<sup>3</sup> and violated so with the order and the pre-regulation. There was an implementation of an invalid permission for last year in coming year. There were also found that woods of totally 21,973.664 m<sup>3</sup> were illegal cut and smuggled. And there were 19,087.393 m<sup>3</sup> were confiscated. Some officials have corruption behaviors, swindle and embezzle State revenues. There were found that illegal Identification Card (ID) for the Foreigners were issued and renewed the Labor ID without the consultation with the State Employment Agency. At the Ministry of Public Security there were officials with accomplices violated the procurement regulation and caused harm for the State revenues. After conducting investigations of the targets mentioned above at the central and local level corruptions were found, corruptors were arrested and prosecuted. 25 persons were accused of corruption and sentenced; and 10 persons are standing under investigation.

#### 3. State Audit Office (SAO)

SAO was set up by the Prime Minister's Decree No 174/PM (dated 5 August 1998). This was considered a major step towards strengthening the supreme audit function in Lao PDR. The SAO is responsible for auditing the accounts and certifying the appropriateness of the accounts of the organizations under State administration, in addition to, state owned enterprises, joint ventures and projects funded by the state budget or international grants and loans. It also inspects the implementation of State Budget that the National Assembly has adopted. This organization is also attached to the Prime Minister's Office and report directly to the Prime Minister.

#### 4. Organ of the People's Prosecutors of the Lao PDR

The Organ of the People's Prosecutors of the Lao PDR is a Supervisory State Organ and responsible for monitoring and inspecting the proper und uniform adherence to laws by all ministries, ministry-equivalent

organizations, government organizations, Lao Front For National Construction, mass organizations, social organizations, local administrations enterprises, and citizens and for exercising the rights of prosecution.<sup>1</sup>

#### 5. National Assembly

The National Assembly is theoretically a legislative body, and oversees the executive and judiciary organizations. The Commission on Economic and Financial Affairs oversees the preparation and implementation of the State budget. The National Assembly adopts, revises and oversees the implementation of the national annual budget.

### **C. Administrative Reform**

The government, with the support of various international organizations, has undertaken many reform initiatives aimed at restructuring the state apparatus; improving government mechanisms, working conditions and administrative procedures; and minimizing the steps involved in granting licenses. The introduction of new reform initiatives are helping to minimize administrative paper work. The reduction of the extensive paperwork trail or number of “doors that people have to go through” is helping to minimize and eventually, eliminate conditions in which corruption can exist. Another major area of reform is the introduction of new mechanisms, such as auditing and inspection, which demand more open and accountable work practices.

The aim of the fore mentioned measures is to combat and eliminate corruption in across the bureaucracy efficiently. During the process reform, the government intends to build a bureaucracy of good and honest civil servants. New civil service recruits will be selected fairly through open examinations. Civil service managers will be elected and appointed through more open, equitable and democratic processes.

A major issue that currently exists is the poor salary, compensation and benefits for civil servants. To improve the overall administrative reform, the government intends to reform salaries and other compensations of civil servants to ensure that civil servants can maintain a decent standard of living.

## **III. INTERNATIONAL STRATEGY**

### **A. International Legal Instruments**

At the Intentional level, relevant legal instruments have been ratified or signed:

- ◆ The convention on anti-corruption has been signed in 2003. The Lao government has undertaken major efforts to improve the country’s situation. The document compiled after the convention has been translated and disseminated amongst civil servants to create awareness and understanding of the convention. In conjunction with this, The Lao government has amended the domestic legal system to enable more international and regional integration. In the near future, the government will submit the convention to the National Assembly for ratification and disseminate the proposal to the donor community to gain support for ratification and implementation of this important convention.
- ◆ Convention on transnational organized crime and the three related protocols have been ratified.
- ◆ Follow up the implementation of the TOC, extraditions with neighboring countries such as Vietnam, Cambodia, Thailand and Myanmar have been signed.
- ◆ The mutual legal assistance in criminal and civil matter between Laos and The North Korea has been also signed.
- ◆ The Lao government has ratified the ASEAN convention on the mutual legal assistance in

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<sup>1</sup> Public Prosecutor, Office of the Northern Part People’s Prosecutor of the Lao P.D.R.

criminal matters.

- ◆ There are also none legally binding declarations of The China-ASEAN Prosecutors General Conference that has been agreed among other things on the international cooperation to fight transnational crimes.

## **IV. ANTI-CORRUPTION COOPERATIVE MECHANISMS**

### **A. Overview**

The Lao government takes important the international and domestic cooperation to fight corruption. Fighting corruption is still very complex, challenging and difficult to detect, and it is not only the work of single anti-corruption or of the public prosecutors alone, and it requires, first of all, determination and persistence of the political leadership and participation from citizens, including the cooperation and coordination with of relevant organizations involved in the anti-corruption. Although the Law is a major step forward, there is still a poor implementation of the law.

By strengthening the institutions the improving coordination amongst those organizations involved in monitoring corruption (i.e. the Audit Office, The State Inspection Authority for investigation and the People's Prosecutor's Offices for prosecution) we will be in a better position to discover and sanction corrupt people, and return public assets back to the state and Lao PDR citizens.

The service that public prosecutors deliver is standing in a chain with the work of investigation agencies, including anti-corruption agency. Investigation agencies and the public prosecutors need each other to exercise the right of investigation and prosecution. Without the cooperation from the investigation agencies our work can not effective be done.

The Organ of the People's Prosecutor of Lao PDR, compared to other organization such as of the police, it is a young organization and it is only 18 years old (9 January 1990-9 January 2008). In practices many investigating officers of the investigating agencies in the local level don't accept the role of prosecutors as supervisory state organ and exercising the rights of prosecution and make so with the cooperation between them difficult.

In the past after establishment of the Organ of the People's Prosecutor of Lao PDR in 1990 the coordination and cooperation between prosecutor and the police have been very poor. The reason is because of the lack of understanding on the role of the prosecutors at a whole and also because of the lack of law books. If they really have the laws there are only laws in old version.

### **B. Cooperative Mechanisms**

Recognizing this situation, and with the support of the international organizations, a work to tighten the cooperation and coordination between prosecutors and the investigating Agencies has been started.

#### **1. Mechanisms among Relevant Anti-Corruption Institutions**

There are following cooperative mechanisms among the relevant anticorruption institutions:

- 1) The important cooperative mechanism is a so called, "Annual Justice Conference or meeting" of the relevant institutions organized at the central, provincial and district level. There are representatives from the National Assembly, office of the supreme people's prosecutor of Lao PDR, people's supreme court, the justice ministry, the public security ministry and senior officials from these organizations. The meeting provides and creates opportunities or all to raise issues and comments on how the law can be effectively implemented and their relations be improved. There is a place to discuss issues regarding the prevention, investigations, court trial and implementation of the judgments or sentence in civil and criminal matter. Importantly it is also that concerned ministries and institutions have to explain and to answer the questions and



critics of the public and of the members of the National Assembly about the implementation of law and they have to explain how they will and plan to do it better. This kind of the conference will be organized annually in the future and we will invite the state inspections authority to attend in order to strengthen the coordination and cooperation in combating corruption in the country.

- 2) Importantly it is a Joint training or seminar of the all relevant parties. A Joint training or seminar of the all relevant parties from prosecutors, investigating agencies, justice department, court and national assembly is organized to create an opportunity that they learn to know and to understand the role of each others, and at the same time build personal contact with each other. This kind of training is helping very well to strengthen the cooperation between public prosecutor and the investigating agencies.
- 3) Joint Agreements or Joint Statements are sometime needed to facilitate or to tighten our cooperation.  
There are for examples:
  - ◆ A Joint Agreement between the Supreme People's Prosecutors, the Minister of Public Security, and the Minister of the Public Health on the Medical Treatment for the sick Prisoners.
  - ◆ A Joint Agreement between the Supreme People's Prosecutors and the Minister of Public Security on the Amnesty for Prisoners.
  - ◆ A Joint Agreement between the Supreme People's Prosecutors and the Minister of Public Security on Juvenile Justice.
- 4) Printing and disseminating the laws books for the prosecutors and the investigating agencies have been started.
- 5) Awareness raising activities on the role of the prosecutors is part of all seminars and meeting when the prosecutors are invited to attend or when we organized such a seminar or workshop.

## 2. Participation of the Citizens

There are:

- ◆ Hot line during the ongoing session of the National Assembly is set up to create an opportunity for all to say their political opinion and issues regarding the implementation of the duties of governments and the government has to answer it officially;
- ◆ Opinion box of all state institutions has been created for the people that they can say and claim about the work of the government or of a specific official of a state institution.

The result of the implementation of the cooperative measures by the Lao government set above, the cooperation between prosecutors and the investigating agencies and with the public are improved and it make our easier and more effective.

## 3. International Cooperation Mechanisms

For international cooperation, there are following mechanisms:

The Lao government has attended:

- ◆ International conferences and meetings and a lot of seminars organized by the Association on Anti Corruption of International Corruption Authorities (IAACA)
- ◆ Five China-ASEAN Prosecutors General Conferences
- ◆ conferences organized by the Asia Crime Prevention Foundation (ACPF) and by Association of International Prosecutors (AIP)
- ◆ And other important international conferences in the field of crimes prevention and criminal justice.

The main objective of such mentioned above conferences and meetings and also the conference what

we do at UNAFEI today are not only to share our opinions on good governance and anti-corruptions, but importantly it aims at developing and strengthening the relations and cooperation between them to combat transnational crimes and of course, including international anti-corruption.

The five China-ASEAN Prosecutors General Conferences have been a great success. On the basis of the Joint Declaration signed in Kunming, People's Republic of China on 9 June 2004 the basically cooperation mechanism between Prosecutorial Organs of China and ASEAN Countries in cracking down transnational crimes have been established and effectively developed step by step.

Since the first conference, the judicial and prosecutorial cooperation, Bilateral meeting mechanism and The Cooperation on training has been broadly developed. On the basis of respecting state sovereignty and judicial independence, according to the principle of equality and reciprocity, the prosecutorial organizations of Lao PDR at the Central and Local Levels have initiated judicial cooperation with Central Prosecutorial Organization and some Prosecutorial organizations in the border to Socialist Republic of Vietnam, People's Republic of China (the People's Procuratorate of Yunan Province), and in the border to Thailand and have assisted neighbouring prosecutorial organizations to investigate crimes and to arrest suspects escaping into the border of Lao PDR. Many Lao Prosecutors have received a short term prosecutorial training in the Socialist Republic of Vietnam and in Yunan Province, People's Republic of China. The training of our prosecutors is very important to learn the legal system of foreign countries. It is not only helpful to deepen the friendship, but also helpful for our cooperation.

The multi-channelled communication, study and exchange of delegation with prosecutorial organizations of other countries was enhanced and developed. The delegations exchange has furthered the understanding, enhanced the friendship, so as to lay the good foundations for establishing the cooperation mechanism.

Based on the declarations of the conferences which it is aimed among other thing to facilitate the direct cooperation between prosecution services of the China and ASEAN prosecutorial organizations at the provincial levels that shared the border with each other and also according to the judicial cooperation conventions between the Lao government and the government of P.R of China and Vietnam a direct cooperation between them are established. There are exchange of the delegations and training of the prosecutors all country and also the joint training of the prosecutors at the orders of Laos and Vietnam is planning and we have discussing this issue with the Attorney General of the Kingdom of Thailand while a high ranking delegations of Thailand visited Laos in September this year.

### **C. Case Proceedings**

If, after the inspection and investigation, there appears to be solid information and evidence , the counter-corruption organisation shall make a summary of the inspection result, complete the file of the case and then send it to the public prosecutor to consider bringing a prosecution in court.

In the event that the public prosecutor fails[,] without reason[,] to prosecute the case in court within 30 days from the date of receiving the case file, the counter-corruption organisation has the right to submit to the higher level of public prosecutor to consider and deal with the issue.

## **V. CONCLUSION**

Lao government conducts relations and cooperates with foreign countries and international organisations on the prevention and countering of corruption[,] based on the laws and regulations of the Lao PDR in compliance with international conventions and agreements that the Lao PDR has signed and is a party to.

The use of measures to counter the corruption of any government staff who commits an offence [relating to corruption] is based on the severity of the offence. If it is a minor offence, there will be education measures and imposition of disciplinary [measures]; if it is a serious offence, it will be subject to legal proceedings as provided under the laws.