

CURRENT CHALLENGES AND BEST PRACTICES IN THE INVESTIGATION, PROSECUTION AND PREVENTION OF CORRUPTION CASES — SHARING EXPERIENCES AND LEARNING FROM ACTUAL CASES IN LAO PDR

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I. PREVENTION AND COUNTERING OF CORRUPTION

Prevention of corruption refers to protecting against corruption and preventing corruption from occurring in State organizations, political organizations, and social organizations by education campaigns, declaration of assets, inspection, implementation of policies, and others. Countering of corruption refers to eliminating, repressing, and suppressing all wrongful acts constituting corruption by inspection, education, implementation of discipline, and punishment as provided by the laws.

A. Principles on the Prevention of Corruption

Prevention of corruption shall be based on the following principles:

- The main focus shall be on preventing corruption, while countering corruption shall be regarded as an important focus;
- Inspection of corruption shall be conducted immediately, strictly, independently, objectively, and accurately;
- If there is an offence, the matter should be dealt with strictly, immediately, and with justice;
- To ensure that there is no interference, obstruction, or threat from any individual or organization; Responsibility of Counter-Corruption Organization. The counter-corruption organization shall perform its duties objectively, with transparency, and correctly according to its scope of rights and duties and according to the procedures as stipulated in the laws, including being highly accountable for the conduct of its responsibilities under the laws and being subject to inspection by the National Assembly.

B. Obligations

Relating to the prevention and countering of corruption, party organizations, state organizations, the Lao Front for National Construction, mass organizations, social organizations, mass media, and citizens all have the obligation to participate in the prevention and countering of corruption by the timely provision of cooperation, facilitation, information, and evidence to concerned organizations which have the rights and duties to deal with corruption.

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C. Prevention of Corruption

Government Leaders as Role Models: staff at all levels, especially the leaders, shall act as role models in the strict implementation of the laws and regulations, and shall lead in having transparent lifestyles and shall have no corruption.

Duties of the State in the prevention of corruption, the State has the following duties:

1. To educate the public to respect and strictly comply with the laws and regulations;
2. To improve governance mechanisms to ensure that they are good, effective and transparent;
3. To define and implement policies toward government staff at each level clearly and to ensure proper living conditions;
4. To strictly and immediately impose discipline and punishment on offenders charged with corruption;
5. To promote the public, mass media, and social organizations to participate in the prevention and countering of corruption according to regulations.

II. LEGAL FRAMEWORK

In Lao PDR, the Law on Anti-Corruption, the Penal Code and the Law on Criminal Procedure are the key pieces of anti-corruption legislation.

A. Acts that Constitute Corruption

Acts that constitute corruption can take the following forms:

- Embezzlement of State property or collective property;
- Swindling of State property or collective property;
- Taking bribes;
- Abuse of position, power, and duty to take State property, collective property or individual property;
- Abuse of State property or collective property;
- Excessive use of position, power, and duty to take State property, collective property or individual property;
- Cheating or falsification relating to technical construction standards, designs, calculations, and others; readers may wish to refer to the Business Law for more information on State-Deception in bidding or concessions;
- Forging documents or using forged documents;
- Disclosure of State secrets for personal benefit;

- Holding back or delaying documents.

B. Conduct of Inspections Relating to Corruption

1. Causes for Conducting an Inspection

The causes that result in the conduct of an inspection by the counter-corruption organization are as follows:

- When firm information and evidence that an act constituting corruption has been committed are found;
- When there is a notification, submission, proposal, report, or claim regarding corruption;
- When any government staff, or husband, wife or child under the charge of such government staff, appears to be unusually rich.

2. Inspection Procedure

The counter-corruption organization shall conduct inspections according to the following procedure:

1. Examine the notification, submission, proposal, report, or claim and, if deemed necessary, collect data in the field;
2. Prepare and establish a plan for the actual inspection in coordination with concerned sectors and local administrations;
3. Inspect all documents and assets of concerned individuals or organizations, especially to inspect the financial situation and accounts, revenue, and expenses, and the use of grants and loans;
4. Call and invite the representative of the organization or the individual concerned to come to give explanations and clarification;
5. Summarize, evaluate, and decide on the result of the inspection.

C. Measures for Countering and Dealing with Corruption

1. Measures for Dealing with Corruption

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.

2. Education Measures

If, through the inspection, a minor offence is found, and the offender honestly reports the offence, and admits to the concerned organization that he committed the offence and returns all assets that he took, he will be subject to education measures and a warning.

D. Imposition of Disciplinary Measures

Any government staff who commits an offence relating to corruption which is not serious, but who does not willingly report or who escapes from the offence, shall be subject to the following disciplinary measures:

- be criticized, and be admonished by recording a note in his biographical file;
- be suspended from receiving any promotion, raise in salary level, or reward;
- be removed from his position or transferred to another position which has a lower title than his former position;
- be dismissed from office without receiving any policy. The person who is subject to the imposition of disciplinary measures must return completely all of the property that was unlawfully taken.

E. Case Proceedings

If, after the inspection and investigation, there appears to be solid information and evidence, the counter-corruption organization 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.

F. Punishment

Any leader, administrative staff, technical staff, staff of a State enterprise, civil servant, soldier, or police officer, including any chief of village or person who is officially authorized to have power, who breaches his duty by abusing his status, position or power, or by embezzling, swindling, receiving bribes, misappropriating State or collective property, or abusing his power to benefit himself or his family, relatives, friends and associates causing damage to the interest of the State or collectives or to the rights and benefits of citizens shall be punished by:

1. Imprisonment from one year to two years and shall be fined one percent (1%) of the value of the damage, where such damage is from 1,000,000 Kip to 20,000,000 Kip;
2. Imprisonment from more than two years to four years and shall be fined one percent (1%) of the damage, where such damage is from more than 20,000,000 Kip to 50,000,000 Kip;
3. Imprisonment from more than four years to six years and shall be fined one percent (1%) of the damage, where such damage is from more than 50,000,000 Kip to 100,000,000 Kip;
4. Imprisonment from more than six years to eight years and shall be fined one percent (1%) of the damage, where such damage is from more than 100,000,000 Kip to 300,000,000 Kip;
5. Imprisonment from more than eight years to ten years and shall be fined one percent (1%) of the damage, where such damage is from more than 300,000,000 Kip to 500,000,000 Kip;

6. Imprisonment from more than ten years to twelve years and shall be fined one percent (1%) of the damage, where such damage is from more than 500,000,000 Kip to 600,000,000 Kip;
7. Imprisonment from more than twelve years to fourteen years and shall be fined one percent (1%) of the damage, where such damage is from more than 600,000,000 Kip to 700,000,000 Kip;
8. Imprisonment from more than fourteen years to sixteen years and shall be fined one percent (1%) of the damage, where such damage is from more than 700,000,000 Kip to 800,000,000 Kip;
9. Imprisonment from more than sixteen years to eighteen years and shall be fined one percent (1%) of the damage, where such damage is from more than 800,000,000 Kip to 1,000,000,000 Kip;
10. Imprisonment from more than eighteen years to twenty years and shall be fined one percent (1%) of the damage, where such damage is from more than 1,000,000,000 Kip to 2,000,000,000 Kip;
11. Life imprisonment and shall be fined one percent (1%) of the damage, where such damage is from more than 2,000,000,000 Kip.

The assets and interests derived from corruption shall be seized by the State or returned to the organization, individual or legal entity who is the rightful owner of such assets.

III. COUNTER-CORRUPTION ORGANIZATION

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

A. Organizational Structure

The organizational structure of the counter-corruption organization consists of:

- Counter-corruption organization at the central level;
- Counter-corruption organization at the provincial level.

B. Rights and Duties of the Counter-Corruption Organization at the Central Level

The counter-corruption organization at the central level has the following main rights and duties:

1. To study policies, directives, plans, laws, regulations, and measures 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 organizations 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;
6. To liaise, coordinate, and cooperate with concerned sectors at the central and local levels to perform their rights and duties;
7. To consider, decide, and use measures against the inspected person as provided in the laws;
8. To summarize 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.

IV. PRESENT ACTUAL CORRUPTION CASE

According to case No 008, February 7, 2014:

1. Plaintiff: Huaphan Province prosecutor
2. Defendants: Mr Silon, Head of Audit; Mr Niyom, Finance Officer; Mr Somphon, Head of Finance Office of Sumneua District
3. Arrested: 13 June 2011
4. Accusation: Corruption
5. Facts: Mr Silon agreed with his financial officers, such as Mr Niyom, Miss Manias, Miss Vonchai, and Mr Sommitta, to conspire with financial officers of the Education Department, such as Mr Khampan, Mr Vangthor and Mr Khamkhao. It was agreed that they would increase the amount of money budgeted to cover salaries of the education officers. Mr Silon signed to pay money; then Mr Khampan withdrew money from the bank, and divided that money for everyone in the group. In addition, they increased the amount of

money in the budget for many in the Department of Huaphan Province. From 2005–2010, Mr Silon embezzled 1,010.000.000 kip (130,000 USD), Mr Niyom embezzled 2,432,320,276 kip (304,000 USD), Miss Malisa embezzled 412,064,500 kip (52,000 USD), Mr Bounthon embezzled 568,000,000 kip (71,000 USD), Mr Khampan embezzled 2,645,219,321 kip (330,000 USD), Mr Khamkhao embezzled 905,605,013 kip (110,600 USD), Mr Vangthor embezzled 869,605,013 kip (108,000 USD), Mr Khampat embezzled 222,005,500 kip (30,000 USD), and Mr Somphon embezzled 689,847,460 kip (90,000 USD).

6. Court sentence: Mr Silon, Mr Niyom, Mr Khampan, Mr Bounthon, Miss Malisa, Mr Khamkhao, Mr Somphon, Mr Vangthor and Mr lhamphet were found guilty of corruption.
7. Punishment:
 - Mr Silon: imprisoned 8 years and 1 month, fine 11,000,000 kip (1,600 USD), restitution
 - Mr Niyom: life imprisonment, fine 24,000,000. kip (3,000 USD), restitution
 - Miss Malisa: imprisoned 8 years and 1 month, fine 4,100,000 kip (512 USD), restitution
 - Mr Bounthon: imprisoned 10 years and 1 month, fine 5,800,000 kip (750 USD), restitution
 - Mr Khampan: life imprisonment, fine 26,500.000 kip, restitution
 - Mr Vangthor: imprisoned 16 years and 1 month, fine 8,700,000 kip, restitution
 - Mr Khampat: imprisoned 6 years and 1 month, fine 2,200,000 kip, restitution
 - Mr Somphon: imprisoned 12 years and 1 month, fine 6,800,000 kip, restitution

V. MUTUAL LEGAL ASSISTANCE AND RECOVERY OF PROCEEDS OF CORRUPTION

A. International Relations and Cooperation

The State conducts relations and cooperates with foreign countries and international organizations 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.

B. Principle of International Cooperation in Criminal Proceedings

International cooperation in criminal proceedings between the competent organization conducting criminal proceedings in the Lao PDR and competent organs of foreign countries shall comply with principles of respect for the independence, territorial sovereignty of the

States, non-interference in domestic affairs, equality and mutual benefit, and be consistent with the Constitution of Lao PDR and the fundamental principles of international law.

C. International Cooperation in Criminal Proceedings

International cooperation in criminal proceedings must be carried out in compliance with agreements that the Lao PDR has signed with foreign countries or international conventions that it has entered into and in accordance with the laws of the Lao PDR. In the event that the Lao PDR has not yet signed or not yet entered into international conventions relating to criminal proceedings, such cooperation shall be carried out on the basis of principles of mutual cooperation, but shall not be in conflict with the laws of the Lao PDR.

D. Implementation of Judicial Assistance

In the provision of judicial assistance, the competent organization conducting criminal proceedings in the Lao PDR shall comply with the agreements that the Lao PDR has signed with foreign countries or international conventions that the Lao PDR is a party to and shall comply with this law. Provision of judicial assistance may have the objective of extradition, or exchange of prisoners, or seizure or sequestration of assets of an accused person or defendant, or enforcement of judgement, or cooperation in combating of cross-border crime and others.