

# SECURING PROTECTION AND COOPERATION OF WITNESSES AND WHISTLE-BLOWERS: A LAO PERSPECTIVE

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## I. INTRODUCTION

As we all aware, the criminal proceeding can take long time, in some case one month, one year or several years, depending on different circumstance or situation, to be closed. Sometime the prosecutors failed to prosecute criminals, but most of the cases carried out in my criminal department we have successes. The reason is that we have full cooperation of all participants participated in the criminal proceedings, especially the witnesses. It is not easy to collect evidences needed. The public prosecutors or organizations responsible for administration of justice do not know all offices and evidences related to any crime committed.

The administration of criminal justice is an important work of the public prosecutor and without the voluntary and full cooperation of the public, medias, witnesses and whistle blowers the administration of criminal justice would never successfully implemented; the offenders would never be prosecuted and convicted. Like the courts, the prosecutors need firm evidence, which would be also a testimony of the witnesses, to be able to perform the duty of prosecution of criminals and bring them to justice and to avoid punishing innocent people who never have commit a crime and to ensure that the human rights in the administration of justice are fully protected as the Constitution and the laws foreseen. Therefore, it is to conclude that the witnesses and or the whistle blowers are playing a significant role in the administration of justice. And the criminal justice administrators needs their contributions to the conviction of the criminals and they, they (the witnesses and whistle blowers) need a liable and full protection by the state.

The Lao government attaches the importance to the administration of justice and the national assembly has adopted several laws such the penal law, criminal proceeding law, the anti-corruption law and others laws being necessary and fundamental for the administration of criminal justice and has established the organizations responsible for the administration of criminal justice which stated by the police, continue by the public prosecutor and terminated by the court with the conviction or non-conviction of the criminals.

## II. WITNESSES

### A. Who Are the Witnesses?

Witnesses can be every person, who knows about or saw the incident constituting the offence or the circumstances of the case. According to this general explanation, it is to understand that the witnesses are including the victims of crimes.

According to Article 32 of the Criminal Procedure Law, it is regulated that a witness is an individual who knows about or saw the incident constituting the offence or the circumstances of the case. However, we do not recognize that the victims of crimes are witnesses of the crimes, but they will receive other legal protection. Person who are deaf, mute, or incompetent, children fewer than eighteen years of age, and relative of the litigants can be brought to give testimony, but they shall not be deemed to be witnesses. What they say, it is only for information for the investigators, public prosecutors and courts to trace the crime, or for more investigations.

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The witnesses have the rights to give testimony; to see the record of his testimony, during the investigation stage; to request to modify or add to his testimony; to complain against the acts and orders of an investigator, and interrogation, a public prosecutor or the people's court that he believes to be unlawful and to receive protections under the laws and regulations from any threat to life, health or Property because of giving testimony (Article 32 of the criminal Proceeding Law).

The witnesses do not have only rights, but they are obliged to perform some duties, such as to appear according to an order or summons of an investigator, an interrogator, a public prosecutor, or the people's courts and to be liable for his refusal to give testimony or for any false testimony.

### **B. What Protection do they Receive from the State?**

According to the Article 32 of the Criminal Procedure Law, The witnesses receive the protection under the laws and regulations from any threat to life, health because of giving testimony. That is for instance a case if the accused or his relative or other persons try to kill or battery or injure the witnesses, they must be punished by the state according to the law (Article 88 and 90 of the criminal law).

Article 58 of the Criminal Procedure Law prescribes that the identification of the criminal by the witnesses shall be carried out under their secrecy and safety. When necessary, the investigator, or public prosecutor shall require witnesses to identify individuals or confirm objects or dead bodies and the identification (in a way that) ensures the anonymity and safety of such person. Do not make the accused or injure party to see the witnesses when he gives identify.

Article 62 of the criminal procedure law foreseen that the suspect will be detained and be not released because of the witnesses safety. That is a case if the suspect may flee, destroy evidence, commit a new offence, or hurt the injure parties or witnesses.

Likewise, it is also the regulation in the Article 66 of the Criminal Procedure Law. There is no pre-trial release of the accused If is convinced that the accused or defendant will flee, will destroy evidence, will commit further offences, will hurt witnesses. So public prosecutor may not pre-trial release the accused.

For their safety, in some cases witnesses may not disclose their name, address and others information if it is not safe. In the court's hearing, the court may be hearing the witnesses first or after for his safety. It does not allow the civil plaintiff, an accused or their relatives to see the witnesses.

Sometime the police, the public prosecutor or the people's court will ask the witnesses for appear to the hearing because of his safety.

Sometime the witnesses are refusing to come to the police station, public prosecutor's office or the people's court to give testimony. They just pretend not to known any things about the offence. They always say that when they come to the court or the police station or the public prosecutor or cooperate with them in bringing criminal to justice, they will lose their time, lose their money, and instead of having good things, they would be brought to a circumstance of risk and non-safety. There was a road accident case in 2009: Mr. A was driving a car and then was hitting Mr. B's motorcycle and then went away. Mr. C incidentally and helped to take him to the hospital. Mr. A waked up, he said that Mr. C is an accused who was driving the car and hitting him and was arrested. Before the police could prove the evidence, Mr. C was detained for two months.

Most criminal cases are successfully carried out in Laos without the assistances of witnesses because there are enough physical evidences for prosecutor prosecute to criminal to the people's court have enough evidence and the accused have confessed to have committed a crime. There is no serious case and there is no case where the witness is murdered or injured.

### **C. The Accused**

As I mentioned above, the accused is not the witness of the case according to the law of Lao PDR.

### 1. What is the Accused?

According to the Criminal Procedure Law article 28, the accused or defendant is an individual who has been brought to Proceeding by an order to open investigations issued by an investigators or Public Prosecutors.

The accused exercise the following rights to:

- 1) be informed of an offence against the charge made against him;
- 2) submit evidence;
- 3) submit requests;
- 4) ask to see the documents in the case file, to make a copy of required documents from the file or to make note of necessary information contained in the file, after investigation has been completed;
- 5) retain and meet with a lawyer or other protector to contest the case;
- 6) participate in court hearings;
- 7) require the recusal of a judge, public prosecutor, interrogator, investigators, expert or translator;
- 8) complain against acts and orders of investigators, interrogators, public prosecutors or the people's court that he believe to be unlawful;
- 9) Make a finally statement in court hearings as the last party;
- 10) Appeal against, or request the cancellation of an order of an investigator, an Interrogators, or public prosecutor, or an instruction, order or decision of the people' courts.

The accused performs following obligations to:

- 1) Appear according to an order or summons of an investigator, an interrogator, a public prosecutor, or the people's court;
- 2) Provide testimony or explanations relating to the charge;
- 3) Comply with the regulations and orders of people's court, in the court hearings.

Although the accused are not recognized as the witness after the law of law PDR, they will be receiving some beneficiary by the state if they provide substantial cooperation in an investigation or prosecution of a case.

Article 40 of the Penal Law regulated circumstances conducive to reduction of penal law responsibilities of the offenders. The court may reduction of penal responsibilities if an offender expresses remorse and surrenders to officials, and acknowledges and reveals offences committed by him and others. For example, instead of getting 20 years of life imprisonment for the murder, the offender would be sentenced for the murder for 10 years of life imprisonment for his or her substantial cooperation in giving information or revealing the case; or the court may stay of his penalty for those offenders sentenced to less than three years according to Article 47 of the Penal Law.

If there are no serious offences, investigators, public prosecutors, or the people's court may not use coercive measures such as detention (Article 61), arrest (Article 62), remand (Article 65), pre-trial house arrest (article 67), and suspension of position or duties(Article 68 of the Criminal Procedure Law).

## **III. WHISTLE-BLOWERS**

### **A. Who are Whistle-blowers?**

Whistle blowers are an individual or organization that know or see about of a person or government official the report to the organization that concern to solve.

The law of Lao PDR does not mention more about whistle blowers and it is not known in Lao PDR. However, the laws regulate the provisions that the peoples who are the opinion that their rights are violated or infringed; they can ask the concerned authorities to solve it. For the criminals case they can report it the concerned authorities such as the police and the prosecutor for prosecution.

This is a right to guarantee a legal access to justice (rights to submit petition) and it is foreseen in Article 41 of the Constitution of Lao PDR, Article 5 of Law on the Handling petition which is regulated followings:

The state facilitates citizens and organization to exercise the right to petition, with the aim of protecting the interests of the state and collectives or (such citizen's or organization's) own rights and legitimate benefits in order to ensure transparency and effectiveness of the state administrative mechanism and government officials in the implementation of their duties (there by) eliminating and preventing negative occurrences in society.

Likewise, it is also the regulation of Article 18 of the Law on the Criminal Procedure.

To archive it, the State organizations have put the opinions boxes in front of their offices or in the public places to ensure that people, who would like to report the illegal activities of any persons or organizations, can exercise their rights without any fear or express their ideas if they think that the Government officials (police) do something unlawful

The office of the Supreme people's Prosecutor also has such a box, but it is on the fence near the police guard and was therefore, useless, because the people do not have courage to report illegal activities of the prosecutors because of fear of being recognized by the police. Therefore, it is planning to put it in the public place. It will be comfortable and safety for the citizen to express their ideas if they think that the government official (prosecutor) carry out unlawful activities. Moreover, the Office of the Supreme People's Prosecutor has the division to examine the claim and report of the people. If the report is reasonable, an investigation will be undertaken and prosecuted if there is a criminal offence.

Likewise, the People's Supreme Court has put the opinion box in place; however, until now there is no claims and report about any cases.

Importantly it is the hotline of the National assembly during its plenary sessions. There are many calls and their names are protected and not disclose to the public. There is a committee being responsible for the inspection of the report. Then the concerned minister or authorities have to explain or reply to the question or concerns.

## **B. State Protection of Whistle-blowers**

According to the Article 7 of the Anti-corruption Law: Officials who conduct counter-corruption operation as well as those who participate in such as reports, information providers, injured persons, witnesses, and experts, shall be protected from revenge, or threat to their life, health, freedom, honor, reputation and property.

Any government office who infringes any of the above-mentioned prohibitions will be subject to re-education and disciplinary, and if the infringement constitutes an offence, shall be punished as provided in the laws and has cause.

According to the Article 25 of the Anti-corruption Law: Prohibitions on person who has position, power and duty to suppress, threaten, or obstruct any person who bring a claim, or provides feedback, including a person who provides negative information to concerned persons.

According to the Article 44 of the Anti-corruption Law: Individuals or organizations with outstanding performance in the implementation of this law, particularly those that provide cooperation and information on corruption, will receive the protection of security, rewards, and other policies-as appropriate.

The whistle blowers can be remaining anonymous and their name address and others personal information will not be disclosed. The whistle blowers do not have duty to be liable for any things because of

their report. It does not matter whether the report is true or false.

#### **IV. CONCLUSION**

Although the Lao government has tried to put necessary legislations in place, to establish state organizations responsible for the administration of justice, there are still many things to be done.

There are no special laws on the witnesses and whistle blowers and therefore, it is also difficult for the officials to implement the too general provision on the witnesses and whistle blowers protection in the real practices. Some cases are solely relying on confessions of the suspected or accused, this is against the Article 21 of the Criminal Procedure Law, which regulated that the confession of the accused shall not form the basis for the prosecution.

To ensure the full functioning of the administration of criminal justice and full cooperation of the witness and whistle blowers in the country, it is necessary to do the followings:

- 1) Creating law on the witnesses and the whistle blowers, which the provisions of their protection are included;
- 2) Training judges and legal and law enforcement about these laws adopted and on Securing Protection and cooperation of witnesses and whistle blowers.
- 3) Disseminating the important rights and duties of witnesses and whistle blowers by using televisions, radios, newspapers, magazine and others means.
- 4) continuing services of the hotline of the National Assembly; and
- 5) Increasing the numbers of the opinion boxes in the public places.