



UNODC

United Nations Office on Drugs and Crime

Country Review Report of the Lao People's Democratic Republic

Review by Mongolia and Luxembourg of the implementation by the Lao People's Democratic Republic of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2011 - 2012

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption (hereinafter referred to as “UNCAC” or the “Convention”) was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the Lao People’s Democratic Republic (hereinafter, “Lao PDR”) of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Lao PDR, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Mongolia, Luxembourg and Lao PDR, by means of telephone conferences and e-mail exchanges and involving Ms. Jargalan Dashnyam and Mr. Unurbayar Chadraabal from Mongolia, and Mr. Jean Bour and Mr. Laurent Thyès from Luxembourg. The staff members of the Secretariat were Ms. Tanja Santucci and Ms. Annika Wythes with the assistance of Mr. Fumio Ito and Mr. Sengdeuane Phomavongsa from UNODC’s Field Office in Lao PDR.
6. A country visit, agreed to by Lao PDR, was conducted in Vientiane from 29 October 2012 to 2 November 2012. During the on-site visit, meetings were held with the Government Inspection Authority and Anti-Corruption (GIAA), Ministry of Justice, Ministry of Public Security/INTERPOL, Office of the Supreme People’s Prosecutor, Supreme People’s Court, Anti-Money Laundering Intelligence Unit in the Bank of Lao PDR, Lao Bar Association, Lao National Chamber of Commerce and Industry, and the Lao Journalist’s Association, as well as with representatives of international donors and development organizations.

III. Executive summary

1. Introduction

1.1 Overview of the legal and institutional framework of the Lao People's Democratic Republic in the context of implementation of the United Nations Convention against Corruption

7. *Lao PDR signed the Convention on 10 December 2003 and ratified it on 25 September 2009. The Convention entered into force for Lao PDR on 25 October 2009.*
8. *Lao PDR follows the civil law system with elements of customary law. International treaties are not self-executing in Lao PDR, but can be applied directly if they are not in conflict with domestic law or where a domestic law does not address the issue.*
9. *Concerning pending legislation, amendments were planned to the Anti-Corruption Law (AC Law) to include, inter alia, bribery in the private sector and draft bills were prepared on anti-money laundering and parole of persons. A draft law on extradition was adopted by the National Assembly in July 2012, which was not yet in force at the time of the review. Moreover, a draft law on mutual legal assistance (MLA) would be enacted five years from the date of the review. A strategy to fight corruption was issued in December 2012, although this was also not yet in place.*
10. *The main bodies involved in the fight against corruption include the Government Inspection Authority and Anti-Corruption (GIAA), Ministry of Public Security (Lao Police), State Audit Authority, Office of the Supreme People's Prosecutor, Supreme People's Court, Ministry of Justice and the Anti-Money Laundering Intelligence Unit of the National Bank of Lao PDR.*

2. Chapter III: Criminalization and Law Enforcement

2.1 Observations on the implementation of the articles under review

Bribery and trading in influence (articles 15, 16, 18, 21)

11. *Article 157(2) of the Penal Law (PL) covers “any person bribing or agreeing to bribe a civil servant”. Articles 2 and 13 of the AC Law and articles 157(1) and 174 of the PL cover the receiving, taking of and “claiming, requesting, accepting or agreeing to accept” a bribe. Article 2 of the AC Law and article 174 of the PL further cover persons “holding a legislative, executive, administrative or judicial office”. Also, pursuant to article 157(1) of the PL, “the bribing party” can be from the public or private sectors, as well as public international organizations. Moreover, “material items” in article 13 of the AC Law were held to include, inter alia, money, gold and other materials.*
12. *Lao PDR has neither criminalized trading in influence nor bribery in the private sector.*

Money-laundering, concealment (articles 23, 24)

13. *Article 64 of the PL provides that “[a]ny person conducting activities in order to convert money or items derived from corruption ... by depositing them in banks, buying land, buying houses, lending to other persons or other means shall be considered as having engaged in money laundering, and shall be punished...Any preparation or attempt to commit such an offence shall also be punished”. Article 2 of the Prime Minister's Decree on Anti-Money Laundering (ML Decree) further states “[m]oney [l]aundering refers to*

the acquisition of money or assets deriving from offences as specified in Annex 1 of this Decree [which includes corruption], that have been transformed, utilized, possessed”.

14. All UNCAC-related offences were deemed to be predicate offences. Foreign offences are also deemed predicate offences to the extent that they would constitute predicate offences in Lao PDR. A person can be convicted of both money-laundering and underlying predicate offences. However, there have been no money-laundering cases to date.

15. Articles 116 and 124 of the PL cover concealment and unlawful trade.

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

16. Articles 109 and 110 of the PL and articles 11 and 12 of the AC Law cover swindle and embezzlement of State or collective property. Article 116 of the PL also covers unlawful trade. More generally, articles 120, 121 and 124 of the PL focus on swindle, embezzlement and unlawful trade. The authorities confirmed that the term “asset”, as cited in the law, would cover “any property, public or private funds or securities or any other thing of value”.

17. Abuse of functions is legislatively covered in articles 153 (abuse of power), 154 (abuse of authority), 155 (abandonment of duty) and 156 (negligence in the performance of duty) of the PL. Article 2 of the AC Law further provides that “[c]orruption is the act of an official who opportunistically uses his position, power, and duties” and articles 14, 16 and 25 address abuse of, excessive use of and prohibitions on the person who has position, power and duty.

18. Lao PDR has not adopted a general statute to address illicit enrichment. However, article 27 of the AC Law could trigger an investigation “[w]hen any government staff ... appears to be unusually rich”; noting the presumption of innocence in article 7 of the Criminal Procedure Law (CPL). There are no income and asset declaration requirements in Lao PDR.

19. Lao PDR has not specifically criminalized embezzlement of property in the private sector.

Obstruction of justice (article 25)

20. Lao PDR does not specifically criminalize the use of physical force, threats or intimidation to interfere with witnesses or the production of evidence. Article 158 of the PL criminalizes “threatening or using force to obstruct officers in the performance of their public or social duties”. Section 159 also criminalizes “using indecent acts or words or false allegations towards State officials to damage their reputation and honour or the population’s confidence in such officials”. It was confirmed that the terms “officer” and “state official” cover “justice or law enforcement officials”.

Liability of legal persons (article 26)

21. Lao PDR has no measures that establish the liability of legal persons for their participation in UNCAC-related offences.

Participation and attempt (article 27)

22. Section 17 of the PL covers the “intentional participation in an offence by two or more persons. Participants in an offence are: “authors; implementers; inciters; and accomplices”. Article 43 further provides a prescription of penalties for accomplices and inciters. Articles 13 and 14 focus on the preparation of and attempts to commit offences. However, the threshold “if deemed dangerous for society” is higher than necessary to fulfill this criminalization.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

23. Pursuant to article 31 of the AC Law, “[t]he 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”.

24. Under articles 64 of the Constitution and 51 of the National Assembly Law, “[m]embers of the National Assembly shall not be prosecuted in court or detained without the approval of the National Assembly”. The CPL covers the equality of citizens before the law and court, the presumption of innocence, pre-sentencing release and the release of prisoners. Measures for the early release of prisoners are further addressed in articles 47 and 52 of the PL.

25. Article 68 of the CPL addresses the suspension of position or duties. Lao law also provides that a civil servant who is suspected “of seriously breaching the civil service rules; or of committing any crime that has a sentence of more than 6 months’ imprisonment shall be suspended until the case is decided by either the Disciplinary Committee or the Court. If found not guilty, the civil servant will be re-instated”. There is no general code of ethics for public officials, but rather specific codes for given professions.

26. Lao PDR imposes measures, based on the severity of the crime, which are educational or disciplinary, as provided for in the AC Law and Decree on Civil Service.

27. Article 40 of the PL provides for the reduction of penal responsibilities when circumstances are deemed conducive. More specifically, article 44 of the AC Law covers “those that provide cooperation and information on corruption, will receive the protection of security, rewards, and other policies as appropriate”.

Protection of witnesses and reporting persons (articles 32, 33)

28. Pursuant to article 32(5) of the CPL, witnesses have the right to receive legal protection from “any threat to life, health, or property because of giving testimony.” Article 7 of the AC Law specifically provides protection to reporters, informers, injured persons, witnesses and experts, as well as officials who conduct anti-corruption operations. The kinds of witness protection available were physical and “secrecy” (i.e name change), which was also extended to family members.

29. Lao PDR lacks comprehensive witness and whistleblower protection systems.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

30. Article 34 of the PL provides for confiscation by the State of part or all of an offender's property without any compensation in serious cases. It was unclear whether value-based confiscation was possible. Moreover, instrumentalities will be confiscated if they were not obtained in good faith or if deemed necessary for national security.
31. The Anti-Money Laundering Intelligence Unit does not have administrative freezing powers. Upon investigation, the Lao Police can order a bank to temporarily freeze an account, although for confiscation, a court order is required. The administrator of frozen, seized or confiscated property varies depending on the stage of the proceeding. If the property is immovable or it is not feasible for the agencies to administer it, it may be assigned to a person or local authority.
32. Article 28 of the AC Law allows GIAA to “[i]nspect all documents and assets of concerned individuals or organisations, especially to inspect the financial situation and accounts”.

Statute of limitations; criminal record (articles 29, 41)

33. Article 26 of the PL states that “[p]rosecutions shall not be considered effective unless filed within: One year, in the case of minor offences; Seven years, in the case of major offences; Fifteen years, in the case of crimes. The [filing period for] effectiveness of a prosecution starts from the day the offence is committed”. Article 51 of the PL further provides that “[p]enalties shall not be imposed by the court unless executed within the following limitation periods: One year for minor offences; Seven years for major offences; Fifteen years for crimes. The limitation period starts on the day the court's sentence becomes final...” It was not clear that all corruption-related offences fall under major offences and crimes.
34. No domestic law allows Lao PDR to take foreign criminal records into consideration.

Jurisdiction (article 42)

35. Articles 3, 4 and 64 of the PL establish jurisdiction over offences committed in Lao PDR, the passive personality principle and money-laundering involving Lao citizens or residents. Article 2 of the AC Law provides that for an offence to be deemed corruption it must also cause “damage to the interests of the State”. Pursuant to article 6 of the Nationality Law, Lao PDR will not extradite its citizens to a foreign State. The law does not clearly provide for the *aut dedere, aut judicare* principle.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

36. Lao PDR does not address the consequences of acts of corruption.
37. Pursuant to article 29 of the CPL, an injured person is “an individual whose health, life, property, or spirit is injured by offences [committed by] other persons” and has the right to “[r]eceive compensation for losses”. Article 30 further provides for civil plaintiffs to file for compensation of damages with the same rights and obligations as injured persons.

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

38. GIAA was established pursuant to the State Inspection Law, enforced in 2007. Articles 28 and 29 establish the mandate, rights and duties of GIAA. According to article 37 of the AC Law, GIAA is “an investigative organisation and performs its duties independently”. Article 5 provides that GIAA is “accountable for the conduct of its responsibilities under laws and subject to inspection by the National Assembly”. If the investigations division of GIAA determines that sufficient evidence exists, it submits the matter to the Office of the People’s Prosecutor. Corruption-related matters fall before the Court of First Instance.
39. The Anti-Money Laundering Intelligence Unit was established in May 2007, pursuant to the AML Decree. It is a department under the Central Bank of Lao PDR.
40. The Ministry of Public Security has the mandate to protect, prevent and handle corruption-related offences, in general, pursuant to article 23 of the CPL. The Police enforce the revised PL, which covers bribery and money-laundering (articles 64, 157 and 164) and the eleven offences in the AC Law. The investigations unit of the Lao Police coordinates with GIAA and is responsible for receiving and investigating corruption-related offences. Matters are referred to the Office of the People’s Prosecutor if there is sufficient evidence after investigation.
41. Article 6 of the AC Law provides that authorities and citizens “have the obligation to participate in the prevention and countering of corruption by timely provision of cooperation”. Article 24 further imposes obligations on the authorities to “coordinate with concerned sectors to prevent, counter and deal with corruption within the scope of their responsibilities”.
42. The Lao National Chamber of Commerce and Industry is responsible to facilitate dialogue between the Government and private sector.

2.1.1 Successes and good practices

43. Overall, the following success and good practice in implementing Chapter III of the Convention was highlighted:
- Inspection units in each ministry and at regional levels enhanced cooperation between national authorities.

2.1.2 Challenges in implementation

44. The following steps could further strengthen existing anti-corruption measures:
- Given the lack of legislative clarity, streamline measures to criminalize bribery of national public officials.
 - Consider removing existing threshold requirements in article 2, AC Law and article 174, PL that could prevent corruption-related offences from being defined as “corruption”.

- *Consider extending the definition of “civil servant” in the law to include foreign public officials and officials of public international organizations.*
- *Address the existing inconsistencies in law (i.e. article 109, Penal Law and article 12, AC Law, article 110, Penal Law and article 11, AC Law) and terminology (e.g. property, assets or items, so that instrumentalities used or to intended to be used for criminal offences, as well as property of corresponding value can be confiscated).*
- *Consider adopting measures to criminalize trading in influence, bribery in the private sector and embezzlement of property in the private sector.*
- *Consider a) implementing a system that requires income and asset declarations of all public officials and also a verification process, and b) adopting a freezing mechanism to prevent assets being dealt with, transferred or disposed of temporarily, such as bank account transfers and also putting in place an adequate communication and coordination mechanism among the relevant agencies.*
- *Lao PDR should furnish copies of its anti-money-laundering laws to the Secretary-General of the United Nations.*
- *Adopt comprehensive measures that criminalize obstruction of justice.*
- *Consider amending the law so that corruption is not deemed a minor offence, providing for a sufficiently long statute of limitations and ensuring that sanctions are effective, proportionate and dissuasive.*
- *Lao PDR may wish to take measures requiring the National Assembly Standing Committee to lift immunity without delay where necessary to pursue corruption-related offences.*
- *Endeavour to ensure that any discretionary prosecutorial powers are exercised to maximize the effectiveness of law enforcement measures and deter the commission of such offences.*
- *Consider establishing 1) procedures so that persons convicted of corruption-related offences are also disqualified from holding office in enterprises owned wholly or partly by the State, and 2) reintegration programmes for persons convicted of corruption-related offences.*
- *Consider legislatively including in the definition of property the proceeds of crime that have been transformed or converted, intermingled and the income or other benefits derived from such proceeds of crime.*
- *Consider incorporating comprehensive witness and whistleblower protection systems as a priority.*
- *Take measures to address the consequences of corruption.*

- *Consider establishing, for the staff of Lao PDR's specialized bodies, appropriate training and resources to carry out their functions effectively.*
- *Consider taking appropriate measures to encourage persons to supply useful information to competent authorities, and providing protection to such persons; Lao PDR may also wish to 1) promote an awareness raising campaign on the rights of citizens under the law, encouraging them to cooperate with law enforcement authorities, and 2) cooperate with other States where such persons are in those countries and can provide substantial cooperation.*
- *Consider addressing the shadow process in place where private sector entities are more willing to approach business associations for assistance to resolve corruption-related disputes in a civil manner, rather than going through formal processes.*
- *Consider taking foreign criminal records into account in criminal proceedings.*
- *Consider extending jurisdiction to 1) vessels flying the national flag and aircrafts registered in Lao PDR, 2) the active personality principle and 3) the aut dedere, aut judicare principle.*

2.1.3 Technical assistance needs identified to improve implementation of the Convention

45. The following forms of technical assistance could assist Lao PDR in more fully implementing the Convention:

- *Article 15: Summary of good practices/lessons learned; information on the law and training curricula of other countries; on-site assistance by an anti-corruption expert (namely, to develop a training curriculum and training of trainers); and site visits to other countries.*
- *Articles 17, 18, 21, 22, 26, 31 and 34: Summary of good practices/lessons learned; model legislation; legislative drafting; and legal advice.*
- *Articles 20 and 27: Summary of good practices/lessons learned.*
- *Article 23: Legislative drafting; development of an action plan for implementation; and enhancement of IT systems and the capacity of agencies to expedite information-sharing and act on suspicious transactions and money laundering information.*
- *Articles 30 and 42: Summary of good practices/lessons learned; and legal advice.*
- *Articles 32 and 33: Summary of good practices/lessons learned; model legislation; and legal advice, and for article 32, also capacity-building programmes for authorities responsible for establishing and managing witness, expert and victim protection.*
- *Article 36: Summary of good practices/lessons learned; model legislation; legislative drafting; legal advice; on-site assistance by an anti-corruption expert; development of*

an action plan for implementation; and capacity-building programmes, trainings and the development of a case management system.

- *Article 37: Summary of good practices/lessons learned; legislative drafting; legal advice; capacity-building programmes for authorities responsible for establishing and managing protection programmes; and an awareness-raising campaign.*
- *Article 39: Summary of good practices/lessons learned and awareness-raising.*

3. Chapter IV: International cooperation

3.1 Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (articles 44, 45, 47)

46. *At the time of the review, Lao PDR relied on bilateral and multilateral treaties and the CPL (arts. 117-120) for international cooperation and could also cooperate on the basis of reciprocity. Lao PDR has enacted treaties covering extradition matters with Vietnam, China, Thailand, Cambodia and the Democratic People's Republic of Korea.*
47. *At the time of ratification Lao PDR declared that it makes extradition conditional on the existence of a treaty and that bilateral agreements are the basis for extradition in respect of any offences, but that it does not consider the Convention as the legal basis for extradition.*
48. *According to the CPL, extradition may be carried out in accordance with the agreements or international conventions that Lao PDR is subject to, or in the absence of treaties on the basis of reciprocity, and dual criminality must be satisfied. Dual criminality is generally strictly applied. Because certain corruption offences carry a minimum punishment of less than one year under Lao law, these are not considered extraditable offences.*
49. *Extradition decisions are made by the different Government agencies responsible for extradition, including the Ministry of Justice, Ministry of Foreign Affairs, Supreme Prosecutor's Office, and Ministry of Public Security. Extradition hearings are foreseen only under the draft extradition law. Extradition procedures are usually handled through direct communication among agencies.*
50. *There have been no extradition cases based on corruption offences. While comprehensive statistics were not available, at least four extradition cases were pending at the time of the review, involving China, the Republic of Korea, and two cases with Malaysia. There was no information on the number of persons extradited to Lao PDR. Over the past ten years, Lao PDR has not refused extradition.*
51. *In accordance with the Law on Lao Nationality, Lao PDR does not extradite its citizens, although the requirement to prosecute is not addressed. Lao law does not permit the conditional extradition of nationals to serve the remainder of their sentence in Lao PDR, nor would Lao consider the enforcement of a foreign sentence in the case of a national whose extradition was refused.*

52. *A duty to consult before refusing extradition is not specified in the law, though it is required under certain treaties. In practice, consultations are not always held, although information on the status of a request is provided on request.*
53. *Pending the adoption of a prisoner transfer law, Lao PDR uses the CPL and existing treaties, and could in principle also apply UNCAC directly. Lao PDR has two treaties in place on the transfer of prisoners with the United Kingdom and Thailand. No statistics were available on the number of prisoner transfer cases. The relevant authorities are the Ministry of Public Security, Ministry of Justice and Ministry of Foreign Affairs.*
54. *There is no law, treaty or practice on the transfer of criminal proceedings and no such cases were reported.*

Mutual legal assistance (article 46)

55. *Pending adoption of the MLA law, assistance is provided on a case-by-case basis under article 118 of the CPL and existing treaties. Lao PDR has signed three bilateral treaties with Vietnam, Democratic People's Republic of Korea and China and is party to the ASEAN treaty on MLA in Criminal Matters. The Convention and other multilateral instruments could in principle be applied directly in the absence of a bilateral agreement. No statistics on the number of MLA requests made or received were available, though Lao PDR reported that it has never refused MLA.*
56. *In Lao PDR the central authorities for MLA vary from one agreement to another, and in practice requests are received and executed directly by competent authorities, such as the Ministry of Public Security/INTERPOL, Ministry of Foreign Affairs and the Financial Intelligence Unit. Under the proposed MLA law, the central authority would be the Supreme People's Prosecutor.*
57. *Lao law requires dual criminality for MLA and does not recognize the criminal liability of legal persons. In principle Lao PDR would render non-coercive assistance in accordance with UNCAC article 46.*
58. *While Lao PDR's law and treaties do not address the spontaneous provision of information, there is no apparent prohibition in this regard. There has been no experience in the transfer of prisoners for providing testimony or evidence.*
59. *MLA requests are generally executed within 30 days from receipt, though there are no timeframes or guidelines in the law or treaties. A duty to consult before refusing or postponing assistance is not addressed.*

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

60. *Law enforcement cooperation proceeds largely through INTERPOL and ASEANAPOL and through mechanisms of MLA. GIAA and other institutions also cooperate through the South East Asia Parties Against Corruption (SEA-PAC) mechanism.*

61. Lao PDR police has established bilateral treaties with neighboring countries, including Vietnam, China and Cambodia. Where no law enforcement treaties exist, Lao police have also applied existing MLA treaties to cooperate with other police agencies. No information was available as to whether the Convention could be applied as a legal basis for direct law enforcement cooperation.
62. Seven requests have been made to, and 185 requests received from, other countries for assistance through INTERPOL, none of which related to corruption matters. Overall there has been limited capacity and experience on direct law enforcement cooperation.
63. There has been no experience using joint investigations at the international level, though the police could proceed under article 118 of the CPL or direct law enforcement treaties and arrangements (including INTERPOL or ASEANAPOL).
64. There are no clear guidelines on using special investigative techniques. Electronic and other evidence derived therefrom could be admitted subject to examination by the court and authentication. Such evidence is not directly admissible but could be used to build direct evidence.

3.1.1 Successes and good practices

65. Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of the Convention:
 - While the MLA framework is in a state of transition and there has been little experience in handling MLA cases, the officials demonstrated a willingness to learn from international best practices and to improve their MLA framework.
 - The reviewers encourage the swift adoption of the draft MLA law to more clearly regulate the process for providing and receiving MLA.

3.1.2 Challenges in implementation

66. The reviewers welcome indications by Lao PDR that it may consider revoking its reservation to use UNCAC as a legal basis for extradition in the future.
67. Moreover, the following points could serve as a framework to strengthen and consolidate the actions taken by Lao PDR to combat corruption by:
 - Ensuring that under the new extradition framework: a) extradition proceedings are carried out in a court of law; b) extradition procedures are expedited and evidentiary requirements are simplified; and c) aggregate statistics on extradition are collected nationally and responsibilities among competent authorities are clearly defined.
 - Identifying implementation gaps under the new extradition framework and working to effectively address them.
 - Considering reviewing penalty requirements to ensure that all UNCAC offences are extraditable in view of their periods of imprisonment.

- *Under the new law, considering monitoring: a) the political offence exception and implementation of clear guidelines, and b) the development of the extradition practice, in particular to see whether the practice will continue to be treaty-based.*
- *Ensuring that nationals who are not extradited are subject to domestic prosecution as set out in the Convention through amendments to the existing extradition treaties and establishment of appropriate procedures in future treaties and practice.*
- *Reviewing the CPL, treaties and the draft extradition law to consider allowing for more flexible arrangements on the extradition of nationals to allow them to serve the remainder of their sentence in Lao PDR.*
- *Ensuring consultations are held with requesting States before refusing extradition. The relevant institutions should be informed of this requirement.*
- *Monitoring the application of the draft law on prisoner transfer.*
- *Under the new MLA framework, collecting aggregate statistics on the number of requests made and received nationally, distinguishing cases of law enforcement cooperation from MLA.*
- *Ensuring that requests involving legal persons can be executed, particularly related to UNCAC offences.*
- *Considering spontaneously sharing information with other countries to assist in ongoing investigations or proceedings.*
- *Under the current and future MLA framework, ensuring that implementing agencies are informed that non-coercive assistance would be granted in cases where dual criminality is not satisfied.*
- *Ensuring that the consent requirement in existing treaties is applied in future cases involving the transfer of prisoners for purposes of providing testimony or evidence. Further, the safe conduct and related UNCAC provisions should be addressed in future treaties and implemented in practice, in particular by informing relevant agencies.*
- *Considering designating one central authority for MLA and notifying the United Nations accordingly, also regarding the acceptable language for requests.*
- *Enhancing interagency coordination and cooperation among competent authorities for MLA.*
- *Continuing to ensure that requesting countries are familiar with the content and format of MLA requests that are acceptable to Lao PDR, both in its treaties and its MLA law and practice.*
- *Ensuring that: a) the taking of testimony and evidence is carried out in a court of law; b) evidence or information received pursuant to MLA requests is protected from uses*

other than those stated in the request, unless it is exculpatory; c) requesting States are notified of any reasons for refusing assistance; and d) requests for MLA are executed swiftly and timely, and status updates are provided promptly.

- *Considering ensuring that future treaties do not expand the grounds for refusing MLA.*
- *Considering amending the draft MLA law to provide for postponement rather than refusal of assistance that interferes with an ongoing investigation, prosecution or proceeding.*
- *Ensuring that consultations are held with requesting States before refusing MLA, to be addressed in the draft law or in regulations. The relevant institutions should be informed of this requirement.*
- *Ensuring that the safe conduct provision is implemented in the future MLA law and practice.*
- *Considering the possibility of transferring criminal proceedings where it would serve the proper administration of justice.*
- *Strengthening communication channels and the exchange of personnel to further direct law enforcement cooperation internationally.*
- *Ensuring that clear procedures and guidelines are in place for joint investigations, including through relevant agreements or arrangements with law enforcement agencies.*
- *Considering clearly defining the power to conduct special investigative techniques and adopting clear rules on the admissibility of electronic and other evidence.*

3.1.3 Technical assistance needs identified to improve implementation of the Convention

68. *The following forms of technical assistance could assist Lao PDR in more fully implementing the Convention:*

- *Article 44: Summary of good practices/lessons learned; capacity-building for authorities responsible for extradition; legal advice; onsite assistance by a relevant expert; and the development of an action plan to address implementation gaps.*
- *Article 46: Capacity-building programmes for authorities responsible for MLA; a summary of good practices/lessons learned; capacity building; on-site assistance by a relevant expert with a view to enhancing interagency coordination and developing a case tracking system; and legal advice.*
- *Article 48: Communication channels and the exchange of personnel to further law enforcement cooperation and capacity building.*

- *Article 50: Law reform/model laws and agreements; summary of good practices/lessons learned; capacity building for relevant institutions on the ability to conduct special investigative techniques and admissibility of evidence.*

IV. Implementation of the Convention

A. Ratification of the Convention

69. Lao PDR signed the Convention on 10 December 2003 (C.N.1454.2003.TREATIES-63) and ratified it on 25 September 2009 (C.N.649.2009.TREATIES-20). The Convention entered into force for Lao PDR on 25 October 2009.

70. Lao PDR made the following reservation at the time of ratification:

“In accordance with paragraph 3, Article 66 of the Convention against Corruption, the Lao People’s Democratic Republic declares that it does not consider itself bound by paragraph 2, Article 66 of the present Convention. The Lao People’s Democratic Republic declares further that to refer a dispute concerning the interpretation or application of the present Convention to International Arbitration or to refer it to the International Court of Justice for decision requires the consent of all parties thereto.”

71. It further made the following notification regarding UNCAC article 44:

“The Lao People’s Democratic Republic declares that it makes extradition conditional on the existence of a treaty. Nevertheless, it does not consider the UN Convention Against Corruption as the legal basis for extradition in respect of the offences set forth therein. It further declares that bilateral agreements will be the basis for extradition as between the Lao People’s Democratic Republic and other States Parties in respect of any offences.”

B. Legal system of Lao PDR

72. The legal system of Lao PDR is the civil law system with elements of customary law. In 1975, the existing legal system was abolished and replaced first by Presidential Decrees until 1989 until the first law entered into force. The Constitution, as the supreme law, was officially promulgated in 1991. A criminal act needs to be provided for in the Penal Law. The other laws, such as the Anti-Corruption Law (AC Law), are *lex specialis*. Presidential Orders and Decrees, in the hierarchy of legal norms in Lao PDR, fall under special laws. Treaties are not self-executing and need to be domesticated. However, during the country visit, the national authorities informed the reviewers of a recent Presidential Decree that allows for treaties to be applied if they are not in conflict with domestic law or where the law is silent on a matter in question.

73. The main bodies involved in the fight against corruption in Lao PDR include the Government Inspection Authority and Anti-Corruption (GIAA), Ministry of Public Security (Lao Police), State Audit Authority, Office of the Supreme People’s Prosecutor, Supreme People’s Court, the Ministry of Justice and the Anti-Money Laundering Intelligence Unit of the National Bank of Lao PDR. There are two levels of administration (central and local). The Government Inspection and Anti-Corruption Authority (GIAA) and the Lao Police conduct investigations at both levels.

C. Previous assessments of anti-corruption measures

74. The Government has conducted an internal assessment of the extradition framework from 2010 through 2011. As a result of the review, which was conducted by the Ministry of Justice, Ministry of Foreign Affairs, Ministry of Public Security and Supreme Prosecution Office, an extradition law was developed, which was adopted by the National Assembly in July 2012 and came into force 90 days afterwards. The Law on Extradition was adopted by resolution of the National Assembly, issued No: 080/NA, dated 11 July 2012, and promulgated by Decree of the President of Lao PDR, issued No: 233/PO, dated 1 August 2012. The law was not yet in force at the time of the review.

D. Implementation of selected articles

75. The laws predominately applied in fighting corruption include: the Criminal Law (revised number 12, dated 9 November 2005); AC Law (revised in 2005); Criminal Procedure Law (dated 15 May 2004); and Law on Audit dated 2005. Amendments will be made to the AC Law to include, *inter alia*, bribery in the private sector. It was also noted by the national authorities that a strategy to fight corruption was issued in December 2012, though this was not yet in place at the time of the review.
76. Concerning pending legislation, apart from the extradition law the Ministry of Justice was drafting a law on mutual legal assistance, which would be enacted five years from the date of the review.
77. The punishment for corruption-related offences are contained in the AC Law (education and disciplinary sanctions), but if such an offence is deemed a serious offence, then the penalties contained in the Penal Law are applied. The penalties range from six months to life imprisonment.
78. Lao PDR requested technical assistance in a range of areas, including good practices and lessons learned from other countries on anti-corruption, legislative drafting and legal advice on how to improve existing laws, and capacity-building programmes for officials to understand the application of existing laws. Such needs would be included in the strategy to fight corruption that was being developed at the time of the review. Additionally, there was a request made to assist in increasing public awareness of anti-corruption.

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

79. Lao PDR cited article 157(2) of the Penal Law (revised in 2005) and article 2 of the AC Law (2005).

Penal Law

Article 157. Bribery and Corruption

(2) Any person bribing or agreeing to bribe a civil servant shall be punished by six months to two years of imprisonment and a fine equal to the amount or value of the bribe.

Anti-Corruption Law

Article 2. Corruption

Corruption is the act of an official who opportunistically uses his position, powers, and duties to embezzle, swindle [or] receive bribes or any other act provided for in Article 10 of this law, [which act is committed] to benefit himself or his family, relatives, friends, clan, or group and causes damage to the interests of the State and society or to the rights and interests of citizens.

The official stipulated in this law means leaders at all levels, administrative staff, technical staff, the staff of State enterprises, civil servants, soldiers, [and] police officers, including chiefs of villages and persons who are officially authorised and assigned to exercise any right or duty.

80. GIAA provided the following statistics on bribery: 8 in 2006; 3 in 2007; 27 in 2008; 8 in 2009; 4 in 2010; 2 in 2011. These relate to convictions in the court of first instance and/or completed administrative cases (i.e. education and disciplinary).

81. Lao PDR has assessed the effectiveness of the measures adopted to criminalize active bribery of national public officials and outlined the results of such an assessment, including methods, tools and resources utilized, in the summary of its Anti-Corruption and Annual Plan (2007, 2008, 2009, 2010).

(b) Observations on the implementation of the article

82. It was confirmed that the statistics for both active and passive bribery had not been separated and thus relate to all of UNCAC article 15. The Anti-Corruption and Annual Plan could not be provided to the review team for further consideration.

83. The reviewers considered that article 157(2) of the Penal Law only partially implemented the provision under review, because it is not self-sufficient but needs to be read together with article 2 of the AC Law. Given the lack of clarity, the reviewers recommended that Lao PDR streamline measures to criminalize active bribery of national public officials.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) **Summary of information relevant to reviewing the implementation of the article**

84. Lao PDR cited articles 2 and 13 of the Anti-Corruption Law and articles 155, 157(1) and 174 of the Penal Law.

Anti-Corruption Law

Article 13. Taking Bribes

Taking bribes is receiving, claiming, requesting, or agreeing to accept material items or benefit from someone else by using one's position, power and duties to provide direct or indirect benefit to the person giving the bribe.

Penal Law

Article 155. Abandonment of Duty

Any civil servant intentionally abandoning his duty and thereby [adversely] affecting State or social activities, shall be punished by six months to three years of imprisonment or re-education without deprivation of liberty and shall be fined from 200,000 Kip to 3,000,000 Kip.

Article 157. Bribery and Corruption

(1) Any civil servant claiming, requesting, accepting or agreeing to accept a bribe in exchange for using [the civil servant's] position for the bribing party's interest shall be punished by one to three years of imprisonment and a fine equal to the amount or value of the bribe.

Article 174. Corruption

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 authorised 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 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 citizens⁵⁶ 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 organisation, individual or legal entity who is the rightful owner of such assets.

85. It was observed that the solicitation or acceptance by a public official of a benefit for refraining from exercise of his/her duties is covered by the "benefit to the person giving the bribe" in article 13 of the Anti-Corruption Law, and "the bribing party's interest" in article 157 of the Penal Law, based on article 155 of the Penal Law.

86. Lao PDR provided the following examples:

1) Mr Chittasone, a merchandiser, was arrested for drug trafficking. For his release, Mr Phayboun who is an acquaintance of Mr. Chittasone offered a reward and the giving of a bribe of 180,000 Bath (Thai Currency), (6,200 USD) to Mr. Saysana who was in charge of the case. Mr. Saysana was the head officer of the Xaysettha Detained Camp and also gave Mr Chanthavong 15,000 Bath (517 USD). Mr. Chanthavong was a police officer in the Chanthabuli District of Vientiane Capital.

On 11 December 2009, the Vientiane Capital Trail People's Court handed down judgment (Case No. 469/KTE). Pursuant to the article 157(2) and (4) (paragraph 4 provides, "Bribe intermediaries shall be punished by six months to two years of imprisonment and fines equal to the amount or value of the bribe") of the Penal Law, Mr. Saysana was sentenced to two year and six months imprisonment and fined 2,500,000 Kip (Lao Currency) (278 USD); Mr Chanthavong was sentenced to 1 year (in practice, six months) and fined greater than the amount of 15,000 Bath (571 USD). Additionally, all the bribery money and munitions were seized and are now Government property.

2) In 2005, Mr Koungsavanh, Mr Khemphet and Mr Thavonesack were Government Officers in the Ministry of Finance, and accepted a bribe of 9500 USD from Ms Vayakhone, Director of Diethelm Travel Company to adjust the tax figure in 2005 - 2006 from 47.796,21 USD to 29.063,93 USD.

In the same year, all of them also accepted a bribe of 4.800 USD, from Mr. Bouakhao, Director of Inter Travel Company to adjust the tax figure in 2002 - 2003 from 33.306 USD to 3.125 USD.

The Vientiane Capital People's Court handed down judgment (Case No. 217/KTE). Pursuant to articles 142(2) and 146(3) of the Penal Law (old issue) on the excessive use of power and taking bribes, sentenced Mr. Khoungsavanh, Mr Khemphet and Mr Thavonesack to 5 years imprisonment and fined them 1,000,000 Kip (125 USD) each (double the bribery amount taken according to the real figure). They also sentenced Ms Vayyakhone and Mr. Bouakhao to pay tax to the Government, according to the real figure of each year. This was to become part of the Government budget according to a payment contract and tax calculation by the Ministry of Finance.

87. Statistics on the taking of bribes are as follows: 2006 - 8; 2007 - 3; 2008 - 27; 2009 - 8; 2010 - 4. These relate to convictions in the court of first instance and/ or completed administrative cases (i.e. education and disciplinary).

88. Lao PDR noted that this information had been collected and analyzed by GIAA.

(b) Observations on the implementation of the article

89. The national authorities explained that article 2 of the AC Law and article 174 of the Penal Law cover persons "holding a legislative, executive, administrative or judicial office". Also, pursuant to article 157(1) of the Penal Law, "the bribing party" can be from the public or private sectors, as well as foreign and international organizations. The authorities further provided that "material items" mentioned in article 13 of the AC Law include, *inter alia*, money, gold and other materials (remaining or not). The reviewers therefore recommended, first, deleting "material items or benefit" in article 13 and including "any undue advantage (material or immaterial, whether pecuniary or non-

pecuniary)” and secondly, extending “benefit to the person giving the bribe” to the undue advantage “to the official himself, herself or any other person or entity” in order to comply with UNCAC article 15(b).

90. The reviewers considered the requirement, “and causes damage to the interests of the State and society or to the rights and interests of citizens” in article 2 of the AC Law. This was deemed a high threshold that could hinder a corruption-related offence as being defined as “corruption” pursuant to article 2. After engaging in an active discussion with the authorities, it was considered that if the requirement of causing damage to the interests of the State was not fulfilled, the offence (assuming it fulfils the other requirement), would be deemed an “attempt”. The reviewers determined this to be limiting and recommended that the requirement of causing “damage to the interests of the State and society or to the rights and interests of citizens” be deleted from article 2 of the AC Law.

(c) Challenges

91. Lao PDR identified the following challenges and issues in fully implementing the article under review:
1. Specificities in its legal system:
Giving a bribe is not defined under the AC Law, while it is defined by the Penal Law (article 157(2)). Thus, the giving of a bribe is currently prosecuted and punished according to the Penal Law. It was recognized that there is an apparent inconsistency of coverage between the Penal Law and AC Law; necessary amendments will need to be made in the near future.
 2. Limited capacity (e.g. human/technological/institution/other):
In some cases, evidence on bribery may not be sufficiently collected because of limited capacity of officials in charge of cases. The capacity of officials and organizations in charge of corruption (inspection and investigation authorities) needs to be enhanced.
92. Lao PDR has provided an account of its efforts, to date, to implement the article under review:
Staff members of GIAA receive training on inspections and investigations every year.
93. Lao PDR further outlined the steps or action that domestic or other authorities would need to take to ensure full compliance with the article under review:
A systematic training curriculum and materials for staff members of GIAA on specific issues (including inspection and investigation techniques) needs to be developed. Such a training curriculum would also include systematic training of trainers.

(d) Technical assistance needs

94. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Summary of good practices/lessons learned:
Information on the law and training curricula of other countries.
 2. On-site assistance by an anti-corruption expert:
Assistance in developing a training curriculum and training of trainers.
 3. Other assistance: necessary assistance in developing a training curriculum, including site visits to other countries.

No forms of technical assistance have been provided to date.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

95. Lao PDR cited articles 3 (new), 4 and 157(2) of the Penal Law.

Penal Law

Article 3. (New) Application of Penal Law within the Territory of the Lao People's Democratic Republic

This law is binding in the territory of the Lao People's Democratic Republic. An individual who commits an offence within the territory of the Lao People's Democratic Republic may be charged and punished in accordance with the Penal Law or other laws of the Lao People's Democratic Republic that define criminal penalties. In the event that diplomatic representatives or individuals benefiting from the diplomatic immunity conferred by international conventions commit offences in the territory of the Lao People's Democratic Republic, these cases shall be solved through diplomatic channels.

Article 4. Application of Penal Law outside the Territory of the Lao People's Democratic Republic

Lao citizens who commit offences outside the territory of the Lao People's Democratic Republic shall be charged with and punished for such offences if they are defined [as offences under] the Penal Law of the Lao People's Democratic Republic. Aliens and apatrids residing in the Lao People's Democratic Republic who commit offences outside the territory of the Lao People's Democratic Republic shall also be charged and punished. Foreign individuals who commit offences outside the territory of the Lao People's Democratic Republic shall be charged and punished as provided in the Penal Law of the Lao People's Democratic Republic if such a case is provided for in international conventions.

Article 157. Bribery and Corruption

(2) Any civil servant claiming, requesting, accepting or agreeing to accept a bribe in exchange for using [the civil servant's] position for the bribing party's interest shall be punished by one to three years of imprisonment and a fine equal to the amount or value of the bribe. Any person bribing or agreeing to bribe a civil servant shall be punished by six months to two years of imprisonment and a fine equal to the amount or value of the bribe. In the event of a substantial bribe, the bribed civil servant, the briber and the person who agrees to give the bribe shall be punished by three to five years of imprisonment and fines equal to twice the amount or value of the bribe.

Bribe intermediaries shall be punished by six months to two years of imprisonment and fines equal to the amount or value of the bribe.

Any person giving bribes under force or threat and who thereafter notifies the authorities shall not be considered an offender on the charge of bribery.

96. It was held that a "civil servant" in article 157 of the Penal Law includes a foreign government official. Based on extraterritorial jurisdiction by article 4 of the Penal Law, bribing of a foreign official outside the territory of the Lao PDR may be punished under article 157. Despite the second paragraph of article 3 of the Penal Law, a person who bribes a foreign official in the territory of the Lao PDR may be punished under article 157.

97. Lao PDR noted that no case examples and statistics are available.

(b) Observations on the implementation of the article

98. During the country visit, it was confirmed by the national authorities that although there have not been any cases, article 157 of the Penal Law could be applied to foreign public officials and officials of public international organizations. Existing international instruments, such as bilateral agreements were also deemed applicable. In order to ensure this application, the reviewers recommended that Lao PDR extend the definition of “civil servant” in law to reflect this, bearing in mind also the recommendations under UNCAC article 15.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

99. Lao PDR indicated that it has partially implemented the provision under review and cited articles 3 (new), 4, 157 and 174 (new) of the Penal Law.

100. Though it is a general rule that cases, which involve foreign officials with diplomatic immunity, shall be solved through diplomatic channels, Lao PDR recognizes several exceptions:

1. Foreign officials without diplomatic immunity can be prosecuted and punished according to the Lao PDR law;
2. Foreign officials from countries which have extradition treaties may be exempt from diplomatic immunity and allow for Lao PDR's jurisdiction; and
3. Lao PDR may negotiate an exemption of diplomatic immunity even if there is no extradition treaty.

A "solution through diplomatic channels" includes encouragement of actions upon foreign officials with diplomatic immunity by the countries of the officials' origin.

In cases where foreign officials were bribed outside the territory of the Lao PDR, it is a general rule that Lao PDR does not exercise jurisdiction. Lao PDR may choose to request extradition of foreign officials based on extradition treaties, where the act was committed in Lao PDR.

101. Lao PDR has stated that no case examples and statistics were available.

(b) Observations on the implementation of the article

102. The reviewers referred to their recommendation above to extend the definition of “civil servant” in law to include foreign public officials and officials of public international organizations.

(c) **Challenges**

103. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Competing priorities: the law of Lao PDR does not allow for the prosecution of foreign officials with diplomatic immunity.

However, Lao PDR would encourage governments from where the foreign officials come to take necessary action, provide information upon the foreign governments' request, or initiate criminal proceedings upon agreement with the foreign governments.

In previous cases, the Lao PDR Government encouraged foreign governments concerned to take necessary action.

(e) **Technical assistance needs**

104. Lao PDR indicated that no technical assistance would be required, and none had been provided, to date.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) **Summary of information relevant to reviewing the implementation of the article**

105. Lao PDR cited articles 109, 110, 116, 120, 121 and 124 of the Penal Law.

Penal Law

Article 109. Swindle of State or Collective Property

Any person engaging in trickery by any means to cause a person in charge of any State or collective asset or other person to hand over [such asset] shall be punished by six months to three years of imprisonment and shall be fined from 200,000 Kip to 7,000,000 Kip.

Where the swindle is performed as a regular profession, by an organised group or causes substantial damage, the offender shall be punished by three to seven years of imprisonment and shall be fined from 5,000,000 Kip to 15,000,000 Kip. Any attempt to commit such an offence shall also be punished.

Article 110. Embezzlement of State or Collective Assets

Any person abusing any confidence in order to embezzle, appropriate or replace any State or collective asset which has been assigned to such person to keep, transport, use in construction, repair or for any other purpose shall be punished by six months to three years of imprisonment and shall be fined from 200,000 Kip to 7,000,000 Kip.

Where embezzlement is performed as a regular profession, by an organised group or causes substantial damage, the offender shall be punished by three to seven years of imprisonment and shall be fined from 5,000,000 Kip to 15,000,000 Kip. Any attempt to commit such an offence shall also be punished.

Article 116. Concealment and Unlawful Trade of State or Collective Property

Any person accepting, purchasing, preserving, concealing or selling any State or collective property with the knowledge that such property was acquired by robbery, theft, mugging, swindle, embezzlement or

otherwise shall be punished by three months to two years of imprisonment and shall be fined from 500,000 Kip to 5,000,000 Kip.

Where such an offence is performed as a regular profession, as part of an organized group, or causes substantial damage, the offender shall be punished by one to five years of imprisonment and shall be fined from 1,000,000 Kip to 10,000,000 Kip.

Article 120. Swindle of Citizens

Any person engaging in trickery by any means to cause a person to hand over his asset shall be punished by three months to two years of imprisonment and shall be fined from 200,000 Kip to 5,000,000 Kip.

Where such swindle is performed as a regular profession, as part of an organised group or causes substantial damage, the offender shall be punished by two to five years of imprisonment and shall be fined from 500,000 Kip to 10,000,000 Kip. Any attempt to commit such an offence shall also be punished.

Article 121. Embezzlement of Citizens' Assets

Any person abusing any confidence in order to embezzle, appropriate or replace any property entrusted to him for keeping or for any other purpose shall be punished by three months to two years of imprisonment and shall be fined from 200,000 Kip to 5,000,000 Kip.

Where such an offence is performed as a regular profession, as part of an organized group or causes substantial damage, the offender shall be punished by two to five years of imprisonment and shall be fined from 500,000 Kip to 10,000,000 Kip. Any attempt to commit such an offence shall also be punished.

Article 124. Concealment and Unlawful Trade of Citizens' Property

Any person accepting, purchasing, preserving, concealing or selling any property with the knowledge that such property belongs to another person and was acquired by robbery, theft, mugging, swindle, embezzlement or otherwise shall be punished by three months to one year of imprisonment and shall be fined from 300,000 Kip to 3,000,000 Kip.

Where such an offence is performed as a regular profession, as part of an organised group or causes substantial damage, the offender shall be punished by one to three years of imprisonment and shall be fined from 500,000 Kip to 5,000,000 Kip.

106. Lao PDR provided the following case:

Embezzlement of the Collective Property.

In 2004, Mr Bounthavy was the manager of the Credit Union Bank for small enterprises. He used the money of the Bank to lend credit to customers in order to get a percentage. After this, customers lost capital; also because Mr Bounthavy had embezzled USD 8,000 for his own benefit.

Mr Bounthavy was removed from his position, and the Bank elected a new manager and complained about Mr Bounthavy.

The Vientiane Capital People Court sentenced Mr Bounthavy (accused) on 13 January 2009 (in Case No. 08/KT.E) to the offence of collective embezzlement, according to article 110 of the Law on Criminal Procedure. He was sentenced to 2 years and 9 months imprisonment. In practice, he served 1 year and 6 months. He had to repay USD 8,000 and was fined USD 550.

107. The following statistical data was also provided.

Swindle Statistics (article 109 of the Penal Law):

2006 - 28; 2007 - 9; 2008 - 18; 2009 - 5; 2010 - 2 .

Embezzlement of the State Property or Collective Property:

2006 - 48; 2007 - 21; 2008 - 56; 2009 - 38; 2010 - 15.

These relate to convictions in the court of first instance and/ or completed administrative cases (i.e. education and disciplinary).

108. Lao PDR has assessed the effectiveness of the measures adopted to criminalize embezzlement, misappropriation or other diversion of property by a public official and has outlined the results of such an assessment:

The Summary of the Anti-Corruption and Annual Plan 2007, 2008, 2009, 2010.

(b) Observations on the implementation of the article

109. The reviewers in considering the example, were not sure if the Credit Union Bank for small enterprises was a State (or quasi-State) run bank. For this reason, it was unclear whether or not the example was applicable.
110. During the country visit, the national authorities further referred to articles 11 and 12 of the AC Law.

The Anti-Corruption Law

Article 11. Embezzlement of State Property or Collective Property

The embezzlement of State property or collective property is the abuse of confidence in order to take in whole, take in part, or substitute other assets for any State property or collective property which has been assigned to such person to keep, transport, use in construction, repair, or for any other purpose.

Article 12. Swindle of State Property or Collective Property

Swindle of State property or collective property is engaging in trickery, deceit or fraud by any means to cause a person in charge of any State property or collective property to hand over [such property] to himself.

111. The national authorities confirmed that the term “asset”, as cited in the law, would cover “any property, public or private funds or securities or any other thing of value”. However, they noted that there was an inconsistency in the law. There are provisions provided for in the Penal Law and also in the AC Law that are not consistent (i.e. article 109, Penal Law and article 12, AC Law, article 110, Penal Law and article 11, AC Law). For this reason, the reviewers recommended addressing this accordingly.

(c) Challenges

112. Lao PDR identified the following challenges and issues in fully implementing the provision under review:
1. Limited capacity (e.g. human/technological/institution/other);
 2. Limited resources for implementation (e.g. human/financial/other).

(d) Technical assistance needs

113. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Summary of good practices/lessons learned;
 2. Model legislation;
 3. Legislative drafting; and
 4. Legal advice.

None of these forms of technical assistance has been provided to Lao PDR.

Article 18 Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Observations on the implementation of the article

114. During the country visit, the national authorities explained that Lao PDR has not criminalized trading in influence. There is no legal provision and no practice with respect to the implementation of the article. For this reason, the reviewers recommended that Lao PDR consider adopting measures to criminalize trading in influence.

(b) Challenges

115. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

(c) Technical assistance needs

116. Lao PDR indicated that the following form of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Model legislation;
3. Legislative drafting; and
4. Legal advice.

No form of technical assistance has been provided to date.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

117. Lao PDR cited articles 153, 154, 155, 156 and 174 (new) of the Penal Law, as well as articles 2, 14, 16 and 25(1) of the AC Law.

Penal Law

Article 153. Abuse of Power

Any civil servant abusing his authority, position, [or] duties for personal gain, thereby [adversely] affecting the interests of the State or society or the rights and interests of citizens shall be punished by three months to two years of imprisonment and shall be fined from 300,000 Kip to 3,000,000 Kip.

Where such an offence causes substantial damage, the offender shall be punished by two to five years of imprisonment and shall be fined from 1,000,000 Kip to 50,000,000 Kip.

Article 154. Abuse of Authority

Any civil servant engaging in the intentional excessive use of the authority provided by law, thereby [adversely] affecting the interests of the State or society or the rights and interests of citizens shall be punished by three months to three years of imprisonment and shall be fined from 500,000 Kip to 5,000,000 Kip. In the event that the abuse of authority is committed with the use of force, weapons, torture, indecent words or acts affecting the honour and reputation of the victim, the offender shall be punished by three to five years of imprisonment and shall be fined from 2,000,000 Kip to 7,000,000 Kip.

Article 155 Abandonment of Duty

Any civil servant intentionally abandoning his duty and thereby [adversely] affecting State or social activities, shall be punished by six months to three years of imprisonment or re-education without deprivation of liberty and shall be fined from 200,000 Kip to 3,000,000 Kip.

Article 156. Negligence in the Performance of Duty

Any civil servant failing to perform an assigned task, negligently performing such assigned task, or guilty of lack of responsibility, and thereby [adversely] affecting the State or society or the rights and interests of citizens, shall be punished by three months to three years of imprisonment or re-education without deprivation of liberty and shall be fined from 100,000 Kip to 1,000,000 Kip.

Article 174. (New) Corruption

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 authorised 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 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 organisation, individual or legal entity who is the rightful owner of such assets.

Anti-Corruption Law

Article 2 Corruption

(1) Corruption is the act of an official who opportunistically uses his position, powers, and duties to embezzle, swindle [or] receive bribes or any other act provided for in Article 10 of the Law, [which act is committed] to benefit himself or his family, relatives, clan or group and causes damage to the interests of the state and society or the rights and interests of citizens.

Article 14. Abuse of Position, Power and Duty

Abuse of position, power and duty to take State property, collective property or individual property is the use of one's position, power, and duty in order to benefit oneself, or one's family, relatives, or clan that causes damage to the interests of the State and collectives or the rights and interests of citizens.

Article 16. Excessive Use of Position, Power and Duty

Excessive use of position, power, and duty is the intentional use of position, power, and duty beyond the scope of the authority provided by the laws and regulations in order to benefit oneself, or one's family, relatives, or clan that causes damage to the interests of the State and collectives or the rights and interests of citizens.

Article 25. Prohibitions on Person who has Position, Power and Duty

It is prohibited for a person with position, power and duty to commit any of the following acts:

1. To receive money, material items, or other benefits from any individual or organisation that relates to his functions which causes damage to the interests of the State and society, or the rights and interests of citizens;

...

6. To use his position to borrow the money of any collective that is under his responsibility for other persons, or to provide any guarantee to other persons to borrow money from the banks;

7. To recruit, post, or appoint one's own wife, husband, children or close relatives in leading positions in those functions under his responsibility that would create conditions for corruption, [such as positions] in organisational and control activities, finance and accounting, treasury functions, warehouse keeping, procurement, and contracting;

8. To incorrectly possess or use any house or land belonging to the State or collectives in order to benefit himself or his family, relatives, group, or clan;

...

12. To refer to the reputation, position, power, and duty of a higher authority or other person for personal benefit.

Any government official who infringes any of the above-mentioned prohibitions will be subject to re-education and disciplinary [measures]; and if the infringement constitutes an offence, [the offender] shall be punished as provided in the laws and shall pay compensation for the damage he has caused.

118. Lao PDR authorities explained that it is an established rule in Lao PDR that article 2 of the AC Law is referred to for guidance on the scope of beneficiaries of corruption offences, including abuse of functions.

119. The following statistical data was provided.

Number of cases decided by Courts on the abuse of position, power and duty:

2006 - 27; 2007 - 19; 2008 - 32; 2009 - 10; 2010 - 6. This information was collected by GIAA.

(b) Observations on the implementation of the article

120. The reviewers deemed the provision under review to have been legislatively implemented by Lao PDR. However, the threshold contained in article 174 of the Penal Law on "causing damage to the interest of the State or collectives or to the rights and benefits of citizens", as mentioned above, required a higher threshold requirement than foreseen by UNCAC.

(c) **Challenges**

121. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) **Summary of information relevant to reviewing the implementation of the article**

122. Lao PDR indicated that it has partially implemented the provision under review. While unusual enrichment that cannot be reasonably explained (illicit enrichment) does not trigger a criminal proceeding, it does trigger an inspection proceeding.

123. Lao PDR cited articles 26 and 27 of the AC Law.

Anti -Corruption Law

Article 26. Property Declaration

Before or after receiving position, power, or duty, the person who has position, power, and duty as provided in Article 8 of this law must declare his or her own property and debts, and that of [the person's] own husband or wife and children who are under his or her charge³⁸ accurately, faithfully, and honestly and must be accountable under the law for the contents of the declaration.

The government issues detailed regulations on the declaration of property and debt.

Article 27 Causes for Conducting an Inspection

The causes that result in the conduct of an inspection by the counter-corruption organisation 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.

124. Lao PDR noted that no cases have been reported.

(b) **Observations on the implementation of the article**

125. The national authorities confirmed that the words “appears to be unusually rich” in article 27 of the AC Law can trigger an investigation. Moreover, the authorities further referred to article 7(3) of the Criminal Procedure Law.

Article 7. Guarantee of Right of Defence to Accused Person

(3) The claimant shall bring evidence to prove his claim and to prove that the accused person or defendant committed the offence. The offender, accused person, or defendant has the right to present evidence to defend himself, but shall not be forced to bring evidence to prove his innocence.

126. During the country visit, it was confirmed that Lao PDR does not allow for the reversal of the burden of proof, as it is also prohibited by the Constitution. There are no income and asset declaration requirements in Lao PDR, bearing in mind article 26 on property declaration, but that asset declarations might be possible pursuant to article 22 of the AC Law, whereby “Government staff...shall lead in having transparent lifestyles and shall have no corruption”. However, Lao PDR may wish to consider implementing a system that requires such declarations of all public officials and that such declarations are also verified.

(c) Challenges

127. Lao PDR identified the following challenge and issue in fully implementing the provision under review:

1. Other issues: Scarcity of information on other country's practices.

128. Lao PDR provided an account of its efforts, to date, to implement the provision under review:

Agencies concerned keep close coordination and communication under the supervision of GIAA.

129. Lao PDR also outlined the steps that domestic or other authorities would need to take to ensure full compliance with the provision under review: the Government is considering necessary amendments to the law.

(d) Technical assistance needs

130. Lao PDR indicated that the following form of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned: Lao PDR would like to know how other countries adopt illicit enrichment offences in their legal systems.

No forms of technical assistance have been provided to date.

Article 21 Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

131. Lao PDR indicated that it has not implemented the provision under review.

(b) Observations on the implementation of the article

132. The reviewers noted during the country visit that there was a willingness to criminalize bribery in the private sector. This was encouraged by the reviewers, who recommended that UNCAC article 21 be implemented accordingly.

(c) Challenges

133. Lao PDR identified the following challenge and issue in fully implementing the provision under review:

1. Specificities in its legal system: the laws (Penal Law and AC Law) do not criminalize bribery in the private sector.

Bribery in the private sector is usually dealt with by the Government's Administrative Committee at the Provincial Level and/or the National Mediation Committee under the Ministry of Justice. Lao PDR hopes to conduct a study to identify which laws need to be amended. In the upcoming amendment to the AC Law, a provision to criminalize bribery in the private sector will be considered. These steps will be taken in the next five years.

(d) Technical assistance needs

134. Lao PDR indicated that the following form of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Model legislation;
3. Legislative drafting; and
4. Legal advice.

No technical assistance has been provided to date.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

135. Lao PDR indicated that it has partially implemented the provision under review, and cited articles 121 and 122 of the Penal Law.

Penal Law

Article 121. Embezzlement of Citizens' Assets

Any person abusing any confidence in order to embezzle, appropriate or replace any property entrusted to him for keeping or for any other purpose shall be punished by three months to two years of imprisonment and shall be fined from 200,000 Kip to 5,000,000 Kip.

Where such an offence is performed as a regular profession, as part of an organized group or causes substantial damage, the offender shall be punished by two to five years of imprisonment and shall be fined from 500,000 Kip to 10,000,000 Kip.

Any attempt to commit such an offence shall also be punished.

Article 122. Intentional Destruction of or Damage to Citizens' Property

Any person intentionally destroying or damaging another person's property by any means or in any manner shall be punished by six months to two years of imprisonment and shall be fined from 100,000 Kip to 1,000,000 Kip.

Where such an offence causes substantial damage or threatens the life or health of the people, the offender shall be punished by two to seven years of imprisonment and shall be fined from 300,000 Kip to 3,000,000 Kip.

Any attempt to commit such an offence shall also be punished.

(b) Observations on the implementation of the article

136. The reviewers deemed the legislation to be vague and there was no evidence of its use with respect to the private sector. For this reason, the reviewers recommended that Lao PDR consider enacting specific legislation on criminalizing embezzlement of property in the private sector.

(c) Challenges

137. Lao PDR identified the following challenge and issue in fully implementing the provision under review:
1. Specificities in its legal system: definition of criminalized acts.

(d) Technical assistance needs

138. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Summary of good practices/lessons learned;
 2. Model legislation;
 3. Legislative drafting; and
 4. Legal advice.

No form of technical assistance has been provided to date.

Article 23 Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*
 - (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*
- (b) Subject to the basic concepts of its legal system:*
- (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

- (ii) *Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

139. Lao PDR indicated that it has partially implemented the provision under review, and cited Articles 4, 11, 17 (New), 43 (New), 64 (New), 165 and 166 of the Penal Law, articles 2 and 10 of the AC Law and article 2 and annex I of the Prime Minister Decree on Anti-Money Laundering.

Penal Law

Article 4. Application of Penal Law outside the Territory of the Lao People's Democratic Republic

Lao citizens who commit offences outside the territory of the Lao People's Democratic Republic shall be charged with and punished for such offences if they are defined [as offences under] the Penal Law of the Lao People's Democratic Republic.

Aliens and apatrids residing in the Lao People's Democratic Republic who commit offences outside the territory of the Lao People's Democratic Republic shall also be charged and punished.

Foreign individuals who commit offences outside the territory of the Lao People's Democratic Republic shall be charged and punished as provided in the Penal Law of the Lao People's Democratic Republic if such a case is provided for in international conventions.

Article 11. Offences Pertaining to Several Categories

An offence pertaining to several categories refers to an act or several acts of infraction committed by an individual, [where such act or acts are] classifiable under two or more categories, transgress several articles of the Penal Law, and with respect to which a decision shall be rendered at the same time and in the same court.

Article 17. (New) Participation in an Offence

“Participation in an offence” refers to intentional participation in an offence by two or more persons.

Participants in an offence are:

- Authors;
- Implementers;
- Inciters; and
- Accomplices.

The author is the one who has planned, organised or given instructions to commit the offence;
The implementer is the one who has directly committed the offence; Inciters are persons persuading others to commit offences; [and] Accomplices are persons who have intentionally assisted in the offence, or who have previously agreed to hide the offender, to hide instruments and tools of the offence, to efface traces of the offence or to conceal any proceeds from the offence.

Article 43. (New) Prescription of Penalties for Accomplices to and Inciters of Offences

Prescription of penalties for complicity in and incitement of offences must be considered on an equal basis as other forms of participation in such offences, but, taking into consideration the nature and degree of the complicity and incitement, the court may sentence lighter penalties than those prescribed.

Article 64. (New) Money Laundering

Any person conducting activities in order to convert money or items derived from corruption, drug trafficking, human trafficking, trade in weapons of war or other offences into legal money by depositing them in banks, buying land, buying houses, lending to other persons or other means shall be considered as having engaged in money laundering, and shall be punished by one year to three years of imprisonment and shall be fined one third of the laundered amount.

Any preparation or attempt to commit such an offence shall also be punished.

Accomplices in money laundering shall be punished by six months to two years of imprisonment and shall be fined 1 percent of the laundered amount.

Article 165. Concealment of Offence

Any person who knows of or who witnessed an offence committed by another person and who fails to report such offence to officers shall be punished by three months to two years of imprisonment or re-education without deprivation of liberty and shall be fined from 200,000 Kip to 2,000,000 Kip.

Article 166. Concealment of Offender

Any person who did not make any previous agreement or promise with an offender but who provides shelter or assistance to such an offender[, allowing the offender] to evade arrest or trial shall be punished by three months to five years of imprisonment or re-education without deprivation of liberty and shall be fined from 300,000 Kip to 5,000,000 Kip.

Anti-Corruption Law

Article 2. Corruption

Corruption is the act of an official who opportunistically uses his position, powers, and duties to embezzle, swindle [or] receive bribes or any other act provided for in Article 10 of this law, [which act is committed] to benefit himself or his family, relatives, friends, clan, or group and causes damage to the interests of the State and society or to the rights and interests of citizens.

The official stipulated in this law means leaders at all levels, administrative staff, technical staff, the staff of State enterprises, civil servants, soldiers, [and] police officers, including chiefs of villages and persons who are officially authorised and assigned to exercise any right or duty.

Article 10. 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;
- Deception in bidding or concessions;
- Forging documents or using forged documents;
- Disclosure of State secrets for personal benefit;
- Holding back or delaying documents.

Prime Minister Decree on Anti-Money Laundering

Article 2

The following terms used in this Decree are understood as follows:

1. Money Laundering refers to the acquisition of money or assets deriving from offences as specified in Annex 1 of this Decree, that have been transformed, utilized, possessed. Transferred or converted in order to give such money or assets the legitimate appearance.
2. Reporting Institution refers to individuals or entities such as commercial banks. Financial institutions. Insurance companies. Casinos and others. As specified in Annex 2 of this Decree, which are obligated to report on any suspicious transaction to the Money Laundering Intelligence Unit.
3. Organization responsible for supervising the Reporting Institutions refers to an organization which has the right and responsibility to supervise and guide Reporting Institutions, namely: the Bank of the Lao P.D.R. . Ministry of Finance and Ministry of Commerce.
4. Transaction refers to any deal conducted between Reporting Institutions and their customers relating to account opening. Cash deposit and withdrawal. Currency exchange. Domestic and international transfers. Purchase sale of material. Goods or services and others.
5. Acquiring money or assets deriving from offences refers to the acquisition of money or assets deriving from unlawful activities such as: illicit trafficking in narcotic drugs. Illicit arms trafficking. Trafficking in human beings, corruption, sexual exploitation and other conducts as listed in Annex 1 of this Decree.
6. Transformation of assets deriving from offences refers to the conversion of the assets deriving from offences as specified in Annex 1 of this Decree. Into different kind of assets such as: from currency to gold, from gold to real estate, from real estate back to currency or other assets that appear legitimate.
7. Utilization of money or assets deriving from offences refers to the usage of money or assets illegally acquired, for entering into a transaction or a business activity or buying assets aiming at recuperating money or assets that appear legitimate.
8. Possession of money and assets deriving from offences refers to having in possession of illegally acquired money or assets or putting under the custody of others aiming at making such assets appear legitimate.
9. Transfer of money and assets deriving from offences refers to the sending, transferring of ownership of money or assets, the money transfer from one account to another between banks or financial institutions domestically and internationally in order to make the money or assets appear legitimate.
10. Exchange of money or assets deriving from offences refers to the making use of money or assets acquired from offences for exchanging into other currencies or other payment instruments or other types of assets, aiming at making the money or assets obtained through such exchanges, appear legitimate.
11. High risk individual refers to an individual having decision making power who is periodically determined by the Money Laundering Intelligence Unit.

Annex 1.

Criminal offences which are considered as serious offences for money laundering are as follows:

- ...
- 9. Corruption
- ...
- 20. Check forgery, illicit usage false checks or bonds and other financial instruments;
- 21. And any other crimes in respect of which a penalty may include a sentence to prison for a period of one year or more.

140. All the offences under UNCAC are predicate offences of money-laundering based on the definition of corruption under the AC Law. A list of predicate offences is found in annex 1 of the Decree on Anti-Money Laundering.
141. "Conversion" under article 64(1) of the Penal Law includes situations where an offender of predicate offences conceals or disguises true information in converting proceeds of crime. Paragraph 5 of article 64 covers situations where an accomplice conceals or disguises true information. Article 165 of the Penal Law criminalizes the concealment of offences in whatever ways.
142. Lao PDR noted that a new law on money-laundering is to be considered and enacted in the next five years. No cases on money-laundering have been reported to date.

(b) Observations on the implementation of the article

143. During the country visit, it was confirmed by the national authorities that there have been no cases on money-laundering. The Anti-Money Laundering Intelligence Unit informed the reviewers that they are in the process of working on an AML/CTF law and a taskforce has been established to consider such drafting.
144. It was confirmed by the national authorities that if a predicate offence is committed overseas, but the person is in Lao PDR (as a citizen or merely residing), then Lao PDR would have jurisdiction over the matter; as long as it would be deemed an offence if it had been committed in Lao PDR.
145. The national authorities informed the reviewers that under the law of Lao PDR (i.e. article 11 of the Penal Law), a person may be criminally liable for both the money laundering act and predicate offence (self-laundering).
146. Copies of LAO PDR's anti-money laundering laws have not been furnished to the United Nations. For this reason, the reviewers recommended that Lao PDR furnish copies of its anti-money-laundering laws to the Secretary-General of the United Nations.
147. The reviewers agreed with the observations contained in the Asia Pacific Group on Money Laundering Report dated July 2012:

Article 64 of the Penal Law does not satisfy all the physical and material elements of the ML offence required in Article 3 of the Vienna Convention and Article 6 of the Palermo Convention (i.e. conversion or transfer, concealment or disguise, acquisition, possession or use of property with the knowledge at the time of receipt). Lao PDR has adopted a mixed threshold and list approach to predicate offences. However, not all predicate offences are criminalised in Lao PDR, including organised crime and racketeering, terrorism and financing of terrorism, smuggling, insider trading and market manipulation. There is a broad range of ancillary offences to the ML offences, though not all are sanctioned (e.g. preparation and attempt). In addition, one cannot find a clear and consistent definition of property, assets and proceeds of crime. [para. 13]

There are seizure and confiscation mechanisms in place under the Criminal Procedure Law and Penal Law, respectively. Seizure is possible, whenever there are reasons to believe that the funds or assets are related to the commission of a crime or are important to its investigation or to produce material evidence. Seizure is a provisional measure that applies to all kinds of property and to all serious crimes, including ML offence and related predicate offences. Confiscation of items (connected to an offence) or property are additional penalties to the principal categories of punishment inflicted upon an offender in accordance with Article 28, paragraph b, sub-paragraph 2 and 3 of the Penal Law. Property derived from criminal activity or acquired with its proceeds may be confiscated under the Penal Law, except if necessary for the livelihood of the offender and his family. However, as explained earlier, the lack of consistency in the terminology used (e.g. property, assets or items) leads to a degree of uncertainty regarding what can be confiscated, in particular instrumentalities used or to intend to be used for ML as well as property of corresponding value. [para 15]

There is no freezing mechanism to prevent assets being dealt with, transferred or disposed of within a short period of time, such as bank account transfers. Article 12 of AML Decree No. 55 establishes the possibility to freeze accounts, but there are no

sanctions. In fact, there is neither a freezing mechanism, nor an adequate communication and coordination mechanism among the relevant agencies in place. [para 16]

Given that there are no statistics on the seizure and confiscation of ML offence, it is not possible to demonstrate the effectiveness of the existing system. [para 17]

There is neither specific provision nor prohibition for an offender to be convicted of ML even if the predicate offence has been committed in another jurisdiction (extraterritoriality of committed predicate offences). [para. 220]

In other words, it is possible to prosecute someone for an offence committed outside Lao PDR as long the conduct is also punishable under Lao PDR criminal law. So, it is possible to punish someone that has committed the ML offence outside the territory of Lao PDR. However, it is not clear that someone can be prosecuted in Lao PDR for ML when the predicate offence was committed outside Lao PDR. [para. 222]

148. The reviewers therefore recommended that the above observations be legislatively considered.

(c) Challenges

149. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Inter-agency co-ordination: while inter-agency coordination on money laundering exists, such coordination needs to be enhanced because money laundering is a relatively new phenomenon in Lao PDR;
2. Limited capacity (e.g. human/technological/institution/other): money laundering is a relatively new phenomenon in Lao PDR; therefore, knowledge and experiences in dealing with it need to be enhanced.

150. Lao PDR provided an account of its efforts, to date, to implement the article under review: article 64 (New) of the Penal Law criminalizing money laundering, as well as the Prime Minister Decree on Anti-Money Laundering, were enacted. The Bank of Lao PDR and other agencies concerned have provided training on anti-money laundering for officials. The Government is currently drafting the Anti-Money Laundering Law, and a first draft has been compiled to date. Regulations for banks on inspecting and reporting of suspicious transactions were developed and implemented. The National Committee on Anti-Money Laundering was established to oversee anti-money laundering efforts. The financial intelligence unit (FIU) of Lao PDR was established and is located in the Bank of Lao PDR.

151. Lao PDR outlined the steps or action that domestic or other authorities would need to take to ensure full compliance with the provision under review:

The Anti-Money Laundering Law is currently being drafted. A new training curriculum will be developed and training of trainers will be conducted. More training for officials concerned will be provided. Terms of reference of each agency concerned will be clarified for better coordination.

(d) Technical assistance needs

152. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Legislative drafting: technical assistance in drafting a new Anti-Money Laundering Law;
2. Development of an action plan for implementation: technical assistance in developing a national action plan on anti-money laundering;
3. Other assistance: enhancement of IT systems and capacity of agencies concerned to expedite information sharing and action on suspicious transactions and money laundering.

Some forms of technical assistance have been partially provided. UNODC has provided training to officials on an ad hoc basis. The World Bank and Asian Development Bank have also assisted in strengthening the supervision of financial institutions.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

153. Lao PDR cited articles 116 and 124 of the Penal Law.

Article 116. Concealment and Unlawful Trade of State or Collective Property

Any person accepting, purchasing, preserving, concealing or selling any State or collective property with the knowledge that such property was acquired by robbery, theft, mugging, swindle, embezzlement or otherwise shall be punished by three months to two years of imprisonment and shall be fined from 500,000 Kip to 5,000,000 Kip.

Where such an offence is performed as a regular profession, as part of an organised group, or causes substantial damage, the offender shall be punished by one to five years of imprisonment and shall be fined from 1,000,000 Kip to 10,000,000 Kip.

Article 124. Concealment and Unlawful Trade of Citizens' Property

Any person accepting, purchasing, preserving, concealing or selling any property with the knowledge that such property belongs to another person and was acquired by robbery, theft, mugging, swindle, embezzlement or otherwise shall be punished by three months to one year of imprisonment and shall be fined from 300,000 Kip to 3,000,000 Kip.

Where such an offence is performed as a regular profession, as part of an organised group or causes substantial damage, the offender shall be punished by one to three years of imprisonment and shall be fined from 500,000 Kip to 5,000,000 Kip.

154. No statistics were available to date.

(b) Observations on the implementation of the article

155. The reviewers were of the view that the provision under review has been legislatively implemented.

(c) Challenges

156. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

157. Lao PDR cited articles 97 and 164(2) of the Penal Law.

Penal Law

Article 97. Duress

Any person exercising duress against another person by using force or weapons or threats to compel such other person to act or to refrain from acting according to the offender's will but contrary to the compelled person's will and to the detriment of such compelled person shall be punished by three months to three years of imprisonment and shall be fined from 100,000 Kip to 1,000,000 Kip.

Article 164. False testimony

(2) Any person agreeing to provide a benefit in money or in kind or to serve [any of] the above-mentioned persons because of his false testimony[, opinion or translation] shall be punished by one to five years of imprisonment and shall be fined from 200,000 Kip to 5,000,000 Kip.

158. Article 97 of the Penal Law is applied to duress aiming at acquiring false statements from witnesses.

159. No cases or statistics were available.

(b) Observations on the implementation of the article

160. The reviewers noted that the cited legislation was vague and suggested that Lao PDR review its legislation to ensure full compliance with UNCAC article 25(a).

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

161. Lao PDR cited articles 158 and 159 of the Penal Law.

Penal Law

Article 158. Obstruction of the Performance of Officers' Duty

Any person threatening or using force to obstruct officers in the performance of their public or social duties shall be punished by three months to two years of imprisonment and shall be fined from 200,000 Kip to 2,000,000 Kip.

Where such an offence causes injury to officers, the offender shall be punished by two to five years of imprisonment and shall be fined from 300,000 Kip to 3,000,000 Kip.

Where such an offence causes an officer's physical disability or loss of life, the offender shall be punished by five to twenty years of imprisonment and shall be fined from 1,000,000 Kip to 10,000,000 Kip or life imprisonment or the death penalty.

Article 159. Denigration of State Officials

Any person using indecent acts or words or false allegations towards State officials to damage their reputation and honour or the population's confidence in such officials shall be punished by three months to two years of imprisonment and shall be fined from 100,000 Kip to 1,000,000 Kip.

162. No cases were reported.

(b) Observations on the implementation of the article

163. The national authorities confirmed that the terms "officer" and "state official" used in articles 158 and 159 of the Penal Law cover "justice or law enforcement officials". For this reason, the reviewers deemed the provision under review to have been legislatively implemented.

(c) Challenges

164. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

Article 26 Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Observations on the implementation of the article

165. The reviewers noted that the legislation cited by Lao PDR (article 2 (new) of the Penal Law, article 31 of the Criminal Procedure Law and Article 92 (edited) of the Contract and Tort Law) was insufficient and did not implement the article under review. They therefore recommended that a comprehensive legal framework on the liability of legal persons be established as a priority.

(b) Challenges

166. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

(c) Technical assistance needs

167. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Model legislation;
3. Legislative drafting;
4. Legal advice.

None of these forms of technical assistance has been provided to Lao PDR to date.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

168. Lao PDR cited articles 17 (New) and 43 of the Penal Law.

Penal Law

Article 17. (New) Participation in an Offence

“Participation in an offence” refers to intentional participation in an offence by two or more persons. Participants in an offence are:

- Authors;
- Implementers;
- Inciters; and
- Accomplices.

The author is the one who has planned, organised or given instructions to commit the offence;
The implementer is the one who has directly committed the offence;
Inciters are persons persuading others to commit offences; [and] Accomplices are persons who have intentionally assisted in the offence, or who have previously agreed to hide the offender, to hide instruments and tools of the offence, to efface traces of the offence or to conceal any proceeds from the offence.

Article 43. (New) Prescription of Penalties for Accomplices to and Inciters of Offences

Prescription of penalties for complicity in and incitement of offences must be considered on an equal basis as other forms of participation in such offences, but, taking into consideration the nature and degree of the complicity and incitement, the court may sentence lighter penalties than those prescribed.

(b) Observations on the implementation of the article

169. The reviewers deemed the provision under review to have been legislatively implemented.

Article 27 Participation and attempt

Paragraphs 2 and 3

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

170. Lao PDR cited articles 14, 38 (New), 39 (New), 41 and 42 of the Penal Law.

Penal Law

Article 13. Preparation to Commit Offences

“Preparation to commit an offence” refers to the preparation of materials, conditions or other factors in order to commit an intentional offence. Such preparation to commit an offence shall only be charged or punished if deemed dangerous for society, as provided in the specific part of this law. Preparation to commit offences shall be punished according to the articles prescribing penalties for the offence itself.

Article 14. Attempts to Commit Offences

“Attempt to commit an offence” refers to the taking of intentional acts which are components of an offence but where the offence was not completed because of circumstances outside the control of the offender, making such acts not successful. Such attempts to commit an offence shall only be charged or punished if deemed dangerous for society, as provided in the specific part of this law.

Attempts to commit an offence shall be punished according to the articles prescribing penalties for the offence itself.

Article 38. (New) Characteristics of Dangerous Offences

An offence is characterised as dangerous based on the category [of the offence] and the method [used to commit] the offence.

Article 39. (New) Levels of Danger of an Offence

The level of danger of an offence depends on the resulting loss to life, health, integrity, and property caused by the intentional or negligent offence. There are three levels of loss to property as follows:

1. Low level or minor loss is from 500,000 Kip to 20,000,000 Kip;
2. Medium level or medium loss is from more than 20,000,000 Kip to 50,000,000 Kip;
3. High level or high loss is from more than 50,000,000 Kip.

Article 42. Prescription of Penalties for the Preparation of and Attempts [to Commit] Offences

Prescription of penalties for the preparation of and attempts [to commit] offences must take into consideration their nature and degree of social threat, the degree of implementation of the offender's ill intentions, and the causes of such unsuccessful offences. The court may impose sentences with lighter penalties than those legally prescribed.

171. No cases were reported.

(b) Observations on the implementation of the article

172. The reviewers deemed the requirement of “if deemed dangerous for society” to require a higher threshold than necessary to fulfill the criminalization of any attempt to or preparation for committing an offence.

(c) Challenges

173. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

(d) Technical assistance needs

174. Lao PDR indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned.

No technical assistance has been provided to Lao PDR to date.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

175. Lao PDR cited articles 26, 51 and 169 of the Penal Law, as well as article 69 of the Criminal Procedure Law.

Penal Law**Article 8**

“Minor offences” are offences punished under the law by public criticism or fine;

“Major offences” are offences punished under the law by re-education without deprivation of liberty, and imprisonment from three months to ten years, and fines;

“Crimes” are offences punished under the law by imprisonment from five years up to the death penalty.

Article 26. Effectiveness of Prosecution

Prosecutions shall not be considered effective unless filed within:

- One year, in the case of minor offences;

- Seven years, in the case of major offences;
- Fifteen years, in the case of crimes.

The [filing period for] effectiveness of a prosecution starts from the day the offence is committed. In the event a second offence is committed while legal proceedings are pending in respect of an earlier offence, the [filing period for] effectiveness of the [first] prosecution shall [re-start] from the day the later offence is committed. In the event of evasion of court proceedings, [the filing period for] effectiveness shall start from the day the offender presents himself or is arrested.

Article 51. Limitation Period for Execution of the Court's Decision

Penalties shall not be imposed by the court unless executed within the following limitation periods:

- One year for minor offences;
- Seven years for major offences;
- Fifteen years for crimes.

The limitation period starts on the day the court's sentence becomes final. In the event that the offender commits a new offence, the limitation period for execution of the court's decision in respect of any previous unexecuted sentence shall re-start on the day the second offence is committed. In the event that the offender evades penalties during the period of effectiveness of the sentence, the limitation period shall re-start from the day the offender presents himself or is arrested.

Article 169. Escape from Prison or Reformatory Centre

Any person escaping from a prison or reformatory centre during a trial or during the serving of a sentence shall be punished by six months to three years of imprisonment and shall be fined from 100,000 Kip to 1,000,000 Kip.

Where such escape from prison or reformatory centre is made with the use of force against officials, the offender shall be punished by three to five years of imprisonment and shall be fined from 500,000 Kip to 5,000,000 Kip.

The Criminal Procedure Law

Article 69. Case Suspension

Case suspension is the temporary suspension of proceedings because of the following causes:

1. The accused is in hiding, has fled from the proceedings or the concerned individual's residence is unknown and evidence in the case is not yet sufficient;
2. It is unknown who committed the offence;
3. There is confirmation from a doctor that the accused has a serious health condition or has lost control of his mental faculties.

The suspension of cases mentioned in point 1 and point 2 shall occur only after the period of investigation has ended.

For the suspension of cases, there must be an order of the head of the investigation organisation or the public prosecutor. The order for suspension of the case [made by] the head of the investigation organisation shall immediately be copied and reported to the public prosecutor.

For the suspension of cases mentioned in point 3, the head of the investigation organisation or the public prosecutor shall issue an order to send the accused person for treatment.

Criminal cases that have been suspended may be dismissed when the limitation period for prosecution expires.

An order to suspend or to dismiss a case shall be notified to the parties, and the injured party or civil plaintiff has the right to appeal within seven days from the date they were notified of such order.

176. No statistics on implementation were available.

(b) Observations on the implementation of the article

177. The reviewers deemed the statutes of limitations (that commence at the time the offence is committed) for major offences of seven years and for crimes of fifteen years to be sufficient, in the event that corruption-related offences fall under these categories (cf. articles 157 and 174 of the Penal Law). However, if a corruption-related offence were to be deemed a minor offence, and it remained unclear to the reviewers whether or not this was the case (cf. article 33 of the AC Law), the one-year statute of limitations was

deemed insufficient. In general, the reviewers considered that corruption should never fall under the category of a minor offence.

(c) Challenges

178. Lao PDR identified the following challenges and issues in fully implementing the provision under review:
1. Limited capacity (e.g. human/technological/institution/other);
 2. Limited resources for implementation (e.g. human/financial/other).

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

179. Articles 31 – 33 of the AC Law were cited during the country visit.

Anti-Corruption Law

Article 31. 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.

Article 32. Education Measures

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

Article 33. 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 criticised, 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.

(b) Observations on the implementation of the article

180. The reviewers were informed during the country visit that the current situation is that no specific punishments are foreseen, but this is evolving through jurisprudence.
181. In considering article 157 of the Criminal Procedure Law, as mentioned above in relation to articles 8 of the Penal Law and 32 of the AC Law (cf. UNCAC article 29), the reviewers were of the view that corruption-related offences should not be considered as

minor offences. They further considered that, in theory, given the provisions in article 174 of the Penal Law, the judicial authorities could take into account the gravity of the offence. However, the reviewers were informed by the national authorities that no first instance judgments on corruption had been appealed. The main reason for this seemed to be the low level of sanctions imposed.

182. As the reviewers deemed that a corruption-related offence ought not to be a minor offence, the existing disciplinary measures (i.e., education measures, removal of position/non-promotion) would not be applicable sanctions. The reviewers recommended that sanctions be effective, proportionate and dissuasive, bearing in mind the gravity of the corruption-related offence in question.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

183. Lao PDR cited article 64 of the Constitution of Lao DPR, articles 28 and 29 of the Prime Minister Decree on Civil Service of the Lao PDR, article 6 of the Peoples Court Law, articles 18- 24 of the Penal Law, and article 51 of the National Assembly Law.

The Constitution of Lao PDR

Article 64.

Members of the National Assembly shall not be prosecuted in court or detained without the approval of the National Assembly, or the National Assembly Standing Committee during the recess of the National Assembly.

In cases involving manifest or urgent offences, the organisation which has detained the member of the National Assembly must immediately report to the National Assembly or to the National Assembly Standing Committee during a recess of the National Assembly for consideration and decision [on further action concerning the member]. Investigations shall not [be conducted in such a manner as to] prevent a prosecuted member from attending National Assembly sessions.

National Assembly Law

Article 51. Immunities of Members of the National Assembly

Members of the National Assembly will not be arrested, detained or prosecuted in a criminal court without the approval of the National Assembly or National Assembly Standing Committee.

In the event that it is necessary to arrest a member of the National Assembly as a result of manifest offence, or due to the urgency of the matter, the organisation which has detained the member of the National Assembly must immediately report to the National Assembly or to National Assembly Standing Committee in order to obtain instructions regarding further action [or prosecution.] Investigations shall not [be conducted in such a manner as to] prevent a prosecuted member from attending National Assembly sessions.

184. No cases were reported.

(b) Observations on the implementation of the article

185. It was confirmed by the national authorities that members of the judiciary enjoy the same privileges as members of the National Assembly.

186. Moreover, for any corruption-related offence to be prosecuted, it would need to first be investigated by GIAA and if there is sufficient evidence, then it would be referred to the Office of the People's Prosecutor to consider. In theory, if a *prima facie* case was determined by the Office, it would go to the Court of First Instance. For this reason, it was provided that the immunity of members of the National Assembly and the judiciary could be lifted, but this had never been exercised. To lift immunity, the prosecutor would request the immunity to be lifted and approval would need to be given by the National Assembly Standing Committee.

187. Bearing in mind the above and assuming that members of the National Assembly and the judiciary only have functional immunity, the reviewers noted that Lao PDR may wish the National Assembly Standing Committee to also lift immunity without delay where necessary regarding a corruption-related offence.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Observations on the implementation of the article

188. The reviewers deemed Lao PDR not to have implemented the provision under review and therefore consider taking the appropriate measures to do so.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

189. Lao PDR cited articles 5 - 8, 17, 18, 21, 66, 85, 96, 108 and 109 of the Criminal Procedure Law, as well as articles 4 and 5 of the National Assembly Oversight Law.

The Criminal Procedure Law

Article 5. Prohibition on Breaching Citizens' Rights and Freedoms

It is prohibited to arrest, detain or conduct any 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. In the case when an arrest or detention contradicts the laws, or is a detention [or] 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 [the arrested or jailed person] immediately.

Any individual who arrests, 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.

Article 6. Equality of Citizens before the Laws and the Court

Criminal proceedings must be conducted on the basis that all citizens are equal before the laws and the people's courts without discrimination on the basis of gender, race, ethnicity, socio-economic status, language, educational level, occupation, beliefs, place of residence, and others.

The people's courts shall create conditions for citizens, especially accused persons, defendants, and civil plaintiffs, to exercise their rights to ensure that criminal proceedings are conducted correctly and objectively.

Article 8. Presumption of Innocence

In criminal proceedings, as long as the accused person or defendant has not yet been convicted [pursuant to] a final decision of the people's courts as a wrong-doer, he shall be regarded as innocent and shall be treated properly.

Article 66. Pre-Sentencing Release

Pre-sentencing release is temporary release from remand after the completion of investigation and before the decision of the court becomes final [in respect of] minor offences in order that the person may conduct his defence while at liberty.

A release pending sentencing must have the written order of the public prosecutor.

During the proceedings, the public prosecutor has the right, within the scope of his authority, to decide to release a person from remand or may decide to release a person from remand based on the request of the accused person, an organisation to which such individual is attached, a representative [of the accused person], husband or wife, guardian, parent, or close relative of the accused person.

Pre-sentencing release shall be based on the following conditions:

If [he] is convinced that the accused person or the defendant will not flee, will not destroy evidence, will not commit further offences, will not hurt an injured party or witnesses[,] or the accused person will not be hurt by others.

In releasing a detained person [pending sentencing] according to a request from the accused, his organisation, his representative, or the husband or wife, guardian, parents, or close relative of such accused person, [the public prosecutor may require] appropriate bail.

The person who is released [pending sentencing] shall report to concerned officials at the specified time once a month.

It is prohibited to release [pending sentencing] for major offences.

190. No statistics were available.

(b) Observations on the implementation of the article

191. The reviewers deemed the provision under review to have been legislatively implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

192. Lao PDR cited articles 47 and 52 of the Penal Law, and articles 66 and 105 of the Criminal Procedure Law.

The Penal Law

Article 47. Stay of Execution of Penalty

The "stay of execution" of deprivation of liberty, re-education without deprivation of liberty or fines as the principal penalty, refers to the suspension of the execution of such penalties for a period of five years. If during such period, the offender is not convicted of any other intentional offence, the penalty shall be lifted.

But in the event of a second intentional offence, if the offender is sentenced to be deprived of liberty and such a sentence is final, the offender must execute the new penalty in addition to the one which has been suspended.

The suspension of the execution of a penalty can be in whole or in part. Recidivists, those offenders sentenced to three years of deprivation of liberty or more, or those sentenced for crimes cannot benefit from a stay of execution of penalties.

Article 52. Conditional Liberation before Term

“Conditional liberation before term”, based on the suggestion of the reformatory centre’s responsible committee, may be granted to progressive, repenting, and exemplary working offenders, who have served half of their sentences in the case of offenders who were less than eighteen years old when the offence was committed, two thirds of the sentence in the case of adult offenders and fifteen years for offenders sentenced to life imprisonment.

The local people's court executing the sanction of sentences is entitled to consider the grant of conditional liberation before term and to outline the conditions to be imposed upon the liberated offender. If within a period of five years, the offender who is granted conditional liberation before term has correctly complied with the outlined conditions and has not committed any further offences, the remaining punishment shall be lifted.

In the event that the outlined conditions are not respected during such period [of 5 years], the offender who is granted conditional liberation before term [shall be liable] to serve the remaining sentence. In the event that a new offence is committed during such period [of 5 years], the offender [shall be] liable to serve the new sentence in addition to the former remaining sentence.

Recidivist offenders or offenders sentenced to a death penalty commuted into imprisonment cannot be granted liberation before term.

Criminal Procedure Law

Article 66. Pre-Sentencing Release

Pre-sentencing release is temporary release from remand after the completion of investigation and before the decision of the court becomes final [in respect of] minor offences in order that the person may conduct his defence while at liberty.

A release pending sentencing must have the written order of the public prosecutor.

During the proceedings, the public prosecutor has the right, within the scope of his authority, to decide to release a person from remand or may decide to release a person from remand based on the request of the accused person, an organisation to which such individual is attached, a representative [of the accused person], husband or wife, guardian, parent, or close relative of the accused person.

Pre-sentencing release shall be based on the following conditions: If [he] is convinced that the accused person or the defendant will not flee, will not destroy evidence, will not commit further offences, will not hurt an injured party or witnesses[,], or the accused person will not be hurt by others.

In releasing a detained person [pending sentencing] according to a request from the accused, his organisation, his representative, or the husband or wife, guardian, parents, or close relative of such accused person, [the public prosecutor may require] appropriate bail.

The person who is released [pending sentencing] shall report to concerned officials at the specified time once a month. It is prohibited to release [pending sentencing] for major offences.

Article 105. Release of a Prisoner

When a convicted person has served the penalty of deprivation of liberty completely in accordance with the court decision, the prison officer shall release such person; if such person has not yet been released, the public prosecutor shall issue an order to release such person.

Conditional release of prisoners before the term shall be carried out in accordance with Article 47 of the Penal Law.

Release by pardon granted by the President of the State on the occasion of important days of the nation shall be carried out in accordance with regulations on pardon.

Release by amnesty shall be carried out in accordance with the resolution of the National Assembly.

The releases mentioned above shall be implemented immediately, even if the civil plaintiff requests an appeal, or requests for a cassation, or the convicted person has not yet paid the compensation for civil damages or fines. Compensation for civil damages or fines shall be assigned to judgment enforcement offices or units to enforce.

193. No statistics were available.

(b) Observations on the implementation of the article

194. During the country visit, the national authorities informed the reviewers of a pending draft law on parole of persons. Such a law was also encouraged by the reviewers.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

195. Lao PDR cited articles 4 and 5 of National Assembly Oversight Law, article 8 and 68 of the Criminal Procedure Law, and article 61 of the Prime Minister's Decree on Civil Servant Management Regulation.

Criminal Procedure Law

Article 8. Presumption of Innocence

In criminal proceedings, as long as the accused person or defendant has not yet been convicted [pursuant to] a final decision of the people's courts as a wrong-doer, he shall be regarded as innocent and shall be treated properly.

Article 68. Suspension of Position or Duties

Suspension of position or duties is the suspension from [his] position or duties of a suspect or accused person because of an offence that is related to his position or duties in order not to hinder investigations.

For suspension of position or duties, there must be an order of the public prosecutor.

The order to suspend position or duties shall be sent to the organisation to which the suspect or accused person is attached to implement the suspension of such position or duties.

The Prime Minister Decree on Civil Servant Management Regulation

Article 61. Any civil servant, who is suspected:

of seriously breaching the civil service rules; or of committing any crime that has a sentence of more than 6 months' imprisonment shall be suspended until the case is decided by either the Disciplinary Committee or the Court. If found not guilty, the civil servant will be re-instated.

196. Lao PDR again referred to the case on the lowering of position or duty of Mr. Soulaphone and Mr. Vilaphan.
197. No statistics were available.

(b) Observations on the implementation of the article

198. During the country visit, it was confirmed that if a public official is sentenced, then such a person will be removed from office and prevented from holding public office in the future. However, it was noted that there is no means to reinstate such a person. It was further provided that there is no general code of ethics for public officials, but rather specific codes for given professions, such as lawyers. The Bar Association informed the reviewers of the sanctions that might be applied to lawyers; namely, if a lawyer is convicted of a minor offence, then the person would receive a warning, but if the

conviction is for a serious offence, then the Bar Association (that has received 10-15 complaints since its existence) would make a recommendation to the Ministry of Justice to disbar the person from practice.

199. The reviewers deemed the provision to have been sufficiently implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraphs 7 - 10

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

200. Lao PDR cited articles 27 – 34 of the AC Law.

Anti-Corruption Law

Article 31. 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.

Article 32. Education Measures

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

Article 33. 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 criticised, 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.

The Decree on Civil Service of the Lao PDR

Article 76

The following disciplinary measures for culpable civil servants are based on the level of seriousness of the actions Level I (minor offences)

- 1) First offence - verbal warning
- 2) - Second offence - warning and the offense noted in their personnel file.

Level II (moderate offences)

- 1) - Salary step advancement and rewards/awards for the civil servants shall be suspended, and the offence will be noted in their personnel file or
- 2) - they may be demoted or they may be transferred to another organisation at a lower position, and the offence noted in their personnel file or
- 3) - they may be dismissed from their management position.

Level III (major offences):

- 1) - the civil servants shall be dismissed from the civil service without any entitlements.

The above-mentioned disciplinary measures shall be applied only after the disciplinary committee's proposals have been approved by a higher authority.

Article 81.

The basic salaries of the civil servants who are temporarily suspended as stipulated in Article 61 shall be reduced by 50%. In case the Disciplinary Committee or the Court finds the civil servants not guilty this amount shall be refunded to them. Those civil servants found guilty by the Court, shall be judged separately by Disciplinary Committee...

201. No cases have been reported to date.

(b) Observations on the implementation of the article

202. The reviewers recommended that Lao PDR also implement UNCAC article 30(7)(b) so that persons convicted for corruption-related offences will also be disqualified from holding office in an enterprise owned in whole or in part by the State. Moreover, the reviewers recommended that Lao PDR consider establishing reintegration programmes for persons convicted of corruption-related offences.

(c) Challenges

203. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

(d) Technical assistance needs

204. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

- a. Summary of good practices/lessons learned;
- b. Legal advice.

None of these forms of technical assistance has been provided to Lao PDR.

Article 31 Freezing, seizure and confiscation

Paragraphs 1 and 2

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

205. Lao PDR cited articles 42, 51, 52, 54 and 55 of the Law on Criminal Procedure, and article 35 of the Penal Law.

Criminal Procedure Law

Article 42. Types of Investigative Measures

Types of investigative measures are:

- Taking testimony;
- Questioning in confrontation;
- Inspection of incident site;
- Inspection of dead body;
- Search of buildings, vehicles, or persons;
- Seizure and sequestration of assets;
- Re-enactment;
- Identification and confirmation.

Article 51. Searches

Searches may be conducted only when there is an order in writing from the public prosecutor or the people's court, except in necessary and urgent cases, but [in such necessary and urgent cases, the search] shall be reported to the public prosecutor within twenty-four hours after completing such search.

Before and after a search, the individuals involved in such search shall demonstrate their honesty [and] good faith towards the owner of the searched premises, the owner of vehicles or persons subject to the search.

Article 52. Building Searches

Buildings [refers to] houses or other [structures] on the land where such houses are located, boats, barges which are used by families as their residence, offices, guest-houses, hotels, and others.

Building searches shall be made in the presence of the head of village administration, the house owner, and at least two witnesses. In the event that there is a search of an office, an organisation, or an enterprise, it shall be conducted in the presence of a representative of such office, organisation, or enterprise.

A search of any place of worship or temple, which is one type of building search, such as a search of: temples, sima, churches, and towers, shall have the participation of the head monk, the head priest, or the persons in charge or representatives of the concerned religious organisations. Building searches and searches of places of worship or temples shall be made during the day [at any time] from 6.00 a.m. to 6 p.m. When the search cannot be completed [by 6 p.m.], it shall continue until it is completed.

Material items and other documents can be seized as exhibits in a criminal case only if they are related to the

offence or are things that contravene the laws.

Article 54. Record of Search

When the search of a building, vehicle, or person has been completed, the officials who conducted such search shall make a record of the search on the spot and draw up a list of exhibits with details of their appearance, quantity, and quality.

The record of search must be made in three copies and read out to participants in the search [who shall] sign or affix their thumbprints as evidence [to certify their participation].

One record must be kept in the case file, one record shall be given to the owner of the house or representative of the relevant office, organisation or enterprise, and the other record is to be given to the village administration.

The record of search of vehicles or individuals shall also be made in three copies, one record to be kept in the case file, one record to be given to the owner of the vehicle or to the person searched and the other record to be kept by the officer.

Article 55. Seizure and Sequestration of Assets

In the event that the type, amount, and location of the place where materials relating to the offence are being kept are clearly known and [such materials] are useful for the proceedings, the head of the investigation organisation or the public prosecutor shall issue an order to seize or sequester such assets. For materials which are immovable, there shall be an order to sequester them.

[In the event that] illegal objects, especially drugs, have been seized, the head of the relevant organisation shall immediately appoint an expert to verify the quality, type, and composition of such drugs in accordance with Article 50 of this law.

The methods for seizure and sequestration and the methods for recording such seizure or sequestration shall be in accordance with Articles 51, 52, and 54 of this law.

The Penal Law

Article 34. Confiscation of Property and [Connected Items]

“Confiscation of property” refers to the confiscation by the State of part or all of an offender’s property without any compensation.

A sentence of confiscation of property may only be imposed in serious cases as stated in the specific part of this law. In the event that the confiscation of all of the offender’s property is imposed, exception must be made for property necessary for the livelihood of the offender and his family according to the list attached to this law. In the event that partial confiscation of property is imposed, the court must set up a clear list of the property to be confiscated.

“Confiscation of items [connected to the offence]” refers to [the confiscation] by the State of items that were used in the offence or in the preparation for the offence, or that were obtained from an intentional offence. Items belonging to other individuals used in the offence shall be confiscated by the State if the owner lending them is not in good faith or if confiscation is deemed necessary for national security.

Items belonging to the State or collectives shall not be confiscated but shall be returned to the relevant authorities.

206. No cases were reported to date.

(b) Observations on the implementation of the article

207. During the country visit, the Anti-Money Laundering Intelligence Unit (FIU of Lao PDR) noted that it cannot freeze any item, even temporarily, as they are merely an administrative body. However, the Lao Police, upon investigation, can order a bank to temporarily freeze an account, although for confiscation, a court order is required.

208. To the reviewers, it was not clear whether or not property, the value of which corresponds to the proceeds of corruption, was also covered by domestic law, and they noted that Lao PDR may wish to include such a provision in article 34 of the Penal Law.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) **Summary of information relevant to reviewing the implementation of the article**

209. Lao PDR cited article 56 of the Criminal Procedure Law.

The Criminal Procedure Law

Article 56. Protection of Exhibits

An exhibit is an asset relating to the offence, [an asset] that was used or would have been used in the offence, [or an asset] that was received or would have been received from the offence.

Such exhibits are obtained from seizures, searches, inspections, and the use of other investigative measures. Exhibits shall be protected, managed, kept in safe and appropriate places, and [recorded in] detailed lists. Exhibits which are objects that can be packaged shall be packaged in bags, [affixed with a] wax seal, stamped [with the relevant organisation's seal], and kept properly.

An exhibit that is money, foreign currency, a check or negotiable instrument, or precious metal shall be deposited in a bank according to regulations. For money that is evidence in proceedings, the serial number of each note shall be recorded. Perishable or degradable exhibits shall be sold and the proceeds shall be kept. Exhibits that are drugs shall be kept in special storage and strictly protected under the management of the public security sector.

Any individual who uses, damages, loses, exchanges, or embezzles any exhibit shall be subject to penalties as provided in Articles 112 and 157 of the Penal Law.

The list of exhibits shall accompany the case file. The level that the case file has reached is the level that has the authority to deal with the exhibits.

210. Lao PDR provided an example:

Retention of Exhibits, Case No. 01/VCPC, dated 1 October 2009

In 2007, the Office of Vientiane Capital Police filed the case of false documents and citizen's embezzlement by Miss Buapet, Miss Pitsamai, Miss Wanna, Mr. Kamgert, Mr. Konsawan, and Mr. Bounnao (the accuseds). The Police issued an order to confiscate the following:

1. A saving bank account (Lan Xang Bank);
2. 3 copper bracelet (6 golden baht);
3. 1 ring;
4. 1 bracelet (2 golden baht);
5. 2 French gold bracelet;
6. 2 French golden ring;
7. 5 pairs of earrings;
8. US\$ 2500;
9. 119,750 baht;
10. 4.043.000 kip;

The objective was to confiscate and then wait for judgment. The Vientiane Capital Committee of the Criminal Court issued the judgment (Case No. 42) on 28 January 2008 and the Office of Judgment Practice sent the proposal (Case No. 244) dated 16 September 2009 to the Court to give back the exhibits to the accused. After that, the Court issued the certificate of exhibit and gave the exhibits to the owners through the Office of Judgment Practice.

(b) **Observations on the implementation of the article**

211. During the country visit, the national authorities informed the reviewers that the administrator of frozen, seized or confiscated property will vary depending on the stage of the proceeding. For example, during an investigation, it might be with the Police or GIAA, while once the matter is being prosecuted, it would be the Office of the Public Prosecutor, and then the Court will decide in its judgment decision what to do with such property. If

the property is immovable or it is not feasible for the agencies to administer the property, then it may be assigned to a person or a local authority.

Article 31 Freezing, seizure and confiscation

Paragraphs 4 – 6

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Observations on the implementation of the article

212. The reviewers recommended that the provisions under review be legislatively implemented as a priority.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

213. Lao PDR cited article 22 of the Law on Banks of Lao PDR.

Law on Banks of Lao PDR

Article 22. Maintaining Confidentiality

While performing duties, or after completing their tasks, all auditors shall keep confidential any problems, documents and data which they discover or come to know of, relating to the Bank of the Lao PDR, the commercial banks or financial institutions, except as otherwise approved by the Board of Directors or by an order of the court.

214. No cases have been reported to date.

(b) Observations on the implementation of the article

215. During the country visit, it was confirmed that there is no obstacle to gaining access to bank accounts. A request is sent directly by the authorities to the bank in question.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Observations on the implementation of the article

216. No relevant information was provided. The reviewers therefore noted that Lao PDR may wish to consider implementing the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraphs 9 and 10

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

(a) Summary of information relevant to reviewing the implementation of the article

217. Lao PDR cited article 34 (4) of the Penal Law.

Penal Law

Article 34. Confiscation of Property and [Connected Items]

“Confiscation of items [connected to the offence]” refers to [the confiscation] by the State of items that were used in the offence or in the preparation for the offence, or that were obtained from an intentional offence. Items belonging to other individuals used in the offence shall be confiscated by the State if the owner lending them is not in good faith or if confiscation is deemed necessary for national security.

(b) Observations on the implementation of the article

218. The reviewers noted that to the extent that “good faith” in article 34(4) of the Penal Law applies to all of UNCAC article 31, Lao PDR had legislatively implemented the provision under review.

(c) Challenges

219. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

(d) Technical assistance needs

220. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Model legislation;

3. Legislative drafting;
4. Legal advice.

None of these forms of technical assistance has been provided to Lao PDR to date.

Article 32 Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

221. Lao PDR cited articles 29, 32, 35, 43, 62, 66 and 118 of the Criminal Procedure Law, articles 7 and 44 of the AC Law, article 8 of Inspection Law and article 26 of the ASEAN Treaty.

Criminal Procedure Law

Article 29. Injured Party

An injured party is an individual whose health, life, property, or spirit is injured by offences [committed by] other persons.

An injured party has the right to:

1. Give testimony regarding the case;
2. Submit evidence;
3. Submit requests;
4. Receive compensation for losses;
5. Ask to see documents in the case file, to make a copy of required documents from the file, or to make notes of necessary information contained in the file, after investigation has been completed;
6. Participate in court hearings;
7. Require the recusal of a judge, public prosecutor, interrogator, investigator, expert, or translator;
8. Complain against the acts and orders of an investigator, an interrogator, a public prosecutor, or the people's courts that he believes to be unlawful;

9. Appeal against, or request the cancellation of, an order of an investigator, an interrogator, or a public prosecutor, or an instruction, order, or decision of the people's courts;
10. Agree to mediate with the accused or defendant in the case of an offence that does not endanger society;
11. Retain a lawyer or other protector to contest the case;
12. Withdraw the claim.

If an injured party has died, his close relatives may exercise his rights as provided in this article.

The injured party has the obligation to:

1. Appear according to an order or summons of an investigator, an interrogator, a public prosecutor, or the people's courts;
2. Be liable for his refusal to give testimony or for any false testimony.

Article 32. Witness

A witness is an individual who knows about [or] saw the incident constituting the offence or the circumstances of the case. Persons who are deaf, mute, or incompetent, children under eighteen years of age, and relatives of the litigants can be brought to give testimony but they shall not be deemed to be witnesses.

A witness has the right to:

1. Give testimony;
2. See the record of his testimony, during the investigation stage;
3. Request to modify or add to his testimony;
4. Complain against the acts and orders of an investigator, an interrogator, a public prosecutor, or the people's courts that he believes to be unlawful;
5. Receive protection under the laws and regulations from any threat to life, health, or property because of giving testimony. Witnesses have the same obligations as injured parties, as provided in Article 29 of this law.

Article 35. Lawyers and Protectors

Protectors are individuals who participate in proceedings to protect the rights and interests of an accused, a defendant, an injured party, a civil plaintiff, or a civilly liable party.

A protector may be a lawyer, a representative of an organisation, the husband or wife, a parent, a guardian, or a close relative.

In the case where the accused or defendant is 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, that person must have a protector. If the accused person or defendant has no protector, the people's court is required by law to appoint a lawyer.

A lawyer or protector may participate in the case from the date of the order to open an investigation.

A lawyer and a protector [each] has the right to:

1. Meet the accused or defendant;
2. Ask to see documents in the case file, to make a copy of required documents from the file, or to make notes of necessary information contained in the file, after investigation has been completed;
3. Submit evidence;
4. Submit requests;
5. Participate in court hearings and provide opinions;
6. Require the recusal of a judge, public prosecutor, interrogator, investigator, expert, or translator;
7. Complain against the acts and orders of an investigator, an interrogator, a public prosecutor, or the people's courts that he believes to be unlawful;
8. Appeal against, or request the cancellation of, an order of an investigator, an interrogator, or a public prosecutor, or an instruction, order, or decision of the people's courts;
9. Receive protection under the laws and regulations from any threat to life, health, or property because of contesting the case on behalf of his client.

A lawyers and a protector [each] has the obligation to:

1. Use all methods of defence provided for in the laws in order to protect the rights and interests of the person whom the protector is defending;
2. Provide legal assistance to the person whom the protector is defending;
3. Comply with the code of ethics and conduct and contribute in searching for evidence, to ensure that the proceedings are correct and just.

In addition, a lawyer also implements other rights and obligations as provided in specific regulation of the bar association.

Article 43. Taking Testimony

Taking of testimony from an accused person:

Investigators and interrogators shall take testimony from the accused persons immediately after opening an investigation. If such testimony is impossible to obtain immediately, this shall be documented with reasons. At the beginning of taking testimony from an accused person, the investigator or interrogator shall notify [the accused person] of the charges and explain to the concerned accused person his rights and obligations. Taking of testimony from witnesses, injured parties and civilly liable persons:

Investigators and interrogators shall notify [witnesses, injured parties and civilly liable persons] of their rights and obligations, and shall warn them of their [legal] liabilities in the taking of testimony or if they refuse to provide testimony.

The taking of testimony shall be performed at the office of the investigator or interrogator. If necessary, it may be carried out in another place.

In the taking of such testimony, in addition to the investigator and interrogator, there shall be a recorder present.

Article 118. 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 to 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 co-operation] 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.

Anti -Corruption Law

Article 7. Protection

Officials who conduct counter-corruption operations, as well as those who participate in such operations such as: reporters, information providers, injured persons, witnesses,[and] experts, shall be protected from revenge, or threat to their life, health, freedom, honour, reputation, and property.

Article 44. Policies Towards Persons with Outstanding Performance

Individuals or organisations 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.

Inspection Law

Article 8. Protection

Government inspectors, reporters, information providers, witnesses, specialists and inspection -process participants must be protected based on laws and regulations from the revenge, threat of killing, health, liberty, reputation, properties from inspected persons or others.

ASEAN Treaty

Article 26

(2) The Parties may develop such practical measures as may be necessary to facilitate the implementation of this Treaty.

222. In Lao PDR, criminal judges make decisions primarily based on written statements of witnesses, notes prepared by police officers, investigators and prosecutors, and identification of suspects made by witnesses in other occasions. Witnesses are not invited to criminal proceedings to give evidence in court in most cases. In this way, witnesses do not need to confront defendants in the Court.

223. No cases on witness protection have been reported.

224. There is no special witness protection programme.

(b) Observations on the implementation of the article

225. During the country visit, it was reported by the national authorities that testimony through the use of communications technology is not used, as there is a practical problem in its usage.

226. It was further held that the kinds of witness protection currently provided were physical protection (including at the person's residency), secrecy (i.e. providing of a false name) and extended protection to the family of such a person. A witness who requires protection can give testimony only to the prosecutor responsible for the matter. However, it was of concern to the reviewers that there was no measure to allow for cross examination. Moreover, electronic evidence can in theory be used, but not in practice.

227. The reviewers were informed of draft witness protection provisions that will ideally be included in the Criminal Procedure Law. A copy of such a draft provisions were not provided to the reviewers.

228. However, as there was no comprehensive existing protection of witnesses as stipulated in UNCAC article 32, the reviewers recommended that such protections be implemented as a priority.

(c) Challenges

229. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

(e) Technical assistance needs

230. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

- a. Summary of good practices/lessons learned;
- b. Model legislation;
- c. Legal advice;
- d. Capacity-building programmes for authorities responsible for establishing and managing witness, expert and victim protection.

None of these forms of technical assistance has been provided to Lao PDR to date.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Observations on the implementation of the article

231. The cited provisions by Lao PDR (articles 163 and 164 on false allegations and false testimony in the Penal Law, as well as article 4 on protection in the Anti-Corruption Law)

were not deemed by the reviewers to be relevant to whistleblower protection. The authorities agreed with this during the country visit and deemed it to be a priority and a matter for law reform.

232. For this reason, the reviewers recommended that Lao PDR consider incorporating an appropriate whistleblower protection system.

(c) Challenges

233. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

(d) Technical assistance needs

234. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Model legislation;
3. Legal advice.

None of these forms of technical assistance has been provided to Lao PDR to date.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Observations on the implementation of the article

235. The reviewers deemed the cited provisions (article 29 of the Criminal Procedure Law, articles 23 and 24 of the Promotion of Investment Law and article 37 of the Contract and Tort Law) to not be relevant and recommended that Lao PDR address the consequences of corruption. This may consider remedial action, such as annulling or rescinding a contract, or withdraw a concession.

(b) Challenges

236. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

(c) Technical assistance needs

237. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Model legislation;
3. Legislative drafting;
4. Legal advice.

None of these forms of technical assistance has been provided to Lao PDR to date.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

238. Lao PDR cited articles 18, 29, 30 and 31 of the Criminal Procedure Law.

Criminal Procedure Law

Article 18. Guarantee of the Right of Citizens to Bring Petitions or Claims

[Every] citizen has the right to bring a petition or claim regarding the performance of duties of the investigation organisations, the Office of the Public Prosecutor, the people's courts, or any person in such organisations who has contravened the laws.

The organisation that has received such petition or complaint shall examine and consider such document in a timely manner, and shall report the results of the examination in writing to the organisation or individual who sent the petition or complaint, and find an appropriate method to deal with their problem.

Organisations that have committed offences shall 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.

Article 29. Injured Party

An injured party is an individual whose health, life, property, or spirit is injured by offences [committed by] other persons.

An injured party has the right to:

1. Give testimony regarding the case;
2. Submit evidence;
3. Submit requests;
4. Receive compensation for losses;
5. Ask to see documents in the case file, to make a copy of required documents from the file, or to make notes of necessary information contained in the file, after investigation has been completed;
6. Participate in court hearings;
7. Require the recusal of a judge, public prosecutor, interrogator, investigator, expert, or translator;
8. Complain against the acts and orders of an investigator, an interrogator, a public prosecutor, or the people's courts that he believes to be unlawful;
9. Appeal against, or request the cancellation of, an order of an investigator, an interrogator, or a public prosecutor, or an instruction, order, or decision of the people's courts;
10. Agree to mediate with the accused or defendant in the case of an offence that does not endanger society;
11. Retain a lawyer or other protector to contest the case;
12. Withdraw the claim.

If an injured party has died, his close relatives may exercise his rights as provided in this article.

The injured party has the obligation to:

1. Appear according to an order or summons of an investigator, an interrogator, a public prosecutor, or the people's courts;

2. Be liable for his refusal to give testimony or for any false testimony.

Article 30. Civil Plaintiff

A civil plaintiff is an individual who has filed a civil claim against the accused or against those who have civil liability for compensation for damages.

A civil plaintiff has the same rights and obligations as an injured party, as provided in Article 29 of this law.

Article 31. Civilly Liable Party

A civilly liable party is an individual or organisation liable for losses arising from the offence of an accused or defendant who is under its control.

A civilly liable party may be parents, adoptive parents, guardians, or users [of the accused or defendant], [or] managers, organisations, or enterprises.

A civilly liable party has the right to:

1. Respond to the claim;
2. Provide explanations relating to the claim;
3. Submit evidence;
4. Submit requests;
5. Ask to see documents in the case file, to make a copy of required documents from the file, or to make notes of necessary information contained in the file, after investigation has been completed;
6. Participate in court hearings;
7. Require the recusal of a judge, public prosecutor, interrogator, investigator, expert, or translator;
8. Complain against the acts and orders of an investigator, an interrogator, a public prosecutor or the people's courts that he believes to be unlawful;
9. Appeal against, or request the cancellation of, an order of an investigator, an interrogator or a public prosecutor, or an instruction, order, or decision of the people's courts;
10. Retain a lawyer or other protector to contest the case.

A civilly liable person has the same obligations as an injured party, as provided in Article 29 of this law.

239. No cases have been reported to date.

(b) Observations on the implementation of the article

240. The reviewers deemed the provision under review to have been legislatively implemented.

(c) Challenges

241. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

242. Lao PDR cited articles 25, 27-30 and 34-41 of the AC Law, article 28-30 of the State Inspection Law, article 11 of the Peoples Court Law, articles 11 and 22-26 of the Criminal Procedure Law and articles 23-25 of the Anti-Money Laundering Decree (2006).

Anti-Corruption Law

Article 25. Prohibitions on Person who has Position, Power and Duty

It is prohibited for a person with position, power and duty to commit any of the following acts:

4. To act as a consultant to private enterprises in relation to his decision-making power for personal benefit;
5. To act as a broker to individuals or organisations for personal benefit; for instance, by lobbying²⁹ in legal proceedings, or for projects or quotas;

Any government official who infringes any of the above-mentioned prohibitions will be subject to re-education and disciplinary [measures]; and if the infringement constitutes an offence, [the offender] shall be punished as provided in the laws and shall pay compensation for the damage he has caused.

Chapter 4. Conduct of Inspections Relating to Corruption

Article 27. Causes for Conducting an Inspection

The causes that result in the conduct of an inspection by the counter-corruption organisation 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.

Article 28. Inspection Procedure

The counter-corruption organisation 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 organisations, 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 organisation or the individual concerned to come to give explanations and clarification;
5. Summarise, evaluate, and decide on the result of the inspection.

Article 29. The Decision on the Result of the Inspection

If, through the inspection, firm evidence [of corruption] is found, the counter-corruption organisation has the right to decide [as follows]:

- In the case of a minor offence not causing substantial damage[,] as provided for in Articles 32 and 33 of this law, it shall submit [the matter] to the concerned organisation which has the rights and duties to educate, warn or impose disciplinary measures on the offenders;
- In the case of a serious offence[,] as provided for in Article 34 of this law, it must undertake investigation⁴², and when there is firm or solid evidence, it should summarise the case and send it to the public prosecutor⁴³ to consider to prosecute the offenders in court.

Article 30. Implementation of the Recommendation of the Counter-Corruption Organisation

The authority that has received a recommendation from the counter-corruption organisation as provided in Article 29 of this law, has an obligation to implement that recommendation within thirty days from the date it receives such recommendation. If that authority does not implement the recommendation, the counter-corruption organisation has the right to propose to the concerned higher authority to deal with the issue; if there is no reason for the failure [of the authority that received the recommendation], it will be regarded as an infringement of the law.

Article 34. 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.

Chapter 6

Enforcement of Judgment

Article 35. Judgment Enforcement

The judgment of the people's court in a corruption case that has become final must be strictly enforced in accordance with the Law on Enforcement of Judgments⁴⁹.

It is absolutely prohibited for any individual or organisation to interfere in or obstruct the enforcement of any judgment in a corruption case.

Article 36. Monitoring of Judgment Enforcement

The counter-corruption organisation and other concerned organisations shall monitor, promote, and facilitate the enforcement of judgments in corruption cases in accordance with their roles, rights, and duties, and ensure that judgments regarding corruption are strictly enforced throughout the country.

Article 37. 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.

Article 38. Organisational Structure

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

- [Counter-corruption organisation] at central level;
- [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 to 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.

Article 39. 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:

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 organisations⁵⁶ 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 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.

Article 40. 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 be removed, appointed, or have his job swapped;
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.

Article 41. Standards and Qualifications of the Government Staff to be in Charge of Corruption Prevention

Government staff in charge of corruption prevention shall meet the following standards and qualifications:

1. Have strong political commitment, be honest, be transparent, and have not committed any act of corruption;
2. Have knowledge, be capable and have a level of profession appropriate to the tasks for which they are responsible;
3. Have a sense of justice, look at matters deeply, completely and objectively, not be partial or prejudiced, be able to accurately and clearly distinguish data and have courage in decision-making;
4. Be persons who are strict and act as role models in the implementation of laws and regulations, strictly observe organisational hierarchy, do not compromise, and are strongly committed to preventing and countering anything that appears to be corruption.

The head of such organisation shall have important political status, roles, and influence, and shall be trusted by the public.

State Inspection Law

Section 2. Administrative Hierarchical State Inspection Authorities

A. Government Inspection Authority

Article 28. Status and Roles

Government Inspection Authority is the State Inspection Authority at national level that has the status at ministerial level and is under the Government Structure, which has a role to be the Government Secretariat regarding the state inspection, prevention and countering of corruption, study, consider requests of population based on the rights, duties of the Government and take lead on this works countrywide.

Article 29. Rights and Duties

Government Inspection Authority has rights and duties as following:

1. Prepare strategy plan regarding state inspection works, prevention and encountering of corruption in order to submit to the Government for consideration;
2. Prepare policies, plans, resolutions, directions of the Government and convert them to detailed action plans, programs and projects of their own organizations for implementation;
3. Request or modify laws, presidential provisions, presidential decrees, directions, guidelines and notifications for the macro management of state inspection works;
4. Propagandize and disseminate policies, laws, regulations on the inspection works;
5. Direct, inspect the implementation of state inspection works countrywide;
6. Training, build and upgrade professional inspection capacities for staffs, civil servants at all levels,
7. Inspect the implementation of policies, laws, regulations, program, rights, duties, responsibilities of ministries, ministry-equivalent authorities, provinces, cities and administrative staffs managed at national level;
8. Inspect the works that are related to multi-ministries, multi-ministry-equivalent authorities, multi-organizations under the Government, multi-provinces and multi-cities;
9. Study, consider requests of population on the action or agreement on an illegal issue of organizations or administrative staffs at national level; study, consider requests of population in the ministries, ministry-equivalent authorities, provinces, cities that were already resolved but population observed that it was done improperly;

10. Implement rights and duties of prevention and encountering of corruption as stated in laws;
11. Cooperate and coordinate with government organizations at national and local levels including the authorities responding the state and independent audits regarding the inspection proceedings, correction and the implementation of inspection results based on roles;
12. Propose measures, methodologies to correct the state inspection results for relevant organizations to consider for agreement and report to the Government;
13. Cooperate with international organizations regarding state inspection works;
14. Conclude, report regularly the proceedings of state inspection and results of the inspection in the scope of the Government management to the Prime Minister, Standing Committees of National Assembly;
15. Perform other rights and duties as assigned by the Prime Minister and as stated in laws and regulations.

Article 30. Structure

The personnel structure of Government Inspection Authority including the following:

- Chairman;
- Some Vice Chairmen;
- Technical Staffs

The organizational structure of the Government Inspection Authority is stated in the specific regulations separately.

The Criminal Procedure Law

Chapter 1. Organisations [with Responsibility for] Criminal Proceedings

Article 22. Organisations [with responsibility for] Criminal Proceedings

Organisations [with responsibility for] criminal proceedings consist of:

- Investigation organisations;
- The Office of the Public Prosecutor;
- The People's Courts.

Article 23. Investigation Organisations

The investigation organisations are:

1. The investigation organisation of police officers;
2. The investigation organisation of military officers;
3. The investigation organisation of customs officers;
4. The investigation organisation of forestry officers;
5. The investigation organisations of other sectors as provided by the laws.

Investigation organisations have the following rights and duties:

1. To accept and record complaints regarding offences;
2. To immediately report to the public prosecutor³⁸ regarding offences;
3. To issue an order to open investigations, and send a copy of the order to the public prosecutor immediately;
4. To proceed to investigate;
5. To use coercive measures as provided in the laws, as well as to release any suspect who was detained, and to report in writing to the public prosecutor;
6. To appeal against the orders of lower-level public prosecutors to higher-level public prosecutors;
7. To summarize the investigation and prepare a case file to be submitted to the public prosecutor.

In the exercise of such rights and the performance of such duties, the investigation organisations shall carry out their activities within the scope of their authority as provided in the laws.

Article 24. Rights and Duties of Investigation Officers

The staff of [each] investigation organisation consists of the head, deputy heads, and investigators.

The head of [each] investigation organisation has the following rights and duties:

1. To direct and lead the overall activities of the investigation organisation;
2. To issue orders to open or not to open investigations, to issue orders to suspend or dismiss criminal cases, and to issue orders to detain or release [any person] from detention;
3. To propose to the public prosecutor to issue orders to arrest, remand, or release before sentencing [any person], to extend the period for investigations, and to extend the period of remand;
4. To summarize and prepare the case file to submit to the public prosecutor to consider after the completion of the investigation;
5. To exercise such other rights and perform such other duties as provided by the laws.

[Each] deputy head of an investigation organisation has the responsibility to assist the head [of the investigation organisation] in the implementation of activities and will be assigned to perform specific tasks as assigned by the head. When the head of the organisation is engaged on other matters, the assigned deputy will act on his behalf.

[Each] investigation officer has the following rights and duties:

1. To receive and record complaints, reports or claims relating to offences;
2. To take testimony from the injured party, civil plaintiff, accused person, witnesses, and other concerned persons;
3. To inspect the site of the incident, to conduct “inspections of dead body”³⁹, to conduct searches of buildings, vehicles, and persons, [and] to collect evidence relating to the offence;
4. To look for, arrest, and escort⁴⁰ accused persons, according to the order of the people’s courts or public prosecutors;
5. To implement orders and to report on the status of proceedings in criminal cases to the head of the investigation organisation;
6. To exercise other rights and perform other duties according to the order of the head of the investigation organisation and as provided by the laws.

The exercise of rights and performance of duties of the staff of an investigation organisation shall be carried out according to the scope of its authority as provided by the laws.

To ensure the exercise of the rights and the performance of the duties mentioned above, [each] investigation officer shall have strong political commitment, have good character, be truly faithful to the interests of the nation and the rights and interests of the people, have ethics, and have received education or training in law and in technical subjects relating to investigation.

Article 25. Office of the Public Prosecutor

The Office of the Public Prosecutor consists of:

1. The Office of the Supreme Public Prosecutor;
2. offices of the appellate public prosecutors;
3. offices of the provincial [or] city public prosecutors;
4. offices of the district [or] municipal public prosecutors;
5. offices of the military prosecutors.

The rights[,] duties and qualifications of public prosecutors and interrogators are defined in the Law on the Office of the Public Prosecutor. Rights[,] duties, and qualifications of military prosecutors are defined in the Presidential Edict on the Office of the Military Prosecutor.

Article 26. The People’s Court

The People’s Court consists of:

1. The People’s Supreme Court;
2. The appellate courts;
3. The people’s provincial and city courts;
4. The people’s district and municipal courts; [and]
5. The military courts.

The rights and duties of the people’s courts and military courts, and the qualifications of judges, are defined in the Law on the People’s Court.

Anti-Money Laundering Decree (2006)

Section III. Anti-Money Laundering Intelligence Unit.

Article 23. Location and Mandates

The Anti-Money Laundering Intelligence Unit shall form part of the Bank of Lao P.D.R., having mandates and responsibility in collecting, analyzing and reporting information on money laundering taken place within the country or abroad, to be submitted to the authorities for taking legal action to combat and deter money laundering.

Article 24. Staffing Structure

The Anti-Money Laundering Intelligence Unit shall consist of the Head of the unit, the Deputy Head and some technical staff., which shall be specified under a separate regulation.

Article 25. Rights and Duties.

The Anti-Money Laundering Intelligence Unit shall have the following rights and duties:

- to examine the information on money laundering received from or reported by individuals, organizations and reporting institutions;
- to maintain international relation and cooperation in the area of anti-money laundering as approved by the higher authority;
- to analyze information on money laundering; 8
- to compile reports for submission to the investigating agency of the police force for legal action, provided that there is evidence to support money laundering suspicion;
- to warn the Reporting Institution about the serious offence which forms the cause and source of money laundering, as specified in Annex 1 of this Decree, by publishing documents on money laundering typologies and methods to detect money laundering to serve as reference for the Reporting Institution in carrying out its reporting duty ;
- to determine the limit for the value of a transaction to serve as the base for the monitoring and reporting duties of the Reporting Institution;
- to issue regulation on Customers' Due Diligence and the reporting of suspicious transactions or transactions with value over the determined limit;
- to advise the Reporting Institution on the appointment of Control Officers to monitor and control the implementation of the regulations issued by the Anti-Money Laundering Intelligence Unit;
- to recommend that the Supervisory Agencies pay close attention on guiding and monitoring the Reporting Institutions under their purview, in order for them to detect and report on money laundering suspicious transactions;
- to establish training program and provide training for its own staff and those of Reporting Institutions in respect of money laundering;
- to report on its activities to the Governor of Bank of the Lao P.D.R., and other concerned government agencies on a regular basis;
- to exercise its other rights and duties as provided under this Decree and as assigned by the Governor.

(b) Observations on the implementation of the article

243. During the country visit, the reviewers were informed that two divisions exist in GIAA, one that focuses on prevention and the other on investigation. If the investigations division determines that a *prima facie* case may exist, the division would submit the matter to the Office of the People's Prosecutor for consideration. The reviewers were informed by this Office that they then decide whether or not to prosecute the matter. They can also request GIAA's investigations division to conduct additional investigations on the matter under the oversight of the Office. If the Office refuses to prosecute, no reasons need be provided to GIAA for why this was so determined. The Office takes corruption-related matters to the Court of First Instance.
244. A three-tier court system exists in Lao PDR: the Court of First Instance, Court of Appeals and the People's Supreme Court. To date, corruption-related cases have only been heard before the Court of First Instance, as no appeals have been filed. However, the Office of the Supreme People's Prosecutor supervises the Offices of the People's Prosecutor (lower levels) who prosecute before the First Instance and Appeals Courts. In theory, instructions can be given to such Offices, if deemed necessary, but this has not been done in practice. In total, there are 15 judges (3 females).
245. GIAA was established pursuant to the State Inspection Law, enforced in 2007. Article 28 establishes the mandate of GIAA. It sits at the ministerial level within the Government structure. Article 29 defines the rights and duties of this body. The status and role of GIAA is also provided for in article 37 of the AC Law, namely that it is "an investigative organisation and performs its duties independently". However, the reviewers noted article 5 on the responsibility of the counter-corruption organization, GIAA, namely that it is "accountable for the conduct of its responsibilities under laws and [being] subject to

inspection by the National Assembly”. GIAA’s budget is approved by the National Assembly Standing Committee, and in practice, has increased from year to year.

246. The representatives of the People’s Supreme Court mentioned that there is no form of specialization provided to prosecutors dealing with corruption-related offences. In Lao PDR, there are 147 prosecutors in total. It was noted by the representatives of the People’s Supreme Court that no corruption-related cases have been before its Court. The reviewers were informed that the Courts do not have the mandate to interpret laws, as this falls under the auspices of the National Assembly. If a law is unclear, then the request for clarification would go to the Ministry of Justice who would send the request to the National Assembly for interpretation. The Assembly would then provide guidance on how to interpret the legal provision in question.
247. The Anti-Money Laundering Intelligence Unit was established in May 2007 pursuant to the AML Decree and is deemed to be a department under the Central Bank of Lao PDR. Eleven officials work in the Unit, which is an administrative FIU. Since 2007, it has received 57 suspicious transaction reports (STRs) from the banking sector (not the commercial sector, as it is not mandated to do so). Five such STRs that were not corruption-related were sent to the Economic Police to investigate. The Unit is not a party to the Egmont Group of Financial Intelligence Units, but Lao PDR is a member of the Asia Pacific Group and is in the process of implementing the APG recommendations. Such recommendations include amending existing definitions and sanctions.
248. The Ministry of Public Security (Lao Police) has the mandate to protect, prevent and handle corruption-related offences, in general, pursuant to article 23 of the Criminal Procedure Law (dated 15 May 2004). The Police apply the revised Penal Code, which includes bribery (articles 157 and 164) and the 11 offences in the AC Law. Articles 117-119 of the Criminal Procedure Law apply to the Police regarding international cooperation. The investigations unit of the Lao Police coordinates with GIAA; it is also responsible for receiving, filing and investigating corruption-related offences. After investigation, if there is sufficient evidence to provide for a *prima facie* case, the matter is sent to the Office of the People’s Prosecutor for consideration. Lao Police is also responsible for money-laundering matters. As was explained by the Anti-Money Laundering Intelligence Unit, the Police receives STRs for investigation from the Unit. The economic and investigation departments of the Lao Police are responsible for serious offences. In each Ministry in Lao PDR, there is an inspection department under the Police (and another inspection department under GIAA) that is responsible for conducting inspections on a regular basis on its own initiative or upon complaint (i.e. in-person, boxes, telephone which can also be anonymous). It was reported that there was one on-going corruption-related matter under investigation by the Police and GIAA at the time of the county visit.
249. Members of the National Assembly have a 5-year term and nominations come from both the State and private institutions (quasi-State); however, members also do not need to have a legal background.
250. The Lao National Chamber of Commerce and Industry holds a unique position in that it is permitted by the Government to inspect the behavior of Government officials, and reports accordingly to the Government on officials of concern. Thus, the private sector

can issue complaints to the Chamber who then collectively reports in line with the position it holds.

251. In general, it was noted that there is no conflict of interest law, but codes of conduct (i.e. Code of Ethics for Lawyers) do contain such provisions. Moreover, to plead a matter before a Court, the “attorney” need only have a law degree but no diploma to practice law. For this reason, there are only 158 attorneys who also have a diploma to practice law.
252. The reviewers deemed that there is a comprehensive system of specialized bodies that are mandated by law to fight corruption. In appreciation of the comments received during the country visit, namely a lack of resources and knowledge of how to implement the AC law (as these laws are fragmented and not consolidated in one piece of legislation, as well as there being no case management system), the reviewers recommended that the staff of Lao PDR’s specialized bodies have the appropriate training and resources to carry out their functions effectively.

(c) Challenges

253. Lao PDR identified the following challenges and issues in fully implementing the provision under review:
1. Limited capacity (e.g. human/technological/institution/other);
 2. Limited resources for implementation (e.g. human/financial/other).

(d) Technical assistance needs

254. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:
1. Summary of good practices/lessons learned;
 2. Model legislation;
 3. Legislative drafting;
 4. Legal advice;
 5. On-site assistance by an anti-corruption expert;
 6. Development of an action plan for implementation;
- Other assistance: Capacity-building programmes; trainings; development of a case management system.

None of these forms of technical assistance has been provided to Lao PDR to date.

Article 37 Cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

4. Protection of such persons shall be, *mutatis mutandis*, as provided for in article 32 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

255. It was explained that paragraphs 6, 8 and 10 of article 40 of the Penal Law encourage cooperation through the mitigation of penalties.

Penal Law

Article 40. Circumstances Conducive to the Reduction of Penal Responsibilities

Circumstances conducive to the reduction of penal responsibilities are:

- 6. An offender acts to prevent damage from being caused by his offence or compensates for the damage voluntarily and in good faith;
- 8. An offender expresses remorse and surrenders to officials, and acknowledges and reveals offences committed by himself and others;
- 10. An offender has shown merit towards the nation.

In the prescription of penalties, the court might take into consideration other factors not provided in this article but [which would commonly be considered relevant] to reduce penal responsibilities.

256. While there is no clear reference to the protection of offenders. In Lao PDR, offenders who cooperate with authorities receive as much protection as informants and cooperators under articles 7 and 44 of the AC Law.

Anti-Corruption Law

Article 7. Protection

Officials who conduct counter-corruption operations, as well as those who participate in such operations such as: reporters, information providers, injured persons, witnesses, [and] experts, shall be protected from revenge, or threat to their life, health, freedom, honour, reputation, and property.

Article 44. Policies Towards Persons with Outstanding Performance

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.

257. Based on article 3 of the Treaty between Lao PDR and People's Republic of China on Mutual Legal Assistance, Lao PDR may request China to mitigate penalties to cooperating offenders based on article 40 of the Penal Law, and Lao PDR may consider mitigation of penalties according to Chinese Law. Even with countries with which Lao PDR does not have a treaty or agreement, Lao PDR will consider mitigation of penalties and immunity from criminal prosecution on a case-by-case basis.

The Treaty between Lao PDR and People's Republic of China on Mutual Legal Assistance

Article 3

Reduction or exemption in criminal procedure fees and legal assistance Party State's citizens who stay in other party states, may receive reduction or exemption in criminal procedure fees and legal assistances under similar conditions and limits with their citizens.

258. Lao PDR provided an example of the implementation of domestic measures:

This case highlights a reduction in the penalty for the person who assisted in giving information. Lao Petrol Enterprise, located in the Champasack Province, had employees, together with the petrol truck driver, steal petrol from the enterprise, with the total value of 33.946.000 Kip (USD3,573). The company acknowledged the wrong doing of their employees and conducted an investigation based on the Lao Petrol Enterprise Regulations. The company could deliver the following verdict:

1. Pay back of Kip 33.946.000 (USD3,573);
2. Change position;
3. Terminate the contract;
4. Discontinue the salary;
5. Stop complementing and no 13 salary.

These employees are pleading guilty to the accusations of the company, and they have made a written promise that they will pack back the money, and continue to work in the company and improve their behavior.

Therefore, the company is requesting the office that is in charge in this case to reduce the penalty for these people.

259. No statistics were available.

(b) Observations on the implementation of the article

260. It was confirmed that mitigated punishment may consist of a reduction in sentence or immunity, depending on the severity of the offence. Moreover, a bribe giver, if acting under duress or according to a threat and after giving the bribe, who informs the relevant authorities, may not be prosecuted.

261. No information on the application of the provision in practice was available, as the cited case did not relate to corruption and no information was provided on the response of the authorities to the request for a reduction in penalties.

262. Due to the low number of complaints made by citizens of Lao PDR, the reviewers suggested (as was also recommended by the national authorities) that Lao PDR promote an awareness raising campaign on the rights of citizens under the law, encouraging them to cooperate with law enforcement authorities.

263. The reviewers recommended that Lao PDR take appropriate measures to encourage persons who participated in the commission of a corruption-related offence to supply information useful to competent authorities. Protection of such persons should also be ensured. Moreover, cooperation with other States should be encouraged where such a person is in another country and can provide substantial cooperation.

(c) Challenges

264. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

(d) Technical assistance needs

265. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Legislative drafting;
3. Legal advice;
4. Capacity-building programmes for authorities responsible for establishing and managing protection programmes;
5. Other assistance: awareness raising campaign

None of these forms of technical assistance has been provided to Lao PDR to date.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

266. Lao PDR cited articles 6, 24, 34 and 37 of the AC Law.

Anti-Corruption Law

Article 6. Obligations Relating to the Prevention and Countering of Corruption

Party organisations, state organisations, the Lao Front for National Construction, mass organisations, social organisations, 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 organisations which have the rights and duties [to deal with the corruption].

Article 24. Obligations of Other Organisations

Party organisations, State organisations, the Lao Front for National Construction, mass organisations, and social organisations, at all levels from central to local level, including State-owned enterprises, shall implement their assigned roles, rights, and duties completely, strictly, [and] immediately, shall provide evaluation and feedback to each other on the performance of functions by their government staff, shall conduct regular education campaigns, and shall coordinate with concerned sectors to prevent, counter and deal with corruption within the scope of their responsibilities.

(b) Observations on the implementation of the article

267. During the country visit, the national authorities mentioned the network that has been developed by GIAA in the different ministries and institutions in order to facilitate the implementation of its mandate and in order to promote the use of the complaints system by citizens to report acts of corruption.

268. A taskforce, under the auspices of the FIU, was established to draft the AML/FCT law. The taskforce is divided into high level and operational level. At the high level, there are 9 relevant agencies included, and at the operational level, there are 14 agencies (this includes GIAA, Office of the Supreme People's Prosecutor and Office of People's Supreme Court, but not a private sector person).
269. Lao Police is also responsible for money-laundering matters, and receives STRs for investigation from the FIU.
270. The review team was further informed that the Ministry of Justice annually runs a "Four Party Conference" where broader issues of relevance to society are discussed. For this reason, it also includes "mass organizations" (i.e. youth and women's groups, labor unions), and other relevant agencies. Moreover, the Ministry of Justice runs a meeting on judicial organization twice a year, as required. During this meeting, law reform is discussed, including discussions on anti-corruption, if deemed relevant. The procedure for law reform is that, first, a discussion takes place on how to address fairness and justice for the people, as well as how to enforce this. New laws would then be suggested to the National Assembly, and based on the new Criminal Procedure Law (which was not provided to the reviewers), relevant agencies would be responsible for drafting and establishing working task-forces to discuss the draft before it is presented. For example, the Central Bank of Lao PDR is responsible for the AML/CFT bill.
271. The Office of the Supreme People's Prosecutors informed the reviewers that individual prosecutors (at all levels) in Lao PDR are responsible for cooperating with relevant authorities in order to successfully prosecute a matter for which they are responsible.

(c) Successes and good practices

272. A good practice was deemed to be that GIAA and the Ministry of Public Security have inspection units in each ministry, as well as at the regional level.

(d) Challenges

273. Lao PDR identified the following challenges and issues in fully implementing the provision under review:
1. Limited capacity (e.g. human/technological/institution/other);
 2. Limited resources for implementation (e.g. human/financial/other).

Article 39 Cooperation between national authorities and the private sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Observations on the implementation of the article

274. During the country visit, the reviewers were informed of the role that the Lao National Chamber of Commerce and Industry has in facilitating dialogue between the Government and the private sector. The Chamber coordinates cooperation and established the Law Business Forum in 2005 as a higher level forum to discuss areas of interest (i.e. amendments to the Lao investment law and land tax) and it can mediate disputes between parties.

275. In practice, it was explained that private sector entities are more willing to approach business associations for assistance to have a dispute resolved that involved a corruption-related offence in a civil manner, rather than go through the formal processes. This shadow process was of concern to the reviewers.

(b) Challenges

276. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

(e) Technical assistance needs

277. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Other assistance: awareness raising campaign.

None of these forms of technical assistance has been provided to Lao PDR to date.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

278. Lao PDR cited article 22 of the Bank of the Lao PDR Law, article 14 of the Criminal Procedure Law, article 8 of the Prime Minister's Decree on Anti-Money Laundering, and article 28(3) 3 of the Anti-Corruption Law.

Bank of the Lao PDR Law

Article 22.

Maintaining Confidentiality

While performing duties, or after completing their tasks, all auditors shall keep confidential any problems, documents and data which they discover or come to know of, relating to the Bank of the Lao PDR, the commercial banks or financial institutions, except as otherwise approved by the Board of Directors or by an order of the court.

Criminal Procedure Law

Article 14. Effect of a Court Decision

The people's courts, on behalf of the Lao People's Democratic Republic, issues instructions, orders, decisions at first instance, decisions on appeal and decisions on cassation.

Instructions, orders, decisions at first instance, decisions on appeal and decisions on cassation of the people's courts that have become final shall be strictly respected by all Party organisations, State organisations, the Lao Front for National Construction, mass organisations, social organisations, enterprises, and citizens; concerned individuals or organisations shall implement them strictly as provided in Article 85 of the Constitution. Decisions at first instance, decisions on appeal and decisions on cassation of the people's courts that have become final shall not be revised, unless the case has been re-opened.

Anti-Corruption Law

Article 28. Inspection Procedure

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

3. Inspect all documents and assets of concerned individuals or organisations, especially to inspect the financial situation and accounts, revenue[, and] expenses, and the use of grants and loans;

279. It was reported that, as part of inspections based on article 28(3) of the AC Law, GIAA officials may request banks to provide necessary information, and banks usually cooperate with GIAA.

280. No cases have been reported to date.

(b) Observations on the implementation of the article

281. During the country visit, it was confirmed that there is no obstacle to gaining access to bank accounts. A request can be sent directly by the authorities to the bank in question.

(c) Challenges

282. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

283. Lao PDR cited article 118 of the Criminal Procedure Law.

The Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

284. No cases have been reported to date.

(b) Observations on the implementation of the article

285. The reviewers noted that there is no domestic law providing for Lao PDR to take a foreign criminal record into account and therefore recommended that consideration be given to legislatively providing for this.

(c) Challenges

286. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

287. Lao PDR cited article 3 of the Penal Law, article 2 of the Peoples Court Law, and article 83 of the Criminal Procedure Law.

Penal Law

Article 3. Within the Territory of the Lao People's Democratic Republic

This law is binding in the territory of the Lao People's Democratic Republic. An individual who commits an offence within the territory of the Lao People's Democratic Republic may be charged and punished in accordance with The Penal Law or other laws of the Lao People's Democratic Republic that define criminal penalties.

In the event that diplomatic representatives or individuals benefiting from the diplomatic immunity conferred by international conventions commit offences in the territory of the Lao People's Democratic Republic, these cases shall be solved through diplomatic channels.

288. Lao PDR provided the following case:

Case of Offence in the Land of Lao PDR (Case No.350, dated 28 June 2001)

Mr Carthy Athur Dans and Mrs Ke Francis Dans (couple), Australian business people, ran a security service in Lao PDR. The company's name was Zequioliq and both Mr and Mrs. Dans were Directors. They signed a security service contract with Jame Mining Company, a foreign company that had signed a mineral mining contract with the Lao Government. After obtaining the right to maintain security from Jame Mining Company,

Mr and Mrs Dans embezzled property, such as 167 crystals (valued at USD143,475), USD 410 in cash, Thai cash 700, 3,2 kilos of crystal equal to 160.000 karats and (valued at USD320,000).

The Vientiane Capital People Court sentenced Mr and Mrs Dans on 26 March 2006 (Case No. 217/VCPC), pursuant to articles 101(2), 141 and 156 of the Penal Law, article 17 of the Tort Law, article 18 of the Court Fee Law, and article 69 (old) of the Criminal Procedure Law. They were deemed guilty and sentenced to 7 years imprisonment and fined USD 66.847, 76 and 700 Bath (Thai currency).

(b) Observations on the implementation of the article

289. The reviewers deemed the provision under review to have been legislatively implemented.

Article 42 Jurisdiction

Subparagraph 1 (b)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

290. Lao PDR cited article 3 of the Penal Law, and articles 9, 12 and 74 of the Civil Aviation Law.

Penal Law

Article 3. New Application of Penal Law within the Territory of the Lao People's Democratic Republic

This law is binding in the territory of the Lao People's Democratic Republic. An individual who commits an offence within the territory of the Lao People's Democratic Republic may be charged and punished in accordance with the Penal Law or other laws of the Lao People's Democratic Republic that define criminal penalties.

In the event that diplomatic representatives or individuals benefiting from the diplomatic immunity conferred by international conventions commit offences in the territory of the Lao People's Democratic Republic, these cases shall be solved through diplomatic channels.

Civil Aviation Law

Article 9. Nationality and Registration of Aircraft

Any aircraft that intends to fly within the airspace of the Lao PDR shall be registered and shall have nationality and registration marks in accordance with the laws of the Lao PDR or of the concerned State.

Article 12. Recognition of Rights in Aircraft

When a person or organisation has duly registered its own civil aircraft in the Lao PDR, the rights in such aircraft shall be recognised in accordance with the relevant international conventions to which the Lao PDR is a party.

Article 74. Penal Sanctions

An individual shall be punished if he commits any of the following criminal offences:

1. Causing injury or loss of life to any passenger or other person due to his fault;
2. Hijacking or seizing any aircraft;

3. Assaulting, intimidating or threatening a crew member or performing any other act which endangers the safety or causes the death of passengers, crew members, or third parties;
4. Bringing any firearms, explosives, dangerous chemicals or addictive substances onto the aircraft without prior authorisation;
5. Counterfeiting any license, certificate or other civil aviation document;
6. Intentionally performing any act which causes damage to any aircraft or building or to the facilities at an aerodrome;
7. Destroying any vehicle or radio equipment to be used in the provision of air traffic services or as a radio navigational aid;
8. Removing or appropriating any part of the aircraft or any property onboard a civil aircraft involved in an accident without prior authorisation;
9. Committing any other penal offence.

291. Lao PDR considers vessels flying Lao PDR's flags and aircrafts registered in Lao PDR to fall within its jurisdiction.

292. No cases have been reported to date.

(b) Observations on the implementation of the article

293. The national authorities confirmed that they can extend jurisdiction to vessels flying its flag and aircrafts registered in Lao PDR. However, as this was not provided for in law, the reviewers recommended to specifically include such a provision.

Article 42 Jurisdiction

Subparagraphs 2 (a) and (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

294. Lao PDR cited article 4 of the Penal Law.

Article 4. Application of Penal Law outside the Territory of the Lao People's Democratic Republic

Lao citizens who commit offences outside the territory of the Lao People's Democratic Republic shall be charged with and punished for such offences if they are defined [as offences under] the Penal Law of the Lao People's Democratic Republic.

Aliens and apatrids residing in the Lao People's Democratic Republic who commit offences outside the territory of the Lao People's Democratic Republic shall also be charged and punished.

Foreign individuals who commit offences outside the territory of the Lao People's Democratic Republic shall be charged and punished as provided in the Penal Law of the Lao People's Democratic Republic if such a case is provided for in international conventions.

295. Lao PDR has jurisdiction over any crime committed against Lao nationals based on article 1 of the Penal Law defining its role as "safeguarding life, health, rights and freedom of the people", regardless of whoever is an offender and wherever the crime under the law is committed.

(b) Observations on the implementation of the article

296. The passive personality principle is legislatively covered by article 4 of the Penal Law. Despite the explanation given for the active personality principle, the reviewers recommended specifically providing for this legislatively.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

297. Lao PDR cited articles 4 and 64 of the Penal Law.

Penal Law

Article 64. (New) Money Laundering

Any person conducting activities in order to convert money or items derived from corruption, drug trafficking, human trafficking, trade in weapons of war or other offences into legal money by depositing them in banks, buying land, buying houses, lending to other persons or other means shall be considered as having engaged in money laundering, and shall be punished by one year to three years of imprisonment and shall be fined one third of the laundered amount.

Any preparation or attempt to commit such an offence shall also be punished.

Accomplices in money laundering shall be punished by six months to two years of imprisonment and shall be fined 1 percent of the laundered amount.

298. No cases have been reported to date.

(b) Observations on the implementation of the article

299. The reviewers noted that Lao PDR has partially implemented the provision under review in so far as the offence in question is committed by Lao citizens and residents. It was therefore recommended to extend such jurisdiction to cover this provision.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

300. Lao PDR cited articles 2(1) and 10 of the AC Law.

Anti-Corruption Law

Article 2. Corruption

(1) Corruption is the act of an official who opportunistically uses his position, powers, and duties to embezzle, swindle [or] receive bribes or any other act provided for in Article 10 of this law, [which act is committed] to benefit himself or his family, relatives, friends, clan, or group and causes damage to the interests of the State and society or to the rights and interests of citizens.

Article 10. 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;
- Deception in bidding or concessions;
- Forging documents or using forged documents;
- Disclosure of State secrets for personal benefit;
- Holding back or delaying documents.

301. Based on articles 2 and 10 of the AC Law, Lao PDR considers corruption offences as crimes committed against the State causing damage to the interests of the State and society.

302. No cases have been reported to date.

(b) Observations on the implementation of the article

303. The reviewers deemed the provision under review to have been implemented, as article 2 of the AC Law provides that for an offence to be deemed corruption it must also cause “damage to the interests of the State”.

Article 42 Jurisdiction

Paragraphs 3 – 6

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) **Summary of information relevant to reviewing the implementation of the article**

304. Lao PDR cited article 6 of the Nationality Law, article 4 of the Penal Law, articles 118-120 of the Criminal Procedure Law, articles 4-6 of the Treaty on Extradition between the Lao PDR and the Kingdom of Thailand, articles 2 and 4 of the Treaty on the transfer of sentenced persons between Lao PDR and the United Kingdom of Great Britain and Northern Ireland, articles 4 and 5 of the Treaty on Extradition between Lao PDR and Cambodia, and articles 3 and 4 of the Treaty on Extradition between Lao PDR and China.

Nationality Law

Article 6. Non-extradition of Lao Citizens

The Lao People's Democratic Republic shall not extradite its citizens to a foreign state.

Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

Article 119. 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 judgment, or cooperation in combating of cross-border crime and others.

Article 120. Refusal to Provide Judicial Assistance

The competent organisation conducting criminal proceedings in the Lao PDR may refuse to provide judicial assistance in the following cases:

1. The request for judicial assistance is not in conformity with agreements that the Lao PDR has signed with foreign countries, or international conventions to which the Lao PDR is a party, or the laws of the Lao PDR.
2. The provision of the judicial assistance would affect the sovereignty, security or stability of the nation, or any important interest of the Lao PDR.

Treaty on Extradition between Lao PDR and the Kingdom of Thailand

Article 4. Grounds for Discretionary Refusal

Extradition may be refused under this Treaty in any of the following circumstances:

- (1) The Requested Party in accordance with its law has jurisdiction over the offence for which the request for extradition is made and shall institute proceedings against the person sought.
- (2) In exceptional cases, the Requested Party while also taking into account the seriousness of the offence and the interests of the Requesting Party deem that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian consideration.
- (3) The Requested Party is in the process of proceeding against the person sought in respect of the same offence.

Article 5. Extradition of Nationals

1. Each Contracting Party shall have the right to refuse to extradite of its own nationals.
2. If extradition is not granted pursuant to paragraph 1 of this Article, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authority for prosecution. For this purpose, the Requesting Party shall submit documents and evidence relating to the case to the Requested Party.
3. Notwithstanding paragraph 2 of this Article, the Requested Party shall not be required to submit the case to its competent authority for prosecution if the Requested Party has no jurisdiction over the offence.

Article 6. Channel of Communication

For the purposes of this Treaty, the Contracting Parties shall communicate through the diplomatic channels, unless otherwise provided for in this Treaty.

TREATY BETWEEN THE LAO PEOPLE'S DEMOCRATIC REPUBLIC AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Article 2. GENERAL PRINCIPLES

1. The Contracting Parties shall afford each other the widest measure of cooperation in respect of the transfer of sentenced persons in accordance with the provisions of this Treaty.
2. A sentenced person may be transferred from the territory of the transferring Party to the territory of the receiving Party in accordance with the provisions of this Treaty in order to continue serving the sentence imposed on him or her by the transferring Party.
3. A sentenced person may express an interest to the transferring Party or receiving Party in being transferred under this Treaty.
4. The transfer of sentenced persons may be requested by either the transferring Party or the receiving Party.

Article 4. CONDITIONS FOR TRANSFER

Sentenced persons may be transferred under this Treaty only on the following conditions:

- (a) The acts or omissions for which the sentence has been imposed would constitute a criminal offence under the laws of the receiving Party; this condition shall not be interpreted to require that the offence described in the laws of both Contracting Parties be identical with respect to matters that do not affect the essential nature of the offence;
- (b) The sentenced person is a national of the receiving Party;
- (c) The transferring and receiving Parties agree to the transfer;
- (d) The transfer is consented to by the sentenced person or, where in view of the person's age or physical or mental condition one of the Contracting Parties considers it necessary, by his or her legal representative;
- (e) At the time the request for transfer is received, the sentenced person has still at least one year of the sentence to serve; in exceptional cases, the Contracting Parties may agree to a transfer even if the sentenced person has less than one year of the sentence to serve;
- (f) The judgment is final and no other legal proceedings relating to the offence or any other offence committed by the sentenced person are pending in the transferring Party;
- (g) The transfer of the sentenced person does not prejudice the Contracting Parties' internal or external security, public order or other essential interests;
- (h) the sentenced person was not sentenced in respect of one of the following offences under Lao law:
 - (i) An offence against the President of the Lao People's Democratic Republic and his spouse;
 - (ii) An offence against the internal security of the State, including criminal offences against the President of the National Assembly and his spouse or the Prime Minister and his spouse, or external security of the State; or
 - (iii) An offence under legislation protecting national art treasures; and
- (i) unless the Contracting Parties otherwise agree, a sentenced person may not be transferred unless he has made full payment of the fine, restitution of property, or compensation for damages according to the judgment of the court in the transferring Party in the criminal case.

Treaty on Extradition between Lao PDR and the Cambodia

ARTICLE 4. Ground for Discretionary Refusal

Extradition may be refused under this Treaty in any of the following circumstances:

1. The Requested Party in accordance with its law has jurisdiction over the offense for which the request for extradition is made and shall institute proceedings against the person sought.
2. The Requested Party is in the process of proceeding against the person sought in respect of the same of offense.
3. In the exceptional cases, the Requested Party while also taking into account the seriousness of the offense and the interests of the Requesting Party deems that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian consideration.

ARTICLE 5. Extradition of Nationals

1. Each Contracting Party shall have the right to refuse extradition of its own nationals.
2. If extradition is not granted pursuant to paragraph 1 of this Article, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authority for prosecution. For this purpose, the Requesting Party shall submit documents and evidence relating to the case to the Requested Party. Notwithstanding paragraph 2 of this Article, the Requested Party shall not be required to submit the case to its competent authority for prosecution if the Requested Party has no jurisdiction over the offense.

Treaty on Extradition between Lao PDR and the China

Article 3. Mandatory Grounds for Refusal

Extradition shall be refused if:

- (a) The Requested Party considers that the offence for which the extradition is requested is a political offence, or the Requested Party has granted asylum to the person sought;
- (b) The Requested Party has substantial reasons to believe that criminal proceedings may be instituted or sentence may be executed against the person sought for reasons of that person's race, religion, nationality, sex, political opinion, or that person may, for any of those reasons, be subject to unfair treatment in judicial proceedings;
- (c) The offence for which the extradition is requested is a purely military offence under the laws of either Party;
- (d) The person sought is a national of the Requested Party under the laws of the Requested Party;
- (e) The person sought has, under the laws of either Party, become immune from prosecution or execution of sentence for any reason including; apse of time or pardon at the time when the request for extraction is received;
- (f) The Requested Party has already rendered a final judgment or terminated the judicial proceedings against the person sought in respect of the offence for which the extradition is requested; or
- (g) The request for extradition is made by the Requesting Party on the basis of a judgment rendered by default, unless the Requesting Party undertakes that the person sought has the opportunity to have the case retried in that person's presence.

Article 4. Discretionary Grounds for Refusal

Extradition may be refused if:

- (a) The Requested Party has jurisdiction over the offence for which the extradition is requested in accordance with its national law, and is conducting or contemplated to institute criminal proceedings against the person sought for that offence; or
- (b) Extradition is incompatible with humanitarian considerations in view of the age, health or other conditions of the person sought.

305. No cases have been reported to date.

306. If Lao PDR does not extradite an offender, it may consider prosecuting the offender according to the Lao law. Articles 118 and 119 of the Criminal Procedure Law provide such a legal basis. For example, although Lao PDR may choose not to extradite an offender based on an offence punishable under the Lao law by imprisonment of less than one year, it may consider prosecuting the offender based on the Lao law if it chooses not to extradite.

307. No cases have been reported to date.

(b) Observations on the implementation of the article

308. The reviewers deemed that the cited provisions do not clearly provided for the "*aut dedere, aut judicare*" principle and recommended that this be specifically included in Lao PDR's national law. Reference is made to the observations under UNCAC article 44, especially paragraph 11, below.

(c) Challenges

309. Lao PDR identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

(d) Technical assistance needs

310. Lao PDR indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Legal advice.

None of these forms of technical assistance has been provided to Lao PDR to date.

Chapter IV. International cooperation

311. As a general matter it was explained that international treaties are not self-executing in Lao PDR but can be applied directly if they are not in conflict with domestic law. Treaties can also be applied directly where a domestic law does not address an issue.

312. In July 2012, the National Assembly of Lao PDR adopted a law on extradition which will come into force 90 days after its promulgation. The law was not yet in force at the time of the review, and will apply to all extradition cases going forward. At the time of the country visit, Lao PDR had also presented draft laws on mutual legal assistance and transfer of prisoners to the National Assembly, which was scheduled to hear these matters at its December 2012 session. Officials at the Ministry of Justice explained that if the bills are not passed at this session, they would be amended and resubmitted for the next session.

313. At the time of the review and prior to the entry into force of the new laws, Lao PDR relied on bilateral and multilateral treaties, provisions in the Criminal Procedure Law (arts. 117-120) for international cooperation (extradition, mutual legal assistance and transfer of sentenced persons), and could also cooperate on the basis of reciprocity.

314. Because the draft laws on extradition and mutual legal assistance were not yet in force at the time of the review, they were not subject to the review and were not considered as evidence of implementation. Where reference to these laws is made in this report, the summary is provided for information only as to how the future international cooperation framework of Lao PDR may evolve. Summaries are based on explanations provided by officials at the Ministry of Justice from the Lao version of the laws.

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

315. According to the Criminal Procedure Law of Lao PDR, extradition may be carried out in accordance with the agreements or international conventions that Lao PDR is subject to or in the absence of treaties on the basis of reciprocity, and dual criminality must be satisfied. Lao PDR has cited articles 117 through 119 of the Criminal Procedure Law, as well as articles 1, 2, 6 and 7 of the Treaty on Extradition between Lao PDR and the Kingdom of Thailand of 1999. Lao officials explained that the extradition treaty with Thailand provides a typical example of extradition treaties Lao PDR has concluded with foreign countries, which require dual criminality. Similar provisions are found in articles 1 and 2 of the Treaty on Extradition between Lao PDR and the Kingdom of Cambodia as well as articles 1 and 2 of the Treaty on Extradition between Lao PDR and the People's Republic of China. A dual criminality requirement for extradition is also found in article 60 of the Treaty on Mutual Legal Assistance with Vietnam, chapter II of which covers extradition.
316. Officials at the Ministry of Justice explained that under previous practice the dual criminality requirement could sometimes be applied in a relaxed manner or waived on a case by case basis. Under the new extradition law, dual criminality will continue to be a requirement and would be strictly applied.
317. As noted in the introduction, Lao PDR made the following notification concerning the implementation of article 44: "The Lao People's Democratic Republic declares that it makes extradition conditional on the existence of a treaty. Nevertheless, it does not consider the UN Convention Against Corruption as the legal basis for extradition in respect of the offences set forth therein. It further declares that bilateral agreements will be the basis for extradition as between the Lao People's Democratic Republic and other States Parties in respect of any offences."
318. At the time of the review, the decision on whether or not a person would be extradited was with the Government, namely the different agencies responsible for extradition, including the Ministry of Justice, Ministry of Foreign Affairs, Supreme Prosecutor's Office, and Ministry of Public Security. Extradition hearings were not foreseen under the existing law or practice of Lao PDR. However, it was explained that under the new extradition law (articles 18 and 19), extradition proceedings are to be carried out in a court of law, which would make the final determination in extradition cases. Specifically, article 19 provides that, in case the court finds reasons to extradite a person, the court will make a decision to extradite and extradition shall be made within 30 days of the judgment.

Criminal Procedure Law
Article 117.

Principle of International Cooperation in Criminal Proceedings

International cooperation in criminal proceedings between the competent organisation 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 the domestic affairs, equality and mutual benefit, and be consistent with the Constitution of Lao PDR and the fundamental principles of international law.

Criminal Procedure Law
Article 118.

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 co-operation] 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.

Criminal Procedure Law

Article 119.

Implementation of Judicial Assistance

In the provision of judicial assistance, the competent organisation 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 judgment, or cooperation in combating of cross-border crime and others.

The Treaty on Extradition between the Lao People's Democratic Republic and the Kingdom of Thailand

Obligation to Extradite

Article 1

The Contracting Parties undertake to extradite to each other, in accordance with the provisions of this Treaty, persons found in the territory of one of the Contracting Parties who are wanted for prosecution, trial or for the imposition or execution of punishment in the territory of the other Party for an extraditable offence.

Extraditable Offences

Article 2

1. For the purpose of this Treaty, extraditable offences are offences which are punishable under the laws of the Contracting Parties by the penalty of imprisonment or other form of detention for a period of more than one year or by any heavier penalty.

2. Where the request for extradition relates to a person sentenced to imprisonment or other form of detention by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six months in the sentence remains to be served.

3. For the purposes of this Article, in determining whether an offence is an offence against the laws of both Parties, it shall not matter whether the laws of the Contracting Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology.

4. When extradition has been granted with respect to an extraditable offence, it may also be granted in respect of any other offence specified in the extradition request that meets all other requirements for extradition except for periods of penalty or detention order set forth in paragraphs 1 and 2 of this Article.

319. Lao PDR explained that there have been no extradition cases to date based on corruption offences. However, extradition will be conducted in the same manner in corruption cases as in other criminal cases. While it was explained that there are no comprehensive statistics on the number of extradition cases in criminal matters generally, Ministry of Justice explained that there were at least four extradition cases pending at the time of the country visit, involving China, Republic of Korea, and two cases with Malaysia. There was no information on the number of persons who had been extradited to Lao PDR.

320. The treaty on extradition between Lao PDR and Thailand was the basis for extradition in the following criminal case not involving corruption offences:

Case of Sixteen Offenders

On 3 July 2000, a group of plunderers (16 offenders) came through the Vangtao border checkpoint on the Lao-Thai border with guns and threatened the exchange unit of the bank, border demarcation officials' residents, border tax officials' residents and private stores for stealing property, arms and weapons, and also threatened to take hostage officials and some local people; then they escaped to Thailand. A competent committee of Lao PDR negotiated with a competent Thai committee and requested Thai authorities to extradite the culprits to Lao PDR. Finally, the Thai counterpart sent the 16 culprits to Lao

PDR to face legal proceedings. After consideration by the court, according to article 118 of the Criminal Procedure Law, and articles 1, 3 and 4 of the Criminal Law, the Champasak Provincial Criminal Court found the group of plunders guilty of robbing property of the government and citizens. Each of them was sentenced to two years and six months in prison; all arms were confiscated and the 16 defendants had to commonly compensate the damage cost of 5,282,000 Thai Baht (approximately \$172,000).

321. Lao PDR provided the following additional case example not involving corruption offences:

Case of extradition of Chinese offenders

In 2011, Chinese police sent a request letter to the Lao police through diplomatic channels for detaining and extraditing Chinese offenders who had swindled Chinese citizens' money through electronic equipment and were in Lao PDR at the time. After consideration and according to articles 117 through 119 on international cooperation of the Criminal Procedure Law and the Treaty on Extradition between Lao PDR and China signed on 4 February 2002, Lao police detained 68 offenders. After consideration by the Government and consultation between two sides, the offenders were extradited to China on 30 September 2011. In this transfer, both sides signed a document that emphasized cooperation in criminal matters based on the bilateral extradition treaty and principles of mutual assistance.

(b) Observations on the implementation of the article

322. Lao PDR should ensure that under the new extradition law and practice, extradition proceedings are carried out in a court of law, which makes the final determination in extradition cases and applies the same principles, procedures and safeguards applicable in criminal proceedings. Training of judges and capacity building for participants in extradition hearings and on the application of the new law may be needed.
323. The reviewers welcome indications by Lao PDR that it may consider revoking its reservation to be able to use UNCAC as a legal basis for extradition in the future. This would enable Lao PDR to execute extradition requests from countries with which no bilateral treaties are in place, including a large number of countries in other regions.
324. In light of the adoption of the new extradition law, the reviewers welcomed the willingness of the Government to improve its extradition law and practice, but also encouraged the Government to identify gaps in implementation under the new arrangement and work to effectively address them.
325. While the number of requests that were pending at the time of the review was provided, it was noted that there were no aggregate statistics on extradition requests made and received in the past by Lao PDR because multiple agencies were involved in extradition matters. Lao PDR is encouraged, under the new extradition framework, to ensure that statistics are collected at the national level on extradition cases it has handled and that there are clearly defined responsibilities among competent authorities regarding the reporting and execution of extradition matters.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

326. Lao PDR has not implemented the provision under review. There is no reference in law, treaties or practice to extradition being possible in the absence of dual criminality. There have been no cases where Lao PDR granted extradition in the absence of dual criminality.

(b) Observations on the implementation of the article

327. The reviewers note that dual criminality is required for extradition to be effected.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

328. Lao PDR has cited article 2, paragraph 4 of the Treaty on Extradition between Lao PDR and the Kingdom of Thailand. A similar provision is found in article 2, paragraph 4 of the Treaty on Extradition between Lao PDR and the Kingdom of Cambodia, article 2, paragraph 4 of the Treaty between Lao PDR and the Socialist Republic of Vietnam and article 2, paragraph 4 of Treaty on Extradition between Lao PDR and China (set forth below). Only certain articles covering extradition of the treaty with Vietnam were available to the reviewers in English.

Treaty on Extradition between the Lao PDR and the Kingdom of Thailand

Article 2

Paragraph 4

When extradition has been granted with respect to an extraditable offence, it may also be granted in respect of any other offence specified in the extradition request that meets all other requirements for extradition except for periods of penalty or detention order set forth in paragraphs 1 and 2 of this Article.

Treaty on Extradition between the Lao PDR and the People's Republic of China

Article 2

Paragraph 4

If the request for extradition concerns two or more acts each of which constitutes an offence under the laws of both Parties and at least one of which fulfills the condition of period of penalty provided for in paragraphs 1 and 2 of this Article, the Requested Party may grant extradition for all of those acts.

329. No cases were reported where Lao PDR has granted extradition under these circumstances.

(b) Observations on the implementation of the article

330. While the ability to grant extradition in these circumstances is not addressed in the legislation, it is provided for in several bilateral treaties.
331. It is noted that, because certain corruption offences carry a minimum punishment of less than one year under Lao law, these would not be considered extraditable offences. Lao PDR is encouraged to consider reviewing its penalty requirements for corruption to ensure that all corruption offences are extraditable in view of their periods of imprisonment.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

332. Lao PDR indicated that it has partially implemented the provision under review. Article 118 of the Criminal Procedure Law generally bases extradition upon bilateral agreements or international conventions in accordance with the law of Lao PDR, and in the absence of treaties on the basis of the principle of reciprocity.
333. Under its existing bilateral treaties, offences are extraditable that are punishable by a minimum period of imprisonment of one year (two years in the case of the treaty with Vietnam where extradition is requested to execute criminal proceedings). The one-year minimum prison term is also a requirement under the new extradition law (paragraph 1 of article 7). Extradition for offences punishable by imprisonment of less than one year could be granted based on article 118 of the Criminal Procedure Law, though this article will not be applied once the new law on extradition is in force.
334. Lao PDR reported that existing bilateral treaties on extradition consider offences punishable by imprisonment of one year or longer as extraditable, and this could potentially exclude certain cases from extradition because not all corruption offences in Lao PDR carry a one year minimum sentence. In this case it was explained that Lao PDR would refuse extradition. The Lao-Thailand treaty on extradition provides a typical example where the legal basis is established for extradition in the case of "extraditable offences" punishable by imprisonment of one year or longer.
335. Lao PDR does not opt to use the Convention as a basis for extradition following its declaration at the time of ratification.

336. Lao PDR has cited articles 117 through 119 (quoted above) and article 120 of the Criminal Procedure Law, as well as articles 2 and 3 of the Treaty on Extradition between Lao PDR and the Kingdom of Thailand. Similar provisions are also found in articles 2 and 3 of the Treaty on Extradition between Lao PDR and the Kingdom of Cambodia as well as articles 2 and 3 of the Treaty on Extradition between Lao PDR and the People's Republic of China (quoted below).

Criminal Procedure Law

Article 120. Refusal to Provide Judicial Assistance

The competent organisation conducting criminal proceedings in the Lao PDR may refuse to provide judicial assistance in the following cases:

1. The request for judicial assistance is not in conformity with agreements that the Lao PDR has signed with foreign countries, or international conventions to which the Lao PDR is a party, or the laws of the Lao PDR.
2. The provision of the judicial assistance would affect the sovereignty, security or stability of the nation, or any important interest of the Lao PDR.

Treaty on Extradition between the Lao PDR and the Kingdom of Thailand

Extraditable Offences

Article 2

1. For the purpose of this Treaty, extraditable offences are offences which are punishable under the laws of the Contracting Parties by the penalty of imprisonment or other form of detention for a period of more than one year or by any heavier penalty.
2. Where the request for extradition relates to a person sentenced to imprisonment or other form of detention by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six months in the sentence remains to be served.
3. For the purposes of this Article, in determining whether an offence is an offence against the laws of both Parties, it shall not matter whether the laws of the Contracting Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology.
4. When extradition has been granted with respect to an extraditable offence, it may also be granted in respect of any other offence specified in the extradition request that meets all other requirements for extradition except for periods of penalty or detention order set forth in paragraphs 1 and 2 of this Article.

Grounds for Mandatory Refusal

Article 3

Extradition shall not be granted under this Treaty in any of the following circumstances:

- (1) The Requested Party considers the offence for which the request for extradition is made by the Requesting Party as a political offence. Reference to a political offence shall not include the taking or attempted taking of the life or an attack on the person of a Head of State or a Head of Government or a member of his or her family.
- (2) The Requested Party has well-founded reasons to suppose that the request for extradition made by the Requesting party aims to institute criminal proceedings against or execute punishment upon the person sought on account of race, religion, nationality or political opinion of that person, or that the position of the person sought in judicial proceedings will be prejudiced for any of the reasons mentioned above.
- (3) The offence for which the request for extradition is made is exclusively an offence under military law of the Requesting Party and does not constitute an offence under criminal law of that Contracting Party.
- (4) The prosecution or the execution of punishment for the offence for which extradition has been sought has become barred by reason prescribed under the law of either Contracting Party including a law relating to lapse of time.
- (5) The Requested Party has passed judgment upon the person sought in respect of the same offence, before the request for extradition is made.

Treaty on Extradition between the Lao PDR and the People's Republic of China

Extraditable Offences

Article 2

1. For the purpose of this Treaty, extraditable offence shall be an act which constitutes an offence and is punishable by the penalty of imprisonment for a period of more than one year or by any heavier penalty under the laws of both Parties.
2. Where the request for extradition relates to a person sentenced by a court of the Requesting Party for any extraditable offence, extradition aimed at execution of the sentence shall be granted only if a period of at least six months in the sentence remains to be served.

3. In determining whether an act constitutes under the laws of both Parties, it shall not matter whether the laws of both Parties place the act within the same category of offence or denominate the offence by the same terminology.

4. If the request for extradition concerns two or more acts each of which constitutes an offence under the laws of both Parties and at least one of which fulfills the condition of period of penalty provided for in paragraphs 1 and 2 of this Article, the Requested Party may grant extradition for all of those acts.

Article 3

Mandatory Grounds for Refusal

(a) The Requested Party considers that the offence for which the extradition is requested is a political offence, or the Requested Party has granted asylum to the person sought;

(b) The Requested Party has substantial reasons to believe that criminal proceedings may be instituted or sentence may be executed against the person sought for reasons of that person's race, religion, nationality, sex, political opinion, or that person may, for any of those reasons, be subject to unfair treatment in judicial proceedings;

(c) The offence for which the extradition is requested is a purely military offence under the laws of either party;

(d) The person sought is a national of the Requested Party under the laws of the Requested Party;

(e) The person sought has, under the laws of either Party, become immune from prosecution or execution of sentence for any reason including lapse of time or pardon at the time when the request for extradition is received;

(f) The Requested Party has already rendered a final judgment or terminated the judicial proceedings against the person sought in respect of the offence for which extradition is sought;

(g) The request for extradition is made by the Requesting Party on the basis of a default judgment rendered by default, unless the Requesting Party undertakes that the person sought has the opportunity to have the case retried in that person's presence.

337. Extradition sought for reasons of a person's political opinion is considered a ground for mandatory refusal in article 3 of the Treaties on Extradition with the Kingdom of Thailand, the Kingdom of Cambodia and the People's Republic of China. Article 61, subparagraph 1 (e) of the treaty with Vietnam provides for refusal of extradition on the grounds that the requested Party considers the request for extradition to be "a special case" under its domestic laws. No information was available as to whether political offences would fall under this provision.

338. The new extradition law provides in Article 8 that extradition shall be refused if the offence for which extradition is requested is considered "a political offence including fighting for liberty, peace and political opinion, except for offences as described in Article 9 of the this law". According to Article 9, offences that are not considered as political offences are: "1. Taking of or attempt at the life or an attack on the following persons such as Head of State, President of National Assembly, Head of Government, or other leaders and members of his or her family; 2. Civil commotion; 3. Attack of detention and reformatory centers; 4. Offence against friendly countries; 5. Abduction or taking hostages; 6. Bombing, firing, using equipments or chemicals that are dangerous and harmful to life or massive physical or property destruction; 7. Preparation, attempt or participation or commission in the offence, giving instruction, assistance or inciting other persons to commit offences as described in paragraphs 1 to 3 of this Article." In practice, it was explained that the court will apply the new law and assess the issue of whether a case involves a political offence once it is raised in a criminal case.

339. The issue of a political offence was raised in the extradition case with Thailand referenced under paragraph 1 above. In this case, 9 of the 16 defendants claimed the extradition request was based on a political offence. After the investigation and request for extradition was sent by Lao PDR to Thailand, the Thai court rendered a judgment in favour of the defendants, and their extradition to Lao PDR was denied.

(b) Observations on the implementation of the article

340. Lao PDR may wish to monitor the application of this provision to ensure that the issue of political offences does not present an impediment to extradition in the future. In addition, Lao PDR should ensure that there are clear guidelines which are known to the relevant institutions to ensure that cases are not deemed political offences under the new extradition law.

341. As noted above, because certain corruption offences carry a minimum punishment of less than one year under Lao law, these would not be considered extraditable offences. Lao PDR is encouraged to review its penalty requirements for corruption to ensure that all corruption offences are extraditable in view of their periods of imprisonment.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

342. Lao PDR indicated that it has not implemented the provision under review. As noted above, although Lao PDR generally makes extradition conditional on the existence of a treaty or the principle of reciprocity, it does not consider the Convention as the legal basis for extradition in respect of corruption offences.

(b) Observations on the implementation of the article

343. As noted above, the reviewers welcome indications by Lao PDR that it may consider revoking its reservation to be able to use the Convention as a legal basis for extradition in the future.

Article 44 Extradition

Paragraph 6

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

344. In practice, Lao PDR may consider granting extradition based on reciprocity under articles 117 through 119 of the Criminal Procedure Law, even in the absence of an extradition treaty with a requesting country.

345. Lao PDR does not consider the Convention as the legal basis for extradition in respect of corruption offences. Lao PDR has made the requisite notification to the United Nations (C.N.709.2009.TREATIES-22).

346. Lao PDR has enacted treaties covering extradition matters with Vietnam, China, Thailand, Cambodia and the Democratic People's Republic of Korea. Lao PDR is preparing a draft extradition treaty with the Russian Federation.

(b) Observations on the implementation of the article

347. As noted above, the reviewers welcome indications by Lao PDR that it may consider revoking its reservation to be able to use the Convention as a legal basis for extradition in the future.

348. Lao PDR may wish to monitor the development of its extradition practice once the new law comes into force, in particular to see whether the practice will continue to be treaty-based.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

349. Lao PDR indicated that it has partially implemented the provision under review. While Lao PDR generally makes extradition conditional on the existence of treaties, it may consider granting extradition based on reciprocity under articles 117 through 119 of the Criminal Procedure Law. While corruption offences are not separately referred to as extraditable offences, they may be included as extraditable offences under existing treaties and practice if punishable by a minimum of one year imprisonment and subject to dual criminality. However, as noted above, not all corruption offences are extraditable.

350. Lao PDR has cited article 117 through 119 of the Criminal Procedure Law (quoted above).

(b) Observations on the implementation of the article

351. As noted above, Lao is encouraged to consider reviewing its penalty requirements for corruption to ensure that all corruption offences are extraditable in view of their periods of imprisonment.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

352. Lao PDR has cited articles 117 through 120 of the Criminal Procedure Law as well as articles 2 and 3 of the Treaties on Extradition between Lao PDR and the Kingdom of Thailand, the Kingdom of Cambodia and the People's Republic of China (quoted above). Article 4 (discretionary refusal) of the Treaties with Thailand and China are quoted below, and a similar provision is found in the Treaty with Cambodia. The non-extradition of nationals, included in the Treaties with Thailand, Cambodia and China, is also referred to (quoted below under UNCAC paragraph 11).

Treaty on Extradition between the Lao PDR and the Kingdom of Thailand Ground for Discretionary Refusal Article 4

Extradition may be refused under this Treaty in any of the following circumstances:

- (1) The Requested Party in accordance with its law has jurisdiction over the offence for which the request for extradition is made and shall institute proceedings against the person sought.
- (2) In exceptional cases, the Requested Party while also taking into account the seriousness of the offence and the interests of the Requesting Party deems that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.
- (3) The Requested Party is in the process of proceeding against the person sought in respect of the same offence.

Treaty on Extradition between the Lao PDR and the People's Republic of China Discretionary Grounds for Refusal Article 4

Extradition may be refused if:

- (a) The Requested Party has jurisdiction over the offence for which the extradition is requested in accordance with its national law, and is conducting or contemplating to institute criminal proceedings against the person sought for that offence;
- (b) Extradition is incompatible with humanitarian considerations in view of the age, health or other conditions of the person sought.

353. Over the past ten years, Lao PDR has not refused extradition.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

354. Even though there have been no extradition cases involving corruption offences, it was explained that in the past extradition procedures have usually been handled through direct communication between focal point authorities such as the police. However, under the extradition treaties and the new extradition law, extradition requests must be submitted via diplomatic channels, though they can be submitted directly in urgent cases. The Extradition Treaty with China (quoted below) allows for direct communication among designated focal point authorities.
355. Under the existing treaties, several institutions are responsible for handling extradition cases, in particular the Prosecutor's Office, Ministry of Public Security, Ministry of Justice and Ministry of Foreign Affairs. Under the new extradition law, the Office of the Supreme Prosecutor receives and transmits extradition request to the different institutions for execution.
356. Only the Treaty on Extradition between Lao PDR and the Kingdom of Cambodia has a provision on expedited procedures (article 10). Other relevant provisions are quoted below, and similar provisions are found in the Treaty with the Kingdom of Thailand. Provisional arrest is also provided for in the Treaties with Thailand, Cambodia and China.

Treaty on Extradition Between the Lao People's Democratic Republic and The Kingdom of Cambodia

Article 6

Channels of Communication

For the purpose of this Treaty, the Contracting Parties shall communicate through the diplomatic channels, unless otherwise provided for in this Treaty.

Article 7

Request for Extradition and Required Documents

Request for extradition shall be made in writing and shall be accompanied by the following:

- (a) documents, statements or other evidence sufficient to describe the identity and probable location of the person sought;
- (b) a statement of the facts of the case;
- (c) the provisions of the law describing the essential elements and the designation of the offence for which extradition is requested;
- (d) the provisions of the law describing the punishment for the offence; and
- (e) the provisions of the law describing any time limit on the prosecution or the execution of punishment for the offence, if any.

2. A request for the extradition relating to a person sought for prosecution also shall be accompanied by:

- (a) a copy of the warrant of arrest issued by a judge, a prosecutor or other competent authority of the Requesting Party;
- (b) such evidence as would justify that person's arrest and committal for trial, including evidence establishing that the person sought is the person to whom the warrant of arrest refers.

3. When the request for extradition relates to a person found guilty, in addition to the required by paragraph 1 of this Article, it shall be accompanied by:

- (a) A copy of the judgment of a court of the Requesting Party;
- (b) evidence providing that the person sought is the person to whom the judgment refers;
- (c) a statement showing to what extent the sentence has been carried out; and
- (d) a statement as to the legal means available to the person to prepare his or her defence or to have the case retried in his or her presence, if a person has been convicted of an offence in his or her absence.

4. All the documents to be presented by the requesting Party pursuant to the provisions this Treaty shall be officially signed or sealed and shall be accompanied by a translation in the language of the requested Party or the English language.

Article 10

Simplified Extradition Procedure

If the person sought irrevocably agrees in writing to extradition after personally being advised by the competent authority of this right to formal extradition proceeding and the protection afforded by them, the

requested Party may grant extradition without formal extradition proceedings, and the provisions of Article 12 shall apply.

Article 12

Surrender of the Person Sought

1. If the extradition has been granted, the Requested Party and the Requesting Party decide through consultation on the implementation of the extradition. For this purpose the requested Party shall inform the requesting Party of the length of the time for which the person sought was detained prior to the surrender.
2. The requesting Party shall be considered as renouncing request for extradition if it does not accept the person sought within fifteen days after the date on which the implementation of the extradition has been agreed, unless otherwise provided for in paragraph 3 of this Article. The Requested Party shall set that person at liberty immediately and may refuse extradition for the same offence.
3. If one contracting Party fails to surrender or accept the person sought within the agreed period for reasons beyond its control, the other Party shall be mortified. The Contracting Parties shall decide through consultation on the implementation of the extradition again, and the provisions of paragraph 2 of this Article shall apply.

Treaty on Extradition Between the Lao People's Democratic Republic and the People's Republic of China

Article 6

Channels of Communication

For the purpose of this Treaty, the Parties shall communicate with each other through their respectively designated authorities unless otherwise provided for in this Treaty. Prior to such designation, they shall communicate through diplomatic channels.

Article 7

Request for Extradition and Required Documents

1. A request for extradition shall be made in writing and shall include or be accompanied by:
 - (a) The name of the requesting authority;
 - (b) The name, age, sex, nationality, category and number of identification document, occupation, characteristics of appearance, domicile and residence of the person sought and other information that may help to identify and search for the person;
 - (c) A statement of the case including the time, place, conduct and outcome of the offence;
 - (d) The text of the relevant provisions of the laws establishing criminal jurisdiction over the offence, creating the offence and prescribing the penalty that can be imposed for the offence; and
 - (e) The text of the relevant provisions of the laws concerning any time limit on the prosecution.
2. In addition to the provisions of paragraph 1 of this Article,
 - (a) The request for extradition which is aimed at conducting criminal proceedings against the person sought shall also be accompanied by a copy of the warrant of arrest issued by the competent authority of the Requesting Party; or
 - (b) The request for extradition which is aimed at executing a sentence imposed on the person sought shall also be accompanied by a copy of effective court judgment or verdict and a description of the period of sentence which has already been executed.
3. A request for extradition and its supporting documents shall be signed or sealed and shall be accompanied by translations in the language of the Requesting Party or in the English language.

357. Lao PDR referred to the case example of the transfer of Chinese citizens in a case not involving corruption offences (quoted under paragraph 1 above). In the subject case, Lao officials conducted a provisional arrest pending receipt of the formal request from China, pursuant to article 9 of the extradition treaty with China. While the case is still ongoing, the defendants are currently serving prison sentences in Lao PDR. It was explained that once the assigned Task Force consisting of Ministry of Foreign Affairs, Prosecutor's Office and Ministry of Justice evaluates the case to determine whether the requirements of the treaty are satisfied, the case will be sent for approval to the Government of the decision to extradite or not.

(b) Observations on the implementation of the article

358. It was not clear to the reviewers how long it takes the Government to issue a decision of whether to extradite or not on the basis of the recommendations of the Task Force. Lao PDR may wish to monitor the application of this provision to ensure that extradition procedures are expedited and evidentiary requirements are simplified. Further, in the context of ongoing law reforms, Lao PDR is encouraged to ensure that under the new extradition law and practice, decisions on extradition are determined in a court of law. The provision does not appear to be implemented.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

359. The provision under review has been implemented through the provisions on international cooperation in articles 117 through 120 of the Criminal Procedure Law (quoted above) and article 9 on provisional arrest of the Treaties with Thailand, Cambodia and China. Provisions on apprehending an individual for extradition and on arrest prior to an extradition request are found in articles 64 and 65 of the Treaty with Vietnam.

Treaty Between the Lao People's Democratic Republic and The People's Republic of China on Extradition

Article 9

Provisional Arrest

1. In case of urgency, one Party may request the provisional arrest of the person sought by the other Party pending the receipt of the request for extradition. Such request may be submitted in writing through the channels provided for in Article 6 of this Treaty, the International Criminal Police Organization (INTERPOL) or other channels agreed upon by both Parties.
2. The request for provisional arrest shall contain the contents indicated in paragraph 1 of Article 7 of this Treaty, a statement of the existence of documents indicated in paragraph 2 of that Article and a statement that a formal request for extradition of the person sought will follow.
3. The Requested Party shall promptly inform the Requesting Party of the result of its handling of the request.
4. Provisional arrest shall be terminated if, within a period of thirty days after the arrest of the person sought, the Requested Party has not received the formal request for extradition. Where duly requested by the Requesting Party, such time limit may be extended for fifteen days.
5. The termination of provisional arrest pursuant to paragraph 4 of this Article shall not prejudice the extradition of person sought if the Requested Party subsequently receives the formal request for extradition.

360. Lao PDR referred to the case example of the transfer of Chinese citizens in a case not involving corruption offences (quoted under paragraph 1 above). In the subject case, Lao officials conducted a provisional arrest pending receipt of the formal request from China, pursuant to article 9 of the extradition treaty with China.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

361. In accordance with article 6 of the Law on Lao Nationality and the new extradition law, Lao PDR does not extradite its citizens. The requirement to prosecute is not addressed in the Law on Lao Nationality. Under article 11 of the new extradition law, citizens are also not extradited unless an extradition treaty provides otherwise, but they will be prosecuted in Lao PDR if the requesting State provides relevant evidence. In light of the new extradition law, it was explained that a duty to prosecute nationals will still need to be included in each bilateral extradition treaty in the future.

362. Related provisions are found in the extradition treaties between Lao PDR and the People's Republic of China (articles 3 (d) and 5), the People's Republic of Cambodia (article 5 (1)), and the Kingdom of Thailand (article 1). The treaty with Vietnam provides for the refusal of extradition of nationals (article 61(1)(a)), but no corresponding obligation to prosecute is established in the chapter on extradition that was provided to the reviewers in English.

The Law on Lao Nationality

Article 6. Non-extradition of Lao Citizens

The Lao People's Democratic Republic shall not extradite its citizens to a foreign state.

The Treaty on Extradition Between The Lao People's Democratic Republic and People's Republic of China

Mandatory Grounds for Refusal

Article 3 (d)

(d) The person sought is a national of the Requested Party under the laws of the Requested Party;

Obligation to Institute Criminal Proceedings against the National of the Requested Party

Article 5

If extradition is not granted pursuant to subparagraph (d) of Article 3 of this Treaty, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authority for the purpose of institution of criminal proceedings in accordance with its national law. For this purpose, the Requesting Party shall provide the Requested Party with documents and evidence relating to the case.

The Treaty on Extradition Between The Lao People's Democratic Republic and the People's Republic of Cambodia, Article 5 (1)

Article 5

Extradition of Nationals

1. Each Contracting Party shall have the right to refuse extradition of its own nationals.
2. If extradition is not granted pursuant to paragraph 1 of this Article, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authority for prosecution. For this purpose, the Requesting Party shall submit documents and evidence relating to the case to the Requested Party.
3. Notwithstanding paragraph 2 of this Article, the Requested Party shall not be required to submit the case to its competent authority for prosecution if the Requested Party has no jurisdiction over the offense.

The Treaty on Extradition Between The Lao People's Democratic Republic and People Republic of The Kingdom of Thailand

Article 5

Extradition of Nationals

1. Each Contracting Party shall have the right to refuse extradition of its own nationals.
2. If extradition is not granted pursuant to paragraph 1 of this Article, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authority for prosecution. For this purpose, the Requesting Party shall submit documents and evidence relating to the case to the Requested Party.
3. Notwithstanding paragraph 2 of this Article, the Requested Party shall not be required to submit the case to its competent authority for prosecution if the Requested Party has no jurisdiction over the offense.

The Treaty on Mutual Legal Assistance Between The Lao People's Democratic Republic and the Socialist Republic of Vietnam

Article 61

Refusal of extradition

1. Extradition will be refused in the follow circumstances: ...
 - a. the offender to be extradited is a National of the requested Party.

(b) Observations on the implementation of the article

363. Lao PDR should ensure that in the future, whether pursuant to treaties or otherwise, its nationals who are not extradited are subject to domestic prosecution under the circumstances set out in the UNCAC provision under review. It should amend its existing extradition treaties in this regard and establish appropriate procedures to provide for such prosecution in its future treaties and practice.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

364. Lao PDR indicated that it has not implemented the provision under review. Article 6 of the Law on Lao Nationality forbids the extradition of Lao nationals and Lao law does not permit the conditional extradition of nationals to serve the remainder of their sentence in Lao PDR.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of

the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

365. Lao PDR indicated that it has not implemented the provision under review. Lao will not consider the enforcement of a foreign sentence in the case of Lao nationals where their extradition has been refused.

366. However, it has cited article 4 of the Law on Judgment Enforcement 2004, which provides generally for the enforcement of orders and decisions of foreign countries, which are acknowledged and permitted to be enforced by the People's Court of Lao PDR.

367. Further, the chapter on extradition in the Treaty on Mutual Legal Assistance in Civil and Criminal matters between Lao PDR and Vietnam provides (article 59) that: "a Party may transfer a national of the other Party that is present in its territory to the stated Party for the purpose of executing criminal proceedings or to enforce a sentence."

Law on Judgment Enforcement 2004

Article 4. Court Judgments and other Judicial Acts to be Enforced

Court judgments and other juridical acts to be enforced by the judgment enforcement officers include: ...

9. Final court instructions, orders and decisions of foreign countries, which are acknowledged and permitted to be enforced by the People's Court of the Lao People's Democratic Republic.

(b) Observations on the implementation of the article

368. The provision is not implemented. It was not clear to the reviewers how the cited law would be applied in extradition cases involving nationals, if at all, as there has been no experience in this regard to date.

369. In the interest of applying the spirit of the Convention, Lao PDR is encouraged to review its Criminal Procedure Law and treaties, as well as the new extradition law, to consider allowing for more flexible arrangements on the extradition of nationals to allow them to serve the remainder of their sentence in Lao PDR.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

370. Lao PDR has cited articles 35, 37, 46 and 50 of the Constitution and articles 8 and 28 of the Criminal Procedure Law. It was explained that the cited provisions apply in extradition cases and to foreign offenders. Reference is also made to the provisions on mandatory and discretionary grounds for refusing extradition in the Treaties with Thailand, Cambodia and China, which provide *inter alia* for refusal of extradition in

extraordinary circumstances where it is incompatible with humanitarian considerations and establish other procedural protections.

Constitution

Article 35. Lao citizens are all equal before the law irrespective of their gender, social status, education, beliefs and ethnic group.

Article 37. Citizens of both genders enjoy equal rights in the political, economic, cultural and social fields and in family affairs.

Article 46. The State protects the legitimate rights and interests of Lao citizens residing abroad.

Article 50. The rights and freedoms of aliens and apatrids⁵ are protected by the laws of the Lao People's Democratic Republic. They have the right to file claims in the courts and [to lodge petitions with] other concerned⁶ organisations of the Lao People's Democratic Republic and have the obligation to respect the Constitution and laws of the Lao People's Democratic Republic.

Criminal Procedure Law Articles 8 and 28

Article 8. Presumption of Innocence

In criminal proceedings, as long as the accused person or defendant has not yet been convicted [pursuant to] a final decision of the people's courts as a wrong-doer, he shall be regarded as innocent and shall be treated properly.

Article 28. Accused and Defendant

An accused is an individual who has been brought to proceedings by an order to open investigations issued by an investigator or a public prosecutor, except when there is direct prosecution.

An accused who is being prosecuted in court is called a defendant.

An accused who has been sentenced⁴⁶ by the people's court is called a prisoner.

An accused or a defendant has the right to:

1. Be informed of and defend 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 notes of necessary information contained in the file, after investigation has been completed;
5. Retain and meet with a lawyer or other protector to contest⁴⁷ the case;
6. Participate in court hearings;
7. Require the recusal of a judge, public prosecutor, interrogator, investigator, expert, or translator;
8. Complain against acts and orders of investigators, interrogators, public prosecutors, or the people's courts that he believes⁴⁸ to be unlawful;
9. Make a final statement in court hearings as the last party;
10. Appeal against, or request the cancellation of, an order of an investigator, an interrogator, or a public prosecutor, or an instruction, order, or decision of the people's courts.

An accused or a defendant has the obligation 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 the people's court in court hearings.

371. It was explained that there have been no issues of discrimination in practice. To the contrary, the extradition case involving Malaysia was mentioned as an example where protections were given: the defendant was afforded a lawyer and Lao officials cooperated with the Malaysian Embassy to find a lawyer trained in Malaysian law and fluent in Malay.

⁵ Readers may wish to refer to the Law on Lao Nationality for the distinction between aliens, apatrids (i.e. persons unable to certify their nationality) and foreign individuals.

⁶ The term "concerned" is used in the sense of "relevant".

⁴⁶ Literally "the people's court has delivered a decision to impose punishment". Sentence and decision of guilt (conviction) are invariably announced at the same time in Laos. The implication is that the penalty is of deprivation of liberty.

⁴⁷ Literally "to fight".

⁴⁸ Literally "sees".

(b) Observations on the implementation of the article

372. While there was little evidence of the implementation of this provision in practice, it appears that Lao PDR has afforded relevant protections in extradition cases.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

373. Lao PDR has cited article 120 of the Criminal Procedure Law (quoted under paragraph 4 above), as well as article 3(2) of the Treaty on Extradition with Thailand and article 3 of the Treaty on Extradition with China. A similar provisions is found in article 3 of the Treaty on Extradition between Lao PDR and the Kingdom of Cambodia.

The Treaty on Extradition Between The Lao People's Democratic Republic and The Kingdom of Thailand

Article 3

Ground for Mandatory Refusal

Paragraph 2

The Requested party has well-founded reasons to suppose that the request for extradition made by the Requesting Party aims to institute criminal proceedings against or execute punishment upon the person sought on account of race, religion, nationality or political option of that person, or that the position of the person sought in judicial proceedings will be prejudiced for any of the reasons mentioned above.

The Treaty on Extradition Between The Lao People's Democratic Republic and China

Article 3

Mandatory Grounds for Refusal

Extradition shall be refused if:

- (a) The Requested Party considers that the offence for which the extradition is requested is a political offence, or the Requested Party has granted asylum to the person sought;
- (b) The Requested Party has substantial reasons to believe that criminal proceedings may be instituted or sentence may be executed against the person sought for reasons of that person's race, religion, nationality, sex, political opinion, or that person may, for any of those reasons, be subject to unfair treatment in judicial proceedings;
- (c) The offence for which the extradition is requested is a purely military offence under the laws of either Party;
- (d) The person sought is a national of the Requested Party under the laws of the Requested Party;
- (e) The person sought has, under the laws of either Party, become immune from prosecution or execution of sentence for any reason including; apse of time or pardon at the time when the request for extraction is received;
- (f) The Requested Party has already rendered a final judgment or terminated the judicial proceedings against the person sought in respect of the offence for which the extradition is requested; or
- (g) The request for extradition is made by the Requesting Party on the basis of a judgment rendered by default, unless the Requesting Party undertakes that the person sought has the opportunity to have the case retried in that person's presence.

374. No specific case on this provision was reported.

(b) Observations on the implementation of the article

375. The provision appears to be implemented in Lao PDR's treaties, though no practical cases or examples were available. As noted above, the treaty with Vietnam provides for refusal in "special cases" (article 61), but does not directly establish the elements of the UNCAC provision under review.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

376. Lao PDR has cited articles 118 and 119 of the Criminal Procedure Law and explained that it would execute an extradition request in a case involving fiscal offences. In the new extradition law, it was explained that the issue of fiscal offences is covered so that Lao PDR may extradite a person where the request involves fiscal matters. The law provides that extraditable offences are those punishable by at least one year imprisonment, and does not include fiscal offences among the grounds for refusing extradition.

The Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

Article 119. Implementation of Judicial Assistance

In the provision of judicial assistance, the competent organisation 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 judgment, or cooperation in combating of cross-border crime and others.

377. No case was reported where extradition was refused or granted for an offence involving fiscal matters.

(b) Observations on the implementation of the article

378. Though not addressed in the cited laws, Lao officials reported that fiscal offences are extraditable and that extradition would be granted under its Treaties for fiscal offences punishable by one year imprisonment. The provision appears to be adequately implemented, although no cases or practice on the matter were reported.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

379. Lao PDR has not implemented this provision. In the new law on extradition, a duty to consult before refusing extradition is not addressed, and it was explained that consultations would not necessarily be held as a matter of practice. Under the existing law, a duty to consult is also not specified, though it is required under the treaties with Thailand and Cambodia but not with China. In practice, consultations were not always held, although officials of Lao PDR indicated that they would provide information on the status of a request if asked to do so.

380. Lao PDR has cited articles 118 and 119 of the Criminal Procedure Law, articles 8 and 10 of the Treaty on Extradition with Thailand and articles 8 and 11 of the Treaty on Extradition with Cambodia. Articles 8 and 10 of the Treaty with China are also quoted below.

Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

Article 119. Implementation of Judicial Assistance

In the provision of judicial assistance, the competent organisation 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 judgment, or cooperation in combating of cross-border crime and others.

Treaty on Extradition Between the Lao People's Democratic Republic and the Kingdom of Thailand **Article 8**

Additional Information

If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within such time as it specifies. If the Requested Party fails to submit additional information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a fresh request for the same purpose.

Article 10

Surrender of the Person Sought

1. The Requested Party shall, through the diplomatic channels, notify without delay the Requesting Party of its decision on the request for extradition.
2. If the extradition has been granted, the Requested Party and the Requesting Party shall decide through consultation on the implementation of the extradition.
3. The Requested Party shall provide reasons for any partial or complete rejection of the request for extradition.

...

Treaty on Extradition Between the Lao People's Democratic Republic and the Kingdom of Cambodia
Article 8

Additional Information

If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within such time as it specifies. If the Requesting Party fails to submit additional information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a fresh request for the same purpose.

Article 11

Decision on the Request

1. The Requested Party shall deal with the request for extradition pursuant to procedures provided by its own law, and shall promptly communicate its decision to the Requesting Party through the diplomatic channels.
2. Reasons shall be given for any complete or partial refusal of the request.

Treaty on Extradition Between the Lao People's Democratic Republic and the People's Republic of China
Article 8

Additional Information

If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient, that Party may request that additional information be furnished within thirty days. Where duly requested by the Requesting Party, the time limit may be extended for fifteen days. If the Requesting Party fails to submit additional information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a fresh request for extradition for that same offence.

Article 10

Decision on the Request for Extradition

The Requested Party shall deal with the request for extradition in accordance with the procedures provided for by its national law, and shall promptly inform the Requesting Party of its decision.

381. No case was reported, as Lao PDR has not refused any extradition requests in the last ten years. Lao PDR consulted with requesting State before granting extradition in the case involving the transfer of Chinese offenders reported above.

(b) Observations on the implementation of the article

382. The provision is not adequately implemented. Lao PDR should ensure that it consults with Requesting States before refusing extradition, and the matter could be addressed in prosecutor's guidelines or other regulations that would be issued under the new extradition law. The relevant institutions should be informed of this requirement.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

383. Lao PDR has entered into treaties covering extradition matters with Cambodia, China, Democratic People's Republic of Korea, Vietnam and Thailand.

(b) Challenges related to article 44

384. Lao PDR has identified the following challenges in fully implementing the article: Paragraphs 1 and 2:

1. Limited capacity: Though Lao PDR has general knowledge in the area of extradition, it can benefit from further increase in capacity in terms of technologies and human resources, especially for judges and authorities involved in extradition cases (Ministry of Justice, Ministry of Foreign Affairs, Ministry of Security and courts), in particular under the new extradition law and practice which foresee the conducting of extradition hearings. A firm procedural process to handle extradition cases would also be useful, given the lack of experience on extradition matters. Sharing of best practices from other countries would be welcome. There was also an indication that Lao PDR may wish to revoke its reservation to be able to use the Convention as a legal basis for extradition in the future, to avoid the need to enact bilateral treaties for extradition. Lao officials were not aware of the reasons for the reservation and indicated an interest in exploring ways of applying the Convention directly. Lao PDR should also consider, in the context of ongoing legal reforms, identifying gaps in implementation under the existing treaties, which do not all have the same requirements, and under the new extradition framework once it is in place, and to effectively address them.

Paragraph 4:

1. Specificities in the legal system: Existing bilateral treaties on extradition consider offences punishable by imprisonment of one year or longer as extraditable, and this could potentially exclude certain corruption cases from extradition. Grounds for refusal of extradition under the Criminal Procedure Law and bilateral treaties may also exclude certain cases (articles 117 through 119 of the Criminal Procedure Law).

Paragraph 12:

1. Competing priorities: The Law on Lao Nationality (article 6) forbids extradition of Lao nationals but does not specify a duty to prosecute them.

(c) Technical assistance needs related to article 44

385. Lao PDR has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned to conduct an assessment of its extradition legal and practical framework.
2. Capacity-building programmes for authorities responsible for extradition. In particular, in light of the new extradition law, which provides for extradition hearings to be held, training and capacity building for judges and authorities in the extradition process may be needed.
3. Legal advice and onsite assistance by a relevant expert. A comprehensive review of existing extradition treaties to identify implementation gaps, as well as a review of the process in place under the new extradition law is needed, together with the development of an action plan to address any identified gaps. Similarly, Lao PDR expressed an interest in considering how to revoke its reservation on using the Convention as a legal basis for extradition. A review of the applicable penalty requirements to ensure that all corruption offences are extraditable is also needed.

Some of the technical assistance requested with regard to a review of Lao PDR's extradition practice under existing treaties has been partly provided previously by UNODC.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

386. Lao PDR has cited article 118 of the Criminal Procedure Law, article 5 of the Treaty between Lao PDR and the Kingdom of Thailand on the Transfer of Sentenced Persons and on Cooperation in the Enforcement of Penal Sentences, and article 5 of the Treaty between Lao PDR and the United Kingdom of Great Britain and Northern Ireland on the Transfer of Sentenced Persons. Lao PDR has two treaties in place (with the UK and Thailand) on the transfer of sentenced persons.

387. A draft law on the Transfer of Prisoners was submitted to the National Assembly together with the mutual legal assistance bill. Pending its adoption, Lao PDR uses its existing treaties, and could in principle also apply UNCAC directly, as well as the Criminal Procedure Law.

The Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

Treaty Between the Lao People's Democratic Republic and The Kingdom of Thailand on the Transfer of Sentenced Persons and on Co-Operation In the Enforcement of Penal Sentences

Article 5

Procedure for Transfer

(1) The parties shall inform sentenced persons of the substance of the Treaty.

(2) Every transfer under this treaty shall be commenced through diplomatic channels by a written request from the receiving State to the transferring State. The transferring State shall inform the receiving State through the same channels and without delay of its decision on whether to approve or to refuse the request for transfer. If the transferring State approves the request, both parties shall take all measures necessary for effectuating the sentenced person's transfer.

(3) The transferring State shall provide the receiving State with the following information:

(a) A summary of the facts upon which the sentence was based, the text of the legal provision defining the offence and the conclusion of the court judgment;

(b) The termination of sentence, the length of time already served by the sentenced person and any credits to which he is entitled on account of work done, good behavior, pretrial confinement or other reasons;

(c) A certified copy of all judgment and sentences concerning the sentenced person and of the law on which they are based;

(d) Any other additional information requested by the receiving State so far as such information may be of significance for the sentenced person's transfer and for the enforcement of his sentence.

(4) Either party shall, as far as possible, provide the other party, if it so requests, with any relevant information, documents or statement before making a request for transfer or taking a decision on whether or not to agree to the transfer.

(5) The transferring State shall afford an opportunity to the receiving State, if the receiving State so desires, to verify through an official designated by the receiving State, prior to the transfer, that the necessary consent of the sentenced person or of a person entitled to act on his behalf to the transfer in accordance with Article 4 (g) of this treaty is given voluntarily and with full knowledge of the legal consequences thereof.

(6) Delivery of the sentenced person by the authorities of the transferring State to those of the receiving State shall occur on a date at a place within the transferring State agreed upon by both parties.

Treaty Between the Lao People's Democratic Republic and the United Kingdom of Great Britain and Northern Ireland on the Transfer of Sentenced Persons

Article 5

Procedures For Transfer

1. Any sentenced person to whom this Treaty may apply shall be informed by the transferring Party of the substance of this Treaty.

2. Every transfer under this Treaty shall be commenced through diplomatic channels by a written request from either Contracting Party.

3. If a sentenced person expresses an interest to the transferring Party to be transferred, and the transferring Party is prepared, in principle, to approve the request for transfer, the transferring Party shall promptly inform the receiving Party in writing, and provide the following information:

- (a) the name, date and place of birth of the sentenced person;
- (b) the location of the sentenced person and, if available, permanent address in the receiving Party;
- (c) a statement of the facts upon which the conviction and sentence were based;
- (d) the nature, duration and date of commencement of the sentence, the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remission to which he or she is entitled on account of work done, good behaviour, pre-trial confinement or other reasons;
- (e) a copy of the judgment and information about the law on which it is based; and
- (f) if available, any other additional information, including medical or social reports on the sentenced person, which may be of significance for the sentenced person's transfer and for the continued enforcement of his sentence.

4. If a sentenced person expresses an interest to the receiving Party to be transferred, the receiving Party shall so inform the transferring Party. If the transferring Party is prepared, in principle, to approve the request for transfer, the transferring Party shall promptly inform the receiving Party in writing, and provide the information referred to in paragraph 3 of this Article.

5. If the receiving Party, having considered the information which the transferring Party has provided, is willing to proceed with the transfer, it shall promptly inform the transferring Party in writing, and provide the following information:

- (a) a statement indicating that the sentenced person is a national of the receiving Party for the purposes of this Treaty;
- (b) a copy of the relevant law of the receiving Party which provides that the acts or omissions on account of which the sentence has been imposed in the transferring Party constitute a criminal offence according to the law of the receiving Party, or would constitute a criminal offence if committed on its territory;
- (c) a statement of the effect, in relation to the sentenced person, of any law or regulation relating to that person's detention in the receiving Party after that person's transfer, including a statement, if applicable, of the effect of paragraph 4 of Article 8 of this Treaty upon that person's transfer; and
- (d) a statement of any outstanding charges, convictions or criminal investigations in respect of the sentenced person.

6. If the transferring Party is willing to proceed with the transfer, it shall inform the receiving Party of its decision through diplomatic channels without delay. It shall also promptly provide the receiving Party with the following

- (a) a declaration containing the sentenced person's consent to the transfer; and
- (b) written confirmation of the transferring Party's agreement to the transfer.

7. Where the Contracting Parties have agreed to the transfer, they shall make arrangements for the transfer of the sentenced person. Delivery of the sentenced person by the authorities of the transferring Party to those of the receiving Party shall occur on a date and at a place within the territory of the transferring Party agreed upon by both Contracting Parties.

8. If either Contracting Party decides not to agree to the transfer, it shall promptly inform the other Contracting Party of its decision in writing.

9. The transferring Party shall inform the sentenced person in writing of any action taken by the transferring Party or the receiving Party under the preceding paragraphs of this Article.

388. Lao PDR provided the case of the transfer of a UK citizen of Nigerian origin, Samantha Orobator, who was transferred to the UK, followed by the separate transfer of her husband. She had been convicted of smuggling over 500 grams of heroin across the border. In this case, the transfer was done quickly because the prisoner was pregnant.
389. There have also been other prisoner transfer cases, though not in corruption matters. There are no statistics on the number of such cases.
390. The authorities responsible for the transfer of sentenced persons are: Ministry of Public Security, Ministry of Justice and Ministry of Foreign Affairs.

(b) Observations on the implementation of the article

391. The article appears to be adequately implemented, though the application of the draft law in transfer or prisoner cases should be monitored to make sure that there are no impediments to the full implementation of this article.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

392. Lao PDR has cited article 118 of the Criminal Procedure Law, articles 2 and 3 of the Treaty on Mutual Legal Assistance in Civil and Criminals Matters between Lao PDR and the Democratic People's Republic of Korea, and articles 1, 2, 4, 5, 25, 26 and 32 of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.
393. Lao PDR has signed three bilateral treaties on mutual legal assistance in judicial matters with: Vietnam, signed at Hanoi, dated 6/7/1998 and enforced from 19/2/2000; Democratic People's Republic of Korea, signed at Vientiane, dated 20/6/2008; and China, signed at Beijing, dated 25/1/2009, enforced from 15/12/2010. The ASEAN treaty on Mutual Legal Assistance in Criminal Matters, signed at Kuala Lumpur, dated 29/11/2004 and enforced from 22/8/2007, is not yet in force for all its signatories, since it has not been ratified by the Government of Thailand. Only certain articles of the mutual legal assistance treaties with Vietnam and China and were available to the reviewers in English.
394. Regarding the number of mutual legal assistance requests made to and received by Lao PDR, officials at the Ministry of Justice explained that there were no statistics available on the number of such requests. Officials of INTERPOL reported that seven requests had been made to other countries and 185 requests received from other countries on mutual legal assistance through INTERPOL. None of these requests related to corruption matters. The reviewers were of the understanding that these requests were examples of direct law enforcement cooperation (UNCAC article 48), rather than mutual legal assistance, as they were made through INTERPOL channels. It was noted that under

the previous mutual legal assistance framework (prior to adoption of the draft mutual legal assistance law), the police were authorized to receive and execute requests for international cooperation directly. This function would be assumed by the Prosecutor's Office under the new framework.

395. The cited provisions of the ASEAN mutual legal assistance treaty, while not evidence of direct implementation of the Convention in domestic law, are cited for information, as Lao officials indicated that Lao PDR could in principle apply the provisions of the ASEAN treaty directly in mutual legal assistance cases.

396. Lao PDR reported on the coordination mechanisms between member countries of ASEANAPOL and INTERPOL. Officials reported that in actual practice relevant authorities of Lao PDR have exchanged information through available mechanisms, including ASEANAPOL's database and INTERPOL channels. Lao PDR has cooperated with ASEANAPOL and INTERPOL to prevent crime across national borders, including exchange of information on offenses, identification of information, coordination of investigation, and other issues.

397. Lao PDR further reported on cooperation through the South East Asia Parties Against Corruption (SEA-PAC) mechanism. SEA-PAC is the primary forum for member countries' organizations to consult and exchange preliminary information in corruption matters. It was reported that institutions in Lao PDR, including GIAA, Customs and others, cooperate through the SEA-PAC mechanism. Regarding the modalities of cooperation under SEA-PAC, each member country has signed a Memorandum of Understand containing the following brief contents:

- Exchange of information, providing information and mutual coordination to prevent and fight corruption;
- Cooperation in official training and expert exchanges;
- Technical assistance as needed;
- Hosting and attending consultation meetings, seminars and regional meetings on preventing and fighting corruption;
- Establishing secretariats and encouraging SEA-PAC's movement.

Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

Treaty Between the Lao People's Democratic Republic and the Democratic People's Republic of Korea on Mutual Legal Assistance In Civil and Criminals Matters

Article 2

Legal Assistance

1. Citizens and juridical persons of a Contracting Party shall have right, in the territory of the other Contracting Party, to legal assistance under the same conditions as applied to citizens and juridical persons of the latter.

2. Both contracting Parties shall render legal assistance to each other in civil and criminal matters through the organs that are authorized to handle civil and criminal matters such as courts and public prosecutors' offices.

Article 3

Scope of Legal Assistance

Both Contracting Parties shall, in keeping with requirement of each Contracting Party's legislation, render legal assistance in civil and criminal matters as follows:

1. Performing proceedings such as query of criminals, witness, expert or victim
2. Providing data and documents of the case.
3. Executing the request for search, seizure and collection of evidence.
4. Recognition and executing judgment and decision of the court
5. Investigating, arresting and detaining and extraditing criminals.

ASEAN Treaty on Mutual Legal Assistance In Criminal Matters

Scope of Assistance

Article 1

1. The Parties shall, in accordance with this Treaty and subject to their respective domestic laws, render to on another the widest possible measure of mutual legal assistance in criminal matters, namely investigations, prosecutions and resulting proceedings.
2. Mutual assistance to be rendered in accordance with this Treaty may include:
 - (a) Taking of evidence or obtaining voluntary statements from persons;
 - (b) Making arrangements for persons to give evidence or to assist in criminal matters;
 - (c) Effecting service of judicial documents;
 - (d) Executing searches and seizures;
 - (e) Examining objects and sites;
 - (f) Providing original or certified copies of relevant documents, records and items of evidence.
 - (g) Identifying or tracing property derived from the commission of an offence and instrumentalities of crime;
 - (h) The restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated;
 - (i) The recovery, forfeiture or confiscation of property derived from the commission of an offence;
 - (j) Locating and identifying witnesses and suspects; and
 - (k) The provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the laws of the Requested Party.
3. This Treaty applies solely to the provision of mutual assistance among the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of any request for assistance.
4. For the purposes of this Treaty, the expression "instrumentalities of crime" Means property used in connection with the commission of an offence or the equivalent value of such property.

Non-Application

Article 2

1. This Treaty does not apply to -
 - (a) The arrest or detention of any person with a view to the extradition of that person;
 - (b) The enforcement in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party;
 - (c) The transfer of persons in custody to serve sentences; and
 - (d) The transfer of proceedings in criminal matters.
2. Nothing in this Treaty entitles a Party to undertake in the territory of another Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that Party by its domestic laws.

Designation of Central Authorities

Article 4

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. The designation of the Central Authority shall be made at the time of the deposit of the instrument of ratification, acceptance, approval or accession to this Treaty.
3. Each Party shall expeditiously notify the others of any change in the designation of its Central Authority.
4. The Central Authorities shall communicate directly with one another but may, if they choose, communicate through the diplomatic channel.

Form of Requests

Article 5

1. Requests for assistance shall be made in writing or, where possible, by any means capable of producing a written record under conditions allowing the Requested Party to establish authenticity. In urgent situations and where permitted by the law of the Requested Party, requests may be made orally, but in such cases the requests shall be confirmed in writing within five days.

Central Authorities shall deal with the transmission of all requests and any communication related thereto. In urgent situations and where permitted by the law of the Requested Party, requests and any communication related thereto may be transmitted through the International Criminal Police Organization (INTERPOL) or the Southeast Asian Police Organization (ASEANAPOL)

Costs

Article 25

1. The Requested Party shall assume all ordinary expenses of fulfilling the request for assistance except that the Requesting Party shall bear -

- (a) The fees of counsel retained at the request of the Requesting Party;
- (b) The fees and expenses of expert witnesses;
- (c) The costs of translation, interpretation and transcription;
- (d) The expenses associated with conveying any person to or from the territory of the Requested Party and the fees, allowances and expenses payable to the person concerned while that person is in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty; and
- (e) The expenses associated with conveying custodial or escorting officers.

2. The cost of establishing live video or television links or other appropriate communications facilities, the costs related to the servicing of live video or television links or other appropriate communications facilities, the remuneration of interpreters provided by the Requested Party and allowances to witnesses and their traveling expenses in the Requested Party shall be refunded by the Requesting Party to the Requested Party, Unless the Parties mutually agree otherwise.

3. If during the execution of the request it becomes apparent that expenses of an extraordinary or substantial nature are required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the execution of the request is to be effected or continued.

Consultation

Article 26

1. The Central Authorities of the Parties shall consult, at times mutually agreed upon by them, to promote the most effective use of this Treaty.

2. The Parties may develop such practical measures as may be necessary to facilitate the implementation of this Treaty.

Depositary of Treaty

Article 32

The Original of this Treaty shall be deposited with the Depositary State which shall send certified copies of it to all the Parties.

398. Lao PDR provided the following case example. However, the reviewers were of the understanding that the case was an example of direct law enforcement cooperation (UNCAC article 48), rather than mutual legal assistance, as it was made through ASEANAPOL channels:

ASEANAPOL Malaysian Stolen Vehicles

Based on the ASEANAPOL police cooperation framework, on 10 January 2012 Malaysian police requested Lao police (number issue: (IP)KPN(RP)71/5(UO)) to monitor about 7 pickup cars, which were stolen in Malaysia and brought through Thailand to Lao PDR on 11 January 2012. Lao police and Lao customs officers conducted inspections at the international customs house in Bolikhamxay Province and found a car carrier of Boualapha Company (a transport company registered in Thailand) containing six cars that were stolen from Malaysia and brought into Lao PDR. Lao officials then issued Order No. 112, dated 26 January 2012, for confiscation of these cars. Through inspection and coordination with the police in Malaysia, by 17 August 2012 Lao police had sent the cars to Malaysia. This is an example of successful cooperation between ASEAN member countries in the framework of ASEANAPOL.

399. No example involving corruption offences were given, but it was reported that mutual legal assistance would be rendered in the same way in a corruption case as in other criminal matters.

(b) Observations on the implementation of the article

400. A general observation related to article 46 is that the ASEAN Treaty is cited for the majority of UNCAC provisions. Apart from general provisions in the Criminal Procedure Law and the three bilateral treaties on mutual legal assistance, no other laws or treaties exist to implement the article, pending adoption of the draft law on mutual legal assistance.
401. It is also noted that the cited case examples appear to deal with direct law enforcement cooperation and not mutual legal assistance. No examples involving corruption offences were provided.
402. Because no aggregate statistics on the number of mutual legal assistance requests made and received were available, Lao PDR is encouraged, under its new mutual legal assistance framework, to collect this data at the national level. Cases of law enforcement cooperation through INTERPOL, ASEANAPOL or police channels should be clearly distinguished from mutual legal assistance cases.

(c) Successes and good practices

403. While the mutual legal assistance framework is in a state of transition and there has been little experience in handling mutual legal assistance cases, the officials represented during the country visit demonstrated a willingness to learn from international best practices and to improve their mutual legal assistance framework.
404. The reviewers welcome the introduction of the draft mutual legal assistance law in the National Assembly and encourage its swift adoption to more clearly regulate the process for providing and receiving mutual legal assistance in Lao PDR.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

405. Lao PDR has cited article 118 of the Criminal Procedure Law, which is generally applied in addition to treaties until the draft mutual legal assistance law is passed. The cited provisions, however, do not address legal persons. It was explained that the provision is probably not implemented in Lao PDR, since Lao law does not recognize the criminal liability of legal persons and requires dual criminality for executing mutual legal assistance requests.
406. Article 2, paragraph 1 of the Treaty on Mutual Legal Assistance with the Democratic People's Republic of Korea provides for equal treatment of legal persons in the territory

of both Parties, while article 7(2) provides that a request for mutual legal assistance shall contain, inter alia, the title and address of the legal person.

Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

Treaty Between the Lao People's Democratic Republic and the Democratic People's Republic of Korea on Mutual Legal Assistance in Civil and Criminals Matters

Article 2

1. Citizens and juridical persons of a Contracting Party shall have the right, in the territory of the other Contracting Party, to legal assistance under the same conditions as applied to citizens and juridical persons of the latter.

...

Article 7(2)

2. Written request for legal assistance shall contain the following:

d) Title and address of the juridical person;

407. No cases of mutual legal assistance involving legal persons were reported.

(b) Observations on the implementation of the article

408. Although no mutual legal assistance cases involving legal persons have been reported, Lao PDR should ensure that if such a request were to arise, it would be able to render the required assistance, in particular in matters related to corruption offences involving legal persons.

Article 46 Mutual legal assistance

Paragraph 3

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

409. Lao PDR indicated that it has partially implemented the provision under review, citing articles 118 and 119 of the Criminal Procedure Law, which define general principles of mutual legal assistance, articles 1(2) and 14 of the ASEAN Treaty on Mutual Legal Assistance In Criminal Matters, as well as articles 3 and 4 of the Treaty on Mutual Legal Assistance in Civil and Criminals Matters between Lao PDR and the Democratic People's Republic of Korea. The relevant provisions of the Treaty with the People's Republic of China and the draft Mutual Legal Assistance Law are also set forth below.

The Criminal Procedure Law, Article 118

Article 118. 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 to 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 co-operation] 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.

Article 119. Implementation of Judicial Assistance

In the provision of judicial assistance, the competent organisation 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 judgment, or cooperation in combating of cross-border crime and others.

ASEAN Treaty on Mutual Legal Assistance In Criminal Matters

Article 1, Paragraph 2

Scope of Assistance

Article 1

2. Mutual assistance to be rendered in accordance with this Treaty may include:

- (a) taking of evidence or obtaining voluntary statements from persons;
- (b) making arrangements for persons to give evidence or to assist in criminal matters;
- (c) effecting service of judicial documents;
- (d) executing searches and seizures;
- (e) examining objects and sites;
- (f) providing original or certified copies of relevant documents, records and items of evidence;
- (g) identifying or tracing property derived from the commission of an offence and instrumentalities of crime;
- (h) the restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated;
- (i) the recovery, forfeiture or confiscation of property derived from the commission of an offence;
- (j) locating and identifying witnesses and suspects; and
- (k) the provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the laws of the Requested Party. ...

Attendance of Person In the Requesting Party

Article 14

1. The Requested Party may, subject to its domestic laws and practices, assist in arranging the attendance of a person in the Requested Party, subject to his consent, in the Requesting Party -
 - (a) To assist in the investigations in relation to a criminal matter in the Requesting Party; or
 - (b) To appear in proceedings in relation to a criminal matter in the Requesting Party unless that person is the person charged.

Treaty Between the Lao People's Democratic Republic and the Democratic People's Republic of Korea on Mutual Legal Assistance in Civil and Criminals Matters

Article 3

Scope of Legal Assistance

Both contracting Parties shall, in keeping with requirements of each Contracting Party's legislation, render legal assistance in civil and criminal matters as follows:

1. performing proceedings such as query of criminals, witness, expert or victim
2. providing data and documents of the case
3. executing the request for search, seizure and collection of evidence.
4. recognition and executing judgment and decision of the court.
5. investigating, arresting and detaining and extraditing criminals.

Article 4

Legal Provision in Legal Assistance

1. The requested organ shall apply its domestic law in rendering legal assistance.
2. In rendering legal assistance the requested organ may apply, at the request of the requesting party, the provisions of the code of legal procedure of the requesting party unless they are not in conformity with its domestic law.

Treaty Between the Lao People's Democratic Republic and the People's Republic of China on Mutual Legal Assistance

Article 27

Scope

In the presence of a request, Parties shall submit documents regarding the criminal case, collect evidence, question witnesses, injured parties, experts [witnesses], suspects and accused, evaluate opinions of experts, perform investigations and other activities involved in the collation of evidence, the provision of witnesses or experts [witnesses], provide notice of criminal [court] adjudications, acknowledge, enforce criminal adjudications regarding civil restitution or court fees.

Draft Mutual Legal Assistance Law of Lao PDR

Article 6 Scope of international cooperation in criminal matters

International cooperation in criminal matters covers the following:

1. Obtaining of evidence or statements given or made voluntarily by participants in criminal proceedings to which requests for international cooperation relate;
2. Taking of legal measures to ensure participants in the criminal proceedings give evidence or assist in the criminal proceedings;
3. Delivery of legal documents such as summons for testimony or invitations to provide information or technical opinions;
4. Search and seizure of evidentiary material;
5. Provision of original documents or duly certified copies thereof, records and evidentiary materials to which requests for international cooperation relate;
6. Inspection and certification of property obtained used in commission of offences or instrumentalities of offences;
7. Prohibition of sale or freezing, seizure, confiscation of property acquired from offences
8. Location of the accused persons or proof of identity of accused persons, witnesses or suspects
9. Assistance in other aspects which may be consented to by the Lao PDR and is consistent with the law of the Lao PDR.

410. It was explained that detailed procedures or guidelines on handling mutual legal assistance cases for prosecutors would be issued (ie, a Prosecutor's Manual) once the draft mutual legal assistance law had been passed.

411. Lao PDR cited the case the following case example where Lao PDR requested assistance from another State, though the reviewers were of the understanding that it was a case of direct law enforcement cooperation:

ASEANAPOL Swindle Case involving a Singaporean Offender

In August 2011, there was data exchange with Singapore through ASEANAPOL in a case of swindle of citizens involving a Singaporean offender. The Department of Economic Police in the Ministry of Public Security of Lao PDR sent a proposal to Singaporean police, which used INTERPOL to request assistance in the form of a criminal biography of the offender. No data about about this person was found.

(b) Observations on the implementation of the article

412. It was noted that under the mutual legal assistance treaty with the Democratic People's Republic of Korea, mutual legal assistance may only be rendered for the purposes specified in article 3, and there is no catch-all clause allowing such other assistance to be rendered as may be agreed and which is consistent with the objectives of the treaty and the laws of the parties. Only certain articles of the mutual legal assistance treaties with Vietnam and China and were available to the reviewers in English.

Article 46 Mutual legal assistance

Paragraph 4

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

413. Lao PDR has cited articles 117 through 119 of the Criminal Procedure Law (quoted above), which define general principles of mutual legal assistance, articles 2, 4 and 30 of the Lao PDR-China Treaty on Mutual Legal Assistance in Criminal Matters, and article 22 of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. The cited provisions of the mutual legal assistance treaty with China were not available in English and could not be reviewed. There are no provisions on spontaneous information sharing in the mutual legal assistance treaty with the Democratic People's Republic of Korea
414. While the measures provided to the reviewers in English do not directly address the spontaneous provision of information, it was explained that such information could be transmitted without a prior request to other countries, because there is no prohibition against doing so in Lao law or treaties. However, it was explained that under the draft mutual legal assistance law, information sharing is prohibited without a prior request. No information was available as to whether Lao PDR has ever shared information spontaneously with another country.

ASEAN Treaty On Mutual Legal Assistance In Criminal Matters
Article 22
Assistance In Forfeiture Proceedings

1. The Requested Party shall, subject to its domestic laws, endeavor to locate, trace, restrain, freeze, seize, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime for which such assistance can be given provided that the Requesting Party provides all information which the requested Party considers necessary.
2. Where a request is made under paragraph 1, the request shall be accompanied by the original signed order, or a duly authenticated copy of it.
3. A request for assistance under this Article shall be made only in respect of orders and judgments that are made after the coming into force of this Treaty.
4. Subject to the domestic laws of the Requested Party, property forfeited or confiscated pursuant to this Article may accrue to the Requesting Party unless otherwise agreed in each particular case.
5. The Requested Party shall, subject to its domestic laws, pursuant to any agreement with the Requesting Party transfer to the Requesting Party the agreed share of the property recovered under this Article subject to the payment of costs and expenses incurred by the Requested Party in enforcing the forfeiture order.

(b) Observations on the implementation of the article

415. In the interest of furthering international cooperation, Lao PDR could consider sharing information with other countries where it becomes aware that such information could be useful in their ongoing investigations or proceedings.

Article 46 Mutual legal assistance

Paragraph 5

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

416. Lao PDR has cited article 9 of the ASEAN Treaty On Mutual Legal Assistance In Criminal Matters. The confidentiality of shared information is also addressed in article 11 of the draft mutual legal assistance law. There are no provisions on confidentiality in criminal matters in the mutual legal assistance treaty with the Democratic People's Republic of Korea; to the contrary, a request appears to be necessary under article 29 (cited below).
417. No information was available as to how confidentiality was ensured in the past, and no cases were provided. There has been no experience with the disclosure of exculpatory information.

ASEAN Treaty on Mutual Legal Assistance In Criminal Matters

Protection Of Confidentiality

Article 9

1. The Requested Party shall, subject to its domestic laws, take all appropriate measures to keep confidential the request for assistance, its contents and its supporting documents, the fact of granting of such assistance and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality requirements, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

2. The Requesting Party shall, subject to its domestic laws, take all appropriate measures to -
- (a) Keep confidential information and evidence provided by the Requested Party, except to the extent that the evidence and information is needed for the purposes described in the request; and
 - (b) Ensure that the information and evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse.

Treaty Between the Lao People's Democratic Republic and the Democratic People's Republic of Korea on Mutual Legal Assistance in Civil and Criminals Matters

Article 29

Scope of Legal Assistance In Criminal Matters

On the request of by the Contracting Party , both Contracting Parties shall render legal assistance to each other in handling a criminal case such as investigation, arrest, examination and extradition of the criminal, the charge or the person given legal judgment, executing judgment and providing data and documents relevant to the criminal case.

Article 46 Mutual legal assistance

Paragraph 6

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

418. Lao PDR has cited article 23 of the ASEAN Treaty on Mutual Legal Assistance In Criminal Matters.

ASEAN Treaty on Mutual Legal Assistance In Criminal Matters

ARTICLE 23

Nothing in this Treaty shall prevent the Parties from providing assistance to each other pursuant to other treaties, arrangements or the provisions of their national laws.

(b) Observations on the implementation of the article

419. It was explained that even if the draft mutual legal assistance law is passed, Lao PDR will continue to apply its existing bilateral and multilateral treaties. It was noted that the Convention and other multilateral instruments could in principle also be applied directly in the absence of a bilateral agreement.

Article 46 Mutual legal assistance

Paragraph 7

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

(a) Summary of information relevant to reviewing the implementation of the article

420. Lao PDR indicated that it has partially implemented the provision under review. Lao PDR is bound by bilateral or multilateral treaties on mutual legal assistance. When there

is no applicable treaty, Lao PDR provides assistance on a case-by-case basis based on article 118 of the Criminal Procedure Law or would, in the future, apply the draft mutual legal assistance law. While Lao PDR has not in the past directly applied the Convention and other international agreements, it could in principle do so where no bilateral or multilateral agreement is in place.

421. While Lao PDR has three bilateral mutual legal assistance treaties in place in addition to the ASEAN Treaty, a significant portion of assistance is provided on a case-by-case basis based on article 118 of the Criminal Procedure Law.

Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

422. Lao PDR has cited article 3(5) of the ASEAN Treaty on Mutual Legal Assistance In Criminal Matters.

ASEAN Treaty on Mutual Legal Assistance In Criminal Matters

Article 3

Limitations On Assistance

5. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.

(b) Observations on the implementation of the article

423. Lao PDR officials explained that they would not decline to render mutual legal assistance due to bank secrecy. There has been no law, experience or practice in this regard.

Article 46 Mutual legal assistance

Paragraph 9

(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

424. Lao PDR has partly implemented the paragraph under review. It has cited article 118 of the Criminal Procedure Law, which restricts mutual legal assistance to cases where dual criminality is met, as well as articles 1 and 3(1)(e) and (f) of the ASEAN Treaty on Mutual Legal Assistance In Criminal Matters. Article 4 of the mutual legal assistance treaty with the Democratic People's Republic of Korea and Article 28 of the Treaty with the People's Republic of China are also cited below.

Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

ASEAN Treaty on Mutual Legal Assistance In Criminal Matters

Scope Of Assistance

Article 1

1. The Parties shall, in accordance with this Treaty and subject to their respective domestic laws, render to one another the widest possible measure of mutual legal assistance in criminal matters, namely investigations, prosecutions and resulting proceedings.

2. Mutual assistance to be rendered in accordance with this Treaty may include:

- (a) Taking of evidence or obtaining voluntary statements from persons;
- (b) Making arrangements for persons to give evidence or to assist in criminal matters;
- (c) Effecting service of judicial documents;
- (d) Executing searches and seizures;
- (e) Examining objects and sites;
- (f) Providing original or certified copies of relevant documents, records and items of evidence.
- (g) Identifying or tracing property derived from the commission of an offence and instrumentalities of crime;
- (h) The restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated;
- (i) The recovery, forfeiture or confiscation of property derived from the commission of an offence;
- (j) Locating and identifying witnesses and suspects; and
- (k) The provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the laws of the Requested Party.

Article 3

Limitations On Assistance

1. The Requested Party shall refuse assistance if, in its opinion - ...

(e) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the requested Party, would not have constituted an offence against the laws of the Requested Party except that the Requested Party may provide assistance in the absence of dual criminality if permitted by its domestic laws;

(f) the provision of the assistance would affect the sovereignty, security, public order, public interest or essential interests of the Requested Party;

Treaty Between the Lao People's Democratic Republic and the Democratic People's Republic of Korea on Mutual Legal Assistance in Civil and Criminals Matters

Article 4

Legal Provisions in Legal Assistance

1. The requested organ shall apply its domestic law in rendering legal assistance.
2. In rendering legal assistance the requested organ may apply, at the request of the requesting party, the provisions of the code of legal procedure of the requesting party unless they are not in conformity with its domestic law.

Treaty Between the Lao People's Democratic Republic and the People's Republic of China on Mutual Legal Assistance

Article 28

Refusal of Criminal Justice cooperation

1. Apart from refusal of criminal justice cooperation as stipulated in article 8 of this treaty, a requested Party may refuse criminal justice cooperation in some cases as follows:
 - (a) They requested Party perceives that the request regarding the offence has political or military elements;
 - (b) The request received is regarding conduct is not a criminal offence in the criminal code of the requested Party;
 - (c) The request is regarding an offender or suspect that is a national of the requested Party at the time of making the request and the individual is not present in the territory of the requested Party.
2. The requested Party shall inform the requesting Party for refusal of Criminal Justice cooperation.

425. No request for mutual legal assistance in the absence of dual criminality has been received, and there have been no cases where Lao PDR has refused to render assistance on the ground of absence of dual criminality.

426. It was explained that, while dual criminality is the generally applicable principle, in principle Lao PDR would follow the Convention and render non-coercive assistance in the cases mentioned in the provision under review. The issue is not explicitly addressed in the legislation and there has been no practice or case where non-coercive assistance was rendered.

427. In Lao PDR's legal framework, the following measures are considered to be coercive, as defined in articles 61, 62 and 63 of the Law on Criminal Procedure on detention, arrest, as well as on-the-spot arrests and arrests in urgent cases:

1. Immediate arrest; and
2. Arrest with warrant.

Criminal Procedure Law

Article 61. Detention

If, after taking testimony from a suspect, some reliable evidence is found to prove that he committed an offence for which the laws prescribe the penalty of deprivation of liberty, the head of the investigation organisation or the public prosecutor may issue an order to detain such suspect for forty-eight hours to conduct further investigations, but shall report in writing to the public prosecutor within twenty-four hours from the time of the detention.

Within those forty-eight hours, the investigator or interrogator shall promptly take the preliminary testimony of the detainee and, after taking such testimony, form one of the following opinions:

1. If there is no reliable information to issue an order to open an investigation, the investigator or interrogator shall ask for an order from the head of the investigation organisation or the public prosecutor to release the suspect and shall immediately report in writing to the public prosecutor;
2. If reliable information is found that is the basis for opening an investigation and it is deemed necessary to remand the suspect, the head of the investigation organisation shall issue an order to open an investigation and ask for an order of remand from the public prosecutor. The interrogator also has to ask for an order to open an investigation and an order of remand from the public prosecutor.

After receiving the request of a head of an investigation organisation or an interrogator for an order of remand, the public prosecutor decides within twenty-four hours whether to release or to remand [the detainee].

Article 62. Arrest

The arrest of any individual shall be accompanied by an order in writing from the public prosecutor or the people's court, except in the case of an on-the-spot arrest or in an urgent case.

Before the issuance of an order to arrest, the public prosecutor or the people's court shall consider the following conditions:

1. The act must be an offence for which the law prescribes the penalty of deprivation of liberty;
2. The evidence in the case must be reliable.

In addition, [such issuance] shall be based on other conditions such as: the suspect may flee, destroy evidence, commit a new offence, [or] hurt the injured party or witness[;] or the suspect may be hurt by the injured party or by other individuals.

If there is to be an arrest of a monk or a novice, the head monk or the representative of the relevant religious organisation shall be informed to de-frock [such monk or novice] before his arrest. For an ordained person in any other religion, the head of such religious organisation shall be informed of the arrest.

For arrest in normal situations, the arrest order along with the cause for such arrest shall be declared to the person to be arrested.

In all cases, after the arrest of an accused person, the investigator shall report in writing to the public prosecutor within twenty-four hours and the taking of testimony from the arrested person shall be conducted within forty-eight hours, together with the forming of an opinion whether to release [pending sentencing] or to remand [such person].

If an opinion is formed to release [pending sentencing] or to remand an arrested person, the head of the investigation organisation or the interrogator shall ask the public prosecutor for an order to release [pending sentencing] or to remand.

After receiving a request for release [pending sentencing] or for an order of remand from the head of the investigation organisation or the interrogator, the public prosecutor shall decide within twenty-four hours whether to release [pending sentencing] or to remand [the arrested person].

In the event that it is not the investigator who conducts the arrest, the arrested person shall be handed over to the investigator immediately. For arrests in remote areas, the arrested person shall be handed over to the investigator within seven days from the date of the arrest.

Arrests shall be conducted by using [such] methods and in a manner that are appropriate to the characteristics of the offence and the person to be arrested.

Beating or torture of the arrested person is prohibited.

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.

Article 63. On-the-spot Arrests and Arrests in Urgent Cases

On-the-spot arrest is an arrest of an individual in [any of] the following cases:

1. The individual is in the act of committing an offence or has just finished committing an offence;
2. The individual, having committed an offence, is being pursued, the individual has actually been seen at the incident, or the injured party has identified him as the person committing the offence;
3. The individual has traces of evidence of an offence on his body or in his house or work-place at a time when such offence has just occurred.

Arrest in urgent cases is an arrest of an individual in [any of] the following cases:

1. The individual who is suspected of committing an offence has a dubious background or an uncertain residence;
2. The individual who is suspected of committing an offence is in the act of fleeing.

On-the-spot arrests and arrests in urgent cases do not require an arrest order from the public prosecutor or from the people's court.

428. Lao PDR does not consider any matter *de minimis*. It provides assistance on any matter as long as such assistance is requested by way of an official communication, including email and correspondences, and the requirements of its domestic law are met.

(b) Observations on the implementation of the article

429. Although there were no examples or cases in practice, it appears that under the current framework there are no obstacles to the implementation of this paragraph. Lao PDR should make sure that, under the current and future mutual legal assistance framework, the implementing agencies are informed that non-coercive assistance would be granted in cases where dual criminality is not satisfied.

Article 46 Mutual legal assistance

Paragraph 10

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

430. Lao PDR has cited article 118 of the Criminal Procedure Law and article 15 of the ASEAN Treaty on Mutual Legal Assistance In Criminal Matters. Articles 14 and 12(3) of the Treaty between Lao PDR and the Democratic People's Republic of Korea on Mutual Legal Assistance In Civil and Criminals Matters are also quoted below. Under the draft mutual legal assistance law, the transfer of a prisoner in the circumstances described is addressed in paragraph 1 of article 16, upon his or her consent. There have been no cases where Lao PDR has sent or received a prisoner for purposes of testifying or providing evidence in criminal proceedings.

431. Lao PDR also referred to article 17 of the Treaty on mutual legal assistance in civil and criminal matters between Lao PDR and China, which covers cooperation involving experts and witnesses. The cited article of the treaty could not be reviewed as it was not available in English.

The Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

ASEAN Treaty on Mutual Legal Assistance In Criminal Matters

ATTENDANCE OF PERSON IN CUSTODY IN THE REQUESTING PARTY

ARTICLE 15

1. The Requested Party may, subject to its domestic laws and practices, agree to allow a person in custody in the Requested Party, subject to his consent, to be temporarily transferred to the Requesting Party to give evidence or to assist in the investigations.

Treaty Between the Lao People's Democratic Republic and the Democratic People's Republic of Korea on Mutual Legal Assistance In Civil and Criminals Matters

Article 14

Transfer of a Prisoner Called to Appear as a Witness of Expert Witness

1. In case any of the Contracting Parties requests to call any prisoner to appear before court as a witness or expert witness, the other party is obliged to transfer him with his consent and the party requesting his transfer is obliged to return him within due period.
2. The period of transfer as a witness or an expert witness shall be included in the prison term.
3. The requested party may refuse to transfer the prisoner in case:
 - The prisoner shall be in the requested country in connection with a criminal case
 - A special circumstance or reason not to transfer him.

Article 12(3)

Calling Witnesses and Expert Witnesses

3. Threat to use force should not be given if anyone refuses to appear as a witness or expert.

(b) Observations on the implementation of the article

432. Noting that there has been no experience in the application of this provision, the reviewers encourage Lao PDR to ensure that the consent requirement, which is addressed in the draft mutual legal assistance law and existing treaties, is applied in future transfer cases.

Article 46 Mutual legal assistance

Paragraph 11

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

433. Lao PDR has cited articles 15(2), (4), (5) and (6) of the ASEAN Treaty on Mutual Legal Assistance In Criminal Matters. Article 14 of the Treaty between Lao PDR and the Democratic People's Republic of Korea on Mutual Legal Assistance In Civil and Criminals Matters is also quoted below. There has been no practice or experience in this regard.

ASEAN Treaty on Mutual Legal Assistance In Criminal Matters

Attendance Of Person In Custody In The Requesting Party

Article 15

2. While the person transferred is required to be held in custody under the law of the Requested Party, the Requesting Party shall hold the person in custody and shall return that person in custody to the Requested Party at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required. ...
4. The Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred.
5. The period during which such person was under the custody of the Requesting Party shall count towards the period of his imprisonment or detention in the Requested Party.
6. No transfer under this Article shall be effected unless the Requesting Party gives an undertaking -
 - (a) to bear and be responsible for all the expenses of the transfer of custody;
 - (b) to keep the person under lawful custody throughout the transfer of his custody; and
 - (c) to return him into the custody of the Requested Party immediately upon his attendance before the competent authority or court in the Requesting Party is dispensed with.

Treaty Between the Lao People's Democratic Republic and the Democratic People's Republic of Korea on Mutual Legal Assistance In Civil and Criminals Matters

Article 14

Transfer of a Prisoner Called to Appear as a Witness of Expert Witness

1. In case any of the Contracting Parties requests to call any prisoner to appear before court as a witness or expert witness, the other party is obliged to transfer him with his consent and the party requesting his transfer is obliged to return him within due period.
2. The period of transfer as a witness or an expert witness shall be included in the prison term.
3. The requested party may refuse to transfer the prisoner in case:
 - The prisoner shall be in the requested country in connection with a criminal case
 - A special circumstance or reason not to transfer him.

(b) Observations on the implementation of the article

434. The provisions of this paragraph are partly addressed in the existing treaties, though there has been no experience in the application of this provision in practice. Lao PDR is encouraged to ensure that these requirements are covered in future treaties and implemented in practice, in particular by informing relevant agencies.

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

435. Lao PDR has cited article 118 of The Criminal Procedure Law and article 15(3) of the ASEAN Treaty on Mutual Legal Assistance In Criminal Matters. Article 13 of the Treaty between Lao PDR and the Democratic People's Republic of Korea on Mutual Legal Assistance In Civil and Criminals Matters is also quoted below. Under the draft mutual legal assistance law, the issue of non-punishment or prosecution/detention for prior acts is addressed in article 17. There has been no practice or experience in this regard.

The Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

ASEAN Treaty on Mutual Legal Assistance In Criminal Matters

Article 16

Safe Conduct

1. Subject to paragraph 2, where a person is present in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty -

(a) that person shall not be detained, prosecuted, punished or subjected to any other restriction of personal liberty in the Requesting Party in respect of any acts or omissions or convictions for any offence against the law of the Requesting Party that is alleged to have been committed, or that was committed, before the person's departure from the Requested Party;

(b) that person shall not, without that person's consent, be required to give evidence in any criminal matter in the Requesting Party other than the criminal matter to which the request relates; or

Treaty Between the Lao People's Democratic Republic and the Democratic People's Republic of Korea on Mutual Legal Assistance In Civil and Criminals Matters

Article 13

Transfer of a Prisoner Called to Appear as a Witness of Expert Witness

1. Both Contracting Parties cannot institute administrative or criminal proceedings against any witness or expert witness who has been called by competent organs for any kind of illegal act committed by them before their crossing the border nor arrest and detain him for it.

2. Except the case in which any witness or expert witness fails to leave the territory of a Contracting Party due to an unavoidable reason, his inviolability shall be null and void if he fails to leave the territory of a Contracting Party within 15 days since he was informed that his appearance has no longer been required or he happens to return back himself.

3. The organ which has called the witness or expert witness shall inform them in written form of the contents of Clause 1 and 2 of this Article before their testimony.

(b) Observations on the implementation of the article

436. The provisions of this paragraph are partly addressed in the existing treaties, although the treaty on mutual legal assistance with the Democratic People's Republic of Korea does not cover the prohibition on arrest or detention for prior acts. There has been no experience in the application of this provision in practice. Lao PDR is encouraged to ensure that these requirements are fully implemented in the future, in particular by informing relevant agencies.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or

accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

437. In Lao PDR the central authorities vary from one agreement to another. For example, the Ministry of Justice (MOJ) is designated as the competent authority for the ASEAN Treaty on Mutual Legal Assistance and the treaty on mutual legal assistance with the Democratic People's Republic of Korea (article 5). The MOJ and the Office of the Supreme People's Prosecutor (OSPP) are designated as the competent authorities for the Lao-Vietnam Treaty on Mutual Legal Assistance. It was explained that the MOJ was designated as the competent authority for mutual legal assistance in general. Notwithstanding the designations in its treaties, it was explained that in practice requests for assistance were also received directly by competent authorities such as the Ministry of Public Security/INTERPOL, Ministry of Foreign Affairs, and the Financial Intelligence Unit.
438. Under the proposed mutual legal assistance law (article 3, paragraph 7), the central authority for mutual legal assistance would be the OSPP. Requests would have to be made through diplomatic channels but could be received directly in urgent cases.
439. Implementing agencies for mutual legal assistance requests include various institutions, such as the police, the Anti-Money Laundering Intelligence Unit of the National Bank of Lao PDR, and others.

(b) Observations on the implementation of the article

440. Lao PDR has not designated a central authority to receive and handle requests for mutual legal assistance, but has appointed several central authorities. It has not made the requisite notification to the United Nations.
441. Lao PDR is encouraged to designate one central authority to receive and handle all requests for mutual legal assistance, and to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).
442. There is a need for interagency coordination and close cooperation among the competent authorities in responding to and making mutual legal assistance requests. These institutions could benefit from training and awareness raising of the existing and new mutual legal assistance procedures. Capacity building and learning from other countries' experiences and international best practices are needed.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

443. Lao PDR has cited articles 5 and 6(3) of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. It was explained that Lao PDR will only accept requests made in Lao language, and that a requesting State would need to ensure translation of requests. English requests were not generally acceptable. However, article 7 of the treaty on mutual legal assistance with the Democratic People's Republic of Korea provides that requests shall be made in the mother tongue of both the requesting and requested State, followed by a translation into the language of the requested State (Lao) or into English.

444. Lao PDR indicated that, in accordance with the ASEAN Treaty, its practice has been that mutual legal assistance requests may be made orally, but shall be confirmed in writing within five days. Under the treaty on mutual legal assistance with the Democratic People's Republic of Korea (article 7), legal assistance shall always be requested in written form.

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

Form of Requests

Article 5

1. Requests for assistance shall be made in writing or, where possible, by any means capable of producing a written record under conditions allowing the Requested Party to establish authenticity. In urgent situations and where permitted by the law of the Requested Party, requests may be made orally, but in such cases the requests shall be confirmed in writing within five days.

2. Central Authorities shall deal with the transmission of all requests and any communication related thereto. In urgent situations and where permitted by the law of the Requested Party, requests and any communication related thereto may be transmitted through the International Criminal Police Organization (INTERPOL) or the Southeast Asian Police Organization (ASEANAPOL).

Contents of Requests

Article 6

3. Requests, supporting documents and other communication made pursuant to this treaty shall be in English language and, if necessary, accompanied by a translation into the language of the Requested Party or another language acceptable to the Requested Party.

(b) Observations on the implementation of the article

445. Lao PDR might consider that a practice of accepting mutual legal assistance requests in one of the official United Nations languages in the future could facilitate the provision of international cooperation. Lao PDR has not made the requisite notification to the United Nations and is encouraged to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime

Article 46 Mutual legal assistance

Paragraph 15

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

(a) Summary of information relevant to reviewing the implementation of the article

446. Lao PDR explained that the content of the request is specified in the proposed mutual legal assistance law, which includes provisions on the identity of the requesting authority, subject matter of the request, and details of the request. These can be supplemented by additional information. The content of a request is not addressed in the Criminal Procedure Law, and Lao PDR would apply its existing treaties. In the treaty on mutual legal assistance with the Democratic People's Republic of Korea, these requirements are adequately covered in article 7. Relevant provisions are also found in Article 29 of the treaty with the People's Republic of China.

(b) Observations on the implementation of the article

447. Lao PDR should continue to ensure that requesting countries are familiar with the content and format of mutual legal assistance requests that are acceptable to Lao PDR, both in its treaties and its mutual legal assistance law and practice.

Article 46 Mutual legal assistance

Paragraph 16

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

448. Lao PDR has cited article 118 of the Criminal Procedure Law and article 6(4) of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.

The Criminal Procedure Law, Article 118

Article 118. 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 to 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 co-operation] 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.

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

CONTENTS OF REQUESTS

ARTICLE 6

4. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, the Requested Party may request additional information. The requesting Party shall supply such additional information as the requested Party considers necessary to enable the request to be fulfilled.

449. No cases were reported where Lao PDR has requested additional information to execute a request.

(b) Observations on the implementation of the article

450. It appears that nothing in its law, treaties or practice would prohibit Lao PDR from requesting additional information where necessary to execute a request. This is also addressed in article 10, paragraph 2 of the treaty on mutual legal assistance with the Democratic People's Republic of Korea.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

451. Lao PDR has cited article 118 of the Criminal Procedure Law and article 7(1) of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.

The Criminal Procedure Law, Article 118

Article 118. 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 to 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 co-operation] 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.

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

Execution of Requests

Article 7

1. Requests for assistance shall be carried out promptly, in the manner provided for by the laws and practices of the Requested Party. Subject to its domestic laws and practices, the Requested Party shall carry out the request in the manner specified by the Requesting Party.

452. No cases were reported.

(b) Observations on the implementation of the article

453. Lao PDR would generally follow its domestic law in executing mutual legal assistance requests. Where possible, procedures specified in the request, such as deadlines, would also be followed; this is a requirement under the draft mutual legal assistance law (article 10). Article 4 of the treaty on mutual legal assistance with the Democratic People's Republic of Korea provides that the law of the requested State would be applied and, at the request of the requesting Party, the criminal procedure law of the requesting Party may also be applied if it is in conformity with the law of the requested State.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

454. Lao PDR has cited article 11, paragraphs 1 through 3 of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

Obtaining of Evidence

Article 11

1. The Requested Party shall, subject to its domestic laws, arrange to have evidence, including sworn or affirmed testimony, documents or records taken or obtained from witnesses for the purpose of a criminal matter for transmission to the Requesting Party.
2. Where sworn or affirmed testimony is to be taken under this Article, the parties to the relevant criminal proceedings in the Requesting Party or their legal representatives may, subject to the domestic laws of the Requested Party, appear and question the person giving that evidence.
3. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the Requested Party for the purpose of executing this Article if it is expedient in the interests of justice to do so.

455. No cases (incoming or outgoing) involving the use of video conference were reported.

(b) Observations on the implementation of the article

456. There is no practice or law on this issue. It was explained that witnesses and experts in the criminal process do not generally testify in court but give testimony to the prosecutor, who introduces such evidence in the proceeding. As with respect to extradition hearings, Lao PDR should ensure that under the draft MLA Law and practice, proceedings for taking testimony and evidence are carried out in a court of law, which applies the same principles, procedures and safeguards applicable in criminal proceedings. There has been no experience in the use of video conference. This provision does not appear to be implemented.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

457. Lao PDR has cited article 8 of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. There is no provision on limitation of the use of evidence in the treaty on mutual legal assistance with the Democratic People's Republic of Korea.

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters
Limitations On Use of Evidence Obtained
Article 8

1. The Requesting Party shall not, without the consent of the Requested Party and subject to such terms and conditions as the Requested Party considers necessary, use or disclose or transfer information or evidence provided by the Requested Party for purposes other than those stated in the request.

2. Notwithstanding paragraph 1, in cases where the charge is amended, the information or evidence provided may be used, with the prior consent of the Requested Party, in so far as the offence, as charged, is an offence in respect of which mutual legal assistance could be provided under this Treaty, and which is made out by the facts on which the request was made.

458. No cases were reported. Lao PDR has never received a request limiting the use of evidence obtained, nor has it made such a request.

(b) Observations on the implementation of the article

459. Lao PDR should ensure that in its future law, treaties and practice, evidence or information it receives pursuant to a mutual legal assistance request is protected from use for purposes other than those stated in the request, unless it is exculpatory to the accused. This does not appear to be sufficiently addressed in its existing law, treaties and practice. The provision is not implemented.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

460. Lao PDR has cited article 9 of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. There is no provision on confidentiality in the treaty with the Democratic People's Republic of Korea.

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

Protection of Confidentiality

Article 9

1. The Requested Party shall, subject to its domestic laws, take all appropriate measures to keep confidential the request for assistance, its contents and its supporting documents, the fact of granting of such assistance and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality requirements, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

2. The Requesting Party shall, subject to its domestic laws, take all appropriate measures to -

(a) Keep confidential information and evidence provided by the Requested Party, except to the extent that the evidence and information is needed for the purposes described in the request; and

(b) Ensure that the information and evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse.

461. No cases were reported.

(b) Observations on the implementation of the article

462. This provision does not appear to be implemented.

Article 46 Mutual legal assistance

Paragraph 21

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

463. Lao PDR uses the ASEAN Treaty on Mutual Legal Assistance In Civil and Criminal Matters and would also apply article 118 of the Criminal Procedure Law for requests from countries with which it does not have bilateral treaties.

464. It was explained that under the existing law and treaties, mutual legal assistance may generally be refused if it would affect Lao PDR's national sovereignty and security, political system and public order, or if it is not in conformity with its domestic law. Examples of national sovereignty and security include: military documents, confidential national documents and other documents.

465. The permissive grounds for refusal under the proposed mutual legal assistance law are set forth below.

466. Lao PDR has also cited article 118 of the Criminal Procedure Law and articles 3(1)(f), 3(1)(k) and 3(2)(a) of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.

Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

Limitations On Assistance

Article 3

1. The Requested Party shall refuse assistance if, in its opinion- ...

(f) The provision of the assistance would affect the sovereignty, security, public order, public interest or essential interests of the Requested Party;

(k) The provision of the assistance would require steps to be taken that would be contrary to the laws of the Requested Party.

...

2. The Requested Party may refuse assistance if, in its opinion –

(a) the Requesting Party has, in respect of that request, failed to comply with any material terms of this Treaty or other relevant arrangements;

Draft Mutual Legal Assistance Law of Lao PDR

Article 7 Refusal of cooperation

The Lao PDR reserves the right to refuse international cooperation in criminal matters for the following reasons:

1. The request for cooperation relates to investigation, prosecution or punishment of political offences or military offences;

2. The cooperation will prejudice sovereignty, security, public order and the national interests of the Lao PDR or is inconsistent with the law of the Lao PDR;

3. There is a strong basis to believe that the request for cooperation has been made with a view to investigating, prosecuting, punishing or otherwise prejudicing a person because of his/her race, religion, sex, ethnicity, nationality or political opinion;

4. The request for cooperation relates to investigation, prosecution or punishment of a person who for his offence referred to in the request :

- has been found guilty by the final judgment of the court of the Lao PDR or has received pardon from the competent authority of the Lao PDR or that of the requesting State

- has served his/her sentence in accordance with the law of the requesting State or the law of the Lao PDR;

5. The request for cooperation relates to investigation, prosecution or punishment of a person for an act or omission occurred in the territory of the requesting State that does not constitute an offence under the law of the Lao PDR, unless otherwise provided for in international treaties on cooperation in criminal matters to which the Lao PDR is party or based on international principles on justice, the law of the requesting State and the consent by the Lao PDR;

6. The requesting State does not confirm that it will provide a similar assistance to the Lao PDR in the future if the Lao PDR makes a request for cooperation in a similar criminal matter;

7. The requesting State does not assure that it will use data or assistance as merely provided in its request for international cooperation and that it will not use them for other purposes than those of a criminal nature as per its request;

8. The assistance will negatively affect the case or the stages of the ongoing criminal proceedings in the Lao PDR or is inconsistent with the Lao PDR's Law on Criminal Procedure;

9. The cooperation may negatively affect the safety of persons inside or outside the Lao PDR ;

10. The cooperation will create a big burden on the Lao PDR

467. Lao PDR has never refused a request for mutual legal assistance from a foreign country.

(b) Observations on the implementation of the article

468. Lao PDR is encouraged to ensure that its future treaties do not expand the grounds for refusing mutual legal assistance, and that this provision is implemented in its law and practice.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

469. Lao PDR has cited article 118 of the Criminal Procedure Law and article 3(5) of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. While the treaty on mutual legal assistance with the Democratic People's Republic of Korea does not explicitly address fiscal matters, it was explained that assistance would be rendered if the offence was recognized (or related to an offence recognized) under Lao law. Similarly, while fiscal matters are not explicitly addressed in the draft mutual legal assistance law, they do not constitute a ground for refusal under the draft law. Moreover, a safeguard provision in the new law would allow Lao PDR to follow international standards, including the Convention, to render assistance in fiscal cases.

Criminal Procedure, Article 118

Article 118. 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 to 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 co-operation] 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.

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

Limitations On Assistance

Article 3

5. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.

470. Financial offences are defined in the laws of Lao PDR, such as chapter 12 of the Law on Bank of Lao PDR, which includes provisions on: violations of the mandatory reserve ratio requirements for banks and other regulations, providing wrong information, engaging in business without a license, disclosure of confidential matters, abuse of power, counterfeit money and other violations. Accordingly, Lao PDR can assist requesting countries in cases involving financial or fiscal offences.

471. No cases were reported where Lao PDR received or made a request involving fiscal matters.

(b) Observations on the implementation of the article

472. It appears based on the information provided to the reviewers that Lao PDR would not be prohibited from rendering assistance in cases involving fiscal matters.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

473. Lao PDR has cited article 3(9) of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. Article 11 of the treaty on mutual legal assistance with the Democratic People's Republic of Korea provides that in case the requested State refuses to execute the request, it shall inform the other party of the reason and return all the documents along with the written request. The draft Mutual Legal Assistance Law would require Lao PDR to "inform the requesting State of the progress or reasons for a delay in the execution of the request" (article 10).

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

Limitations On Assistance

Article 3

9. If the Requested Party refuses or postpones assistance, it shall promptly inform the Requesting Party of the grounds of refusal or postponement.

474. No cases were reported, as Lao PDR has not refused any requests for mutual legal assistance.

(b) Observations on the implementation of the article

475. Although there have been no examples in practice, the provision appears to be implemented in Lao PDR's treaties. Lao PDR should ensure that the requirement to notify requesting States of any reasons for refusing assistance is also addressed in its new mutual legal assistance practice.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of

the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

476. Under the draft mutual legal assistance law, “requests for international cooperation in criminal matters from the requesting State to the Lao PDR shall be dealt with promptly within the time period, methods and matters to which the request for cooperation relates in accordance with the principles set forth in the Law on Criminal Procedure of the Lao PDR” (article 10). Also, as noted in the previous paragraph, there is a duty to provide status updates to requesting States, and Lao PDR may ask the requesting State to provide additional information if it is difficult to execute the request.

477. Under the existing regime, the same practice was generally followed, although the matter was not specifically addressed in the legislation. The treaty on mutual legal assistance with the Democratic People’s Republic of Korea provides that mutual legal assistance requests shall be executed swiftly and that investigations of suspected criminals, upon request, shall be actively executed, with notification of the result to the requesting State together with relevant data.

478. Lao officials explained that coordination points to contact about status updates are INTERPOL or ASEANAPOL under the ASEAN treaty on mutual legal assistance, or the Ministry of Justice under the Vietnam treaty.

479. Lao PDR has cited article 7 of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

Execution of Requests

Article 7

1. Requests for assistance shall be carried out promptly, in the manner provided for by the laws and practices of the Requested Party. Subject to its domestic laws and practices, the Requested Party shall carry out the request in the manner specified by the Requesting Party.

2. The Requested Party shall, if requested to do so and subject to its domestic laws and practices, make all necessary arrangements for the representation of the Requesting Party in the Requested Party in any criminal proceedings arising out of a request for assistance and shall otherwise represent arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

3. The Requested Party shall respond as soon as possible to reasonable inquiries by the Requesting Party concerning progress toward execution of the request.

4. The Requested Party may ask the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

480. No cases were reported. Lao PDR officials explained that mutual legal assistance requests are generally executed within 30 days from the time of receipt of the request.

(b) Observations on the implementation of the article

481. Lao PDR should ensure that requests for mutual legal assistance are executed swiftly, taking into account deadlines suggested in the request, and that Lao PDR provides updates on the status of requests promptly when asked to do so. This appears to be

addressed in the draft law but should be ensured in practice, including under existing and future treaties.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

482. Lao PDR has cited article 3(1)(j) of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. The matter is not addressed in Lao PDR's existing treaties.

483. The draft mutual legal assistance law provides that Lao PDR may refuse (not postpone) a request on the ground that "The assistance will negatively affect the case or the stages of the ongoing criminal proceedings in the Lao PDR or is inconsistent with the Lao PDR's Law on Criminal Procedure" (article 7, paragraph 8).

484. Lao PDR never postponed mutual legal assistance on these grounds. No cases were reported where a request was received that interfered with an ongoing investigation or judicial proceeding.

Treaty on Mutual Legal Assistance in Criminal Matters in ASEAN Limitations On Assistance Article 3

1. The Requested Party shall refuse assistance if, in its opinion - ...
- (j) the provision of the assistance could prejudice a criminal matter in the Requested Party;

(b) Observations on the implementation of the article

485. There have been no cases and the matter is not addressed in the existing laws or treaties of Lao PDR, apart from ASEAN. Because the draft mutual legal assistance law allows for the refusal, but not postponement, of assistance on these grounds, Lao PDR is encouraged to consider amending the draft law in this regard.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

486. Lao PDR has cited article 118 of the Criminal Procedure Law and article 3 of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. The matter is not

addressed in the treaty on mutual legal assistance with the Democratic People's Republic of Korea or applied in Lao PDR's existing practice. It was explained that a duty to consult before refusing or postponing assistance is also not addressed in the draft law on mutual legal assistance, although article 10 of the draft law provides that Lao PDR "may ask the requesting State to provide additional information if it is difficult for the Lao PDR to execute the request".

Criminal Procedure Law

Article 118. 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 to 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 co-operation] 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.

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

Limitations on Assistance

Article 3

If the Requested Party refuses or postpones assistance, it shall promptly inform the Requesting Party of the grounds of refusal or postponement.

487. No cases were reported where Lao PDR has refused or postponed a request for mutual legal assistance.

(b) Observations on the implementation of the article

488. The provision is not implemented in Lao PDR's existing law, treaties or practice, nor is there a requirement to consult before refusing a request in the draft law on mutual legal assistance. As with extradition cases, Lao PDR should ensure that it consults with a requesting State before refusing mutual legal assistance, and the matter should be addressed in the draft law or in new regulations. The relevant institutions should be informed of this requirement.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

489. Lao PDR has cited articles 14 and 16 of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. The matter is addressed in article 13, paragraph 1, of the treaty on mutual legal assistance with the Democratic People's Republic of Korea.

Treaty on Mutual Legal Assistance in Criminal Matters in ASEAN

Attendance Of Person In The Requesting Party

Article 14

1. The Requested Party may, subject to its domestic laws and practices, assist in arranging the attendance of a person in the Requested Party, subject to his consent, in the Requesting Party -

- (a) To assist in the investigations in relation to a criminal matter in the Requesting Party; or
- (b) To appear in proceedings in relation to a criminal matter in the Requesting Party unless that person is the person charged.

2. The Requested Party shall, if satisfied that satisfactory arrangements for that person's safety will be made by the Requesting Party, invite the person to give or provide evidence or assistance in relation to a criminal matter in the Requesting Party. The person shall be informed of any expenses or allowances payable.

3. The Requested Party shall promptly inform the Requesting Party of the person's response and, if the person consents, take any steps necessary to facilitate the person's attendance in the Requesting Party.

4. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the Requested Party if it is expedient in the interests of justice to do so.

Safe Conduct

Article 16

1. Subject to paragraph 2, where a person is present in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty -

(a) That person shall not be detained, prosecuted, punished or subjected to any other restriction of personal liberty in the Requesting Party in respect of any acts or omissions or convictions for any offence against the law of the Requesting Party that is alleged to have been committed, or that was committed, before the person's departure from the Requested Party.

(b) That person shall not, without that person's consent, be required to give evidence in any criminal matter in the Requesting Party other than the criminal matter to which the request relates; or

(c) That person shall not be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from the Requested Party.

2. Paragraph 1 shall cease to apply if that person, being free and able to leave, has not left the Requesting Party within a period of 15 consecutive days after that person has been officially told or notified that his presence is no longer required or, having left, has voluntarily returned.

3. A person who attends before a competent authority or court in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not be subject to prosecution based on such testimony except that person shall be subject to the laws of the Requesting Party in relation to contempt of court and perjury.

4. A person who does not consent to attend in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not by reason only of such refusal or failure to consent be subjected to any penalty or liability or otherwise prejudiced in law notwithstanding anything to the contrary in the request.

Treaty Between the Lao People's Democratic Republic and the Democratic People's Republic of Korea on Mutual Legal Assistance In Civil and Criminals Matters

Article 13

Transfer of a Prisoner Called to Appear as a Witness of Expert Witness

1. Both Contracting Parties cannot institute administrative or criminal proceedings against any witness or expert witness who has been called by competent organs for any kind of illegal act committed by them before their crossing the border nor arrest and detain him for it.

2. Except the case in which any witness or expert witness fails to leave the territory of a Contracting Party due to an unavoidable reason, his inviolability shall be null and void if he fails to leave the territory of a Contracting Party within 15 days since he was informed that his appearance has no longer been required or he happens to return back himself.

3. The organ which has called the witness or expert witness shall inform them in written form of the contents of Clause 1 and 2 of this Article before their testimony.

490. No cases were reported.

(b) Observations on the implementation of the article

491. While the requirements of this provision are partially addressed in its existing treaties (the treaty on mutual legal assistance with the Democratic People's Republic of Korea does not address a prohibition on detention), Lao PDR should ensure that the safe conduct requirements are implemented in its future mutual legal assistance law and practice.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

492. Lao PDR has cited article 25 of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. Under article 24 of the draft mutual legal assistance law, Lao PDR would pay the ordinary costs of executing a request in its territory, while extraordinary costs are borne by the requesting State. The latter include: (a) Fees of legal advice, legal representation, and expenses of witnesses or experts as per the request; (b) Expenses associated with the transfer of persons to the requesting State and returning them to Lao PDR including travel, fees, allowances or other expenses; and (c) Expenses on communication via electronic means. It was explained that for outgoing requests to other countries, the requested State would bear the ordinary costs. The draft law further provides that where Lao PDR's treaties on international cooperation in criminal matters provide for expenses, the relevant provisions of such treaties will be followed.

Treaty on Mutual Legal Assistance in Criminal Matters in ASEAN

Costs

Article 25

1. The Requested Party shall assume all ordinary expenses of fulfilling the request for assistance except that the Requesting Party shall bear -
 - (a) The fees of counsel retained at the request of the Requesting Party;
 - (b) The fees and expenses of expert witnesses;
 - (c) The costs of translation, interpretation and transcription;
 - (d) The expenses associated with conveying any person to or from the territory of the Requested Party and the fees, allowances and expenses payable to the person concerned while that person is in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty; and
 - (e) The expenses associated with conveying custodial or escorting officers.
2. The cost of establishing live video or television links or other appropriate communications facilities, the costs related to the servicing of live video or television links or other appropriate communications facilities, the remuneration of interpreters provided by the Requested Party and allowances to witnesses and their traveling expenses in the Requested Party shall be refunded by the Requesting Party to the Requested Party, Unless the Parties mutually agree otherwise.
3. If during the execution of the request it becomes apparent that expenses of an extraordinary or substantial nature are required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the execution of the request is to be effected or continued.

493. There have been no cases involving extraordinary costs or any issues regarding fees in mutual legal assistance cases in the past.

(b) Observations on the implementation of the article

494. The allocation of costs under the treaties of Lao PDR (in particular, article 15 of the treaty on mutual legal assistance with the Democratic People's Republic of Korea) is unclear, and no cases were cited. Under the new law, the matter appears to be adequately addressed.

Article 46 Mutual legal assistance

Paragraph 29

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

495. Lao PDR has cited articles 21(1) and 13 (2) of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. While the matter is not addressed in its existing law or practice, officials explained that Lao PDR is not prohibited from providing public and non-sensitive, non-public documents in response to a mutual legal assistance request, so long as the request does not present any grounds for refusal under its law or treaties. No examples or cases of the provision of documents were cited.

**Treaty on Mutual Legal Assistance in Criminal Matters in ASEAN
Service of Documents**

Article 21

1. The Requested Party shall, subject to its domestic laws, use its best endeavors to effect service of any document in respect of a criminal matter issued by any court in the Requesting Party.

Provision of Publicly Available Documents and Other Records

Article 13

(2) The Requested Party may, subject to its domestic laws and practices, provide the Requesting Party with copies of any documents or records in the possession of government departments and agencies that are not publicly available. The Requested Party may in its discretion deny, entirely or in, part, a request pursuant to this paragraph.

496. No cases were reported.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

497. Lao PDR has signed three bilateral treaties on mutual legal assistance in judicial matters with: Vietnam, signed at Hanoi, dated 6/7/1998 and enforced from 19/2/2000; Democratic People's Republic of Korea, signed at Vientiane, dated 20/6/2008; and China, signed at Beijing, dated 25/1/2009, enforced from 15/12/2010. The ASEAN treaty on Mutual Legal Assistance in Criminal Matters, signed at Kuala Lumpur, dated 29/11/2004 and enforced from 22/8/2007, is not yet in force for all its signatories, since it has not been ratified by the Government of Thailand. Only certain articles of the mutual legal assistance treaties with Vietnam and China and were available to the reviewers in English.

498. The Convention and other multilateral instruments can also be applied directly in principle.

499. Lao PDR has cited articles 23 of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

Compatibility With Other Arrangements

Article 23

Nothing in this Treaty shall prevent the Parties from providing assistance to each other pursuant to other treaties, arrangements or the provisions of their national laws.

(b) Challenges related to article 46

500. Lao PDR has identified the following challenges and issues in fully implementing the article under review:

1. There is a need for interagency coordination and close cooperation among the competent authorities in responding to and making mutual legal assistance requests. These institutions could benefit from training and awareness raising of the existing and, in particular, the new mutual legal assistance procedures, once they are adopted. Capacity building and learning from other countries' and international best practices are needed.

2. Limited capacity: Though Lao PDR has general knowledge in this area, it can benefit from further increase in capacity in terms of technologies and human resources. Apart from the ASEAN Treaty (which is not yet in force for all its signatories), general provisions in the Criminal Procedure Law and the three bilateral treaties on mutual legal assistance, no other laws or treaties exist, pending adoption of the draft law on mutual legal assistance. As a result, there has been little experience and few cases (none involving corruption) in the area of mutual legal assistance. The mutual legal assistance cases cited also appear to be examples of direct law enforcement cooperation, rather than mutual legal assistance.

3. Limited capacity: Because no aggregate statistics on the number of mutual legal assistance requests made and received were available, Lao PDR is encouraged, under its new mutual legal assistance framework, to collect this data at the national level. Cases of law enforcement cooperation through INTERPOL, ASEANAPOL or police channels should be clearly distinguished from mutual legal assistance cases. Lao PDR should also ensure that the required content and format of mutual legal assistance

requests acceptable to Lao PDR are known to requesting countries, both in its treaties and its mutual legal assistance law/practice.

4. Inadequacy of existing normative measures:

- Adoption of the draft mutual legal assistance law is needed to more clearly regulate the process for providing and receiving mutual legal assistance in Lao PDR.
- As Lao PDR will continue to apply its existing bilateral and multilateral treaties even if the draft mutual legal assistance law is passed, it should ensure that future treaties comply with the requirements of the Convention and may further wish to explore ways to apply the Convention and other multilateral instruments directly in the absence of a bilateral agreement.
- Given that Lao PDR does not recognize the criminal liability of legal persons, it should also ensure that it would be able to render the required assistance in any future mutual legal assistance requests involving legal persons, in particular in matters related to corruption offences involving legal persons.

5. Competing priorities: While Lao PDR takes a position to promote international cooperation to the extent possible in accordance with article 118 of the Criminal Procedure Law, it also tries to align its cooperation with existing treaties where possible. A review of existing treaties to ensure their compliance with the Convention is needed.

(c) Technical assistance needs related to article 46

501. Lao PDR has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Capacity-building programmes for authorities responsible for mutual legal assistance are needed. Training and awareness raising of the existing and, in particular, the new mutual legal assistance procedures, once they are adopted, are needed. The central authority designated for this purpose under the draft mutual legal assistance law (Office of the Supreme People's Prosecutor) has a key role to play in ensuring that such coordination and awareness raising activities are conducted. Lao PDR could also benefit from further increase in capacity in terms of technologies and human resources.
2. Summary of good practices/lessons learned.
3. On-site assistance by a relevant expert, in particular with a view to enhancing interagency coordination and developing a case tracking system. Priority should also be given to developing a firm procedural process to handle mutual legal assistance cases (including through the adoption of relevant guidelines under the new mutual legal assistance law) and to ensure that competent authorities engage in consultations with requesting States and provide timely status updates and communication regarding ongoing requests. A review of the mutual legal assistance practice under the new framework to be adopted in the future (including with respect to issues such as requests involving legal persons) would also be useful.
4. Legal advice: As Lao PDR will continue to apply its existing bilateral and multilateral treaties even if the draft mutual legal assistance law is passed, it should ensure that future treaties comply with the requirements of the Convention. A review of existing treaties to ensure their compliance with the Convention is needed. Legal advice on ways to apply the Convention and other multilateral instruments directly in the absence of a bilateral or multilateral agreement would also be useful.

None of the forms of technical assistance has been provided previously.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

502. There is no law, treaty or practice on the transfer of criminal proceedings. No cases involving the transfer of criminal proceedings to or from Lao PDR were reported by the judiciary. No information was available as to how a transfer of proceedings would be handled in the future, as there has been no law or practice in this regard.

(b) Observations on the implementation of the article

503. Judges, prosecutors and officials in the judicial process of Lao PDR are encouraged to consider the possibility of transferring criminal proceedings in cases where it would serve the proper administration of justice, for example where substantial evidence in a case is located in another country.

Article 48 Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

504. Lao PDR referred to the coordination mechanisms between member countries of ASEANAPOL and INTERPOL. Officials reported that in actual practice relevant authorities of Lao PDR have exchanged information through available mechanisms, including ASEANAPOL's database and INTERPOL channels. Lao PDR has cooperated with ASEANAPOL and INTERPOL to prevent crime across national borders, including exchange of information on offenses, identification of information, coordination of investigation, and other issues.

505. ASEANAPOL member countries coordinate through coordinated points in each country and the ASEAN Secretariat by using the ASEAN electronic police database (eADS) and other communication equipment. eADS was designed to be applied in 10 ASEAN countries as a channel for information exchange on offenses, including information relevant to lost passports and vehicles. Communication has also been made through other means, such as by telephone, fax, email and through diplomatic channels. INTERPOL member countries coordinate through INTERPOL offices that are coordinated points in each country and through INTERPOL's database I-24/7. Coordination is implemented 24 hours a day.

506. Lao PDR police has coordinated directly multilaterally through ASEANAPOL and INTERPOL. These frameworks of cooperation are the basis for direct cooperation between Lao PDR police and other countries' police. Government agencies such as the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Public Security, Supreme People's Prosecutor's Office, Bank of Lao PDR, Government Inspection Authority and others have cooperated with law enforcement agencies in other countries.

507. Lao PDR further reported on cooperation through the South East Asia Parties Against Corruption (SEA-PAC) mechanism. SEA-PAC is the primary forum for member countries' organizations to consult and exchange preliminary information in corruption matters. It was reported that institutions in Lao PDR, including GIAA, Customs and others, cooperate through the SEA-PAC mechanism. Regarding the modalities of

cooperation under SEA-PAC, each member country has signed a Memorandum of Understand containing the following brief contents:

- Exchange of information, providing information and mutual coordination to prevent and fight corruption;
- Cooperation in official training and expert exchanges;
- Technical assistance as needed;
- Hosting and attending consultation meetings, seminars and regional meetings on preventing and fighting corruption;
- Establishing secretariats and encouraging SEA-PAC's movement.

508. Law enforcement agencies of Lao PDR, especially the Lao PDR police, have established bilateral treaties with neighboring countries, including Vietnam, China and Cambodia. Where no law enforcement treaties are in place, Lao police have also applied existing mutual legal assistance treaties to cooperate with other police agencies. No information was available as to whether Lao PDR police could use the Convention as a legal basis for direct law enforcement cooperation.

509. No cases were reported where Lao PDR police have sent or received liaison officers from/to other countries.

510. There was no information as to the use of modern technology in investigations, although Lao PDR police cooperate through electronic channels and using the databases of INTERPOL and ASEANAPOL.

511. INTERPOL officials in Lao PDR provided the following case example not involving corruption offences:

Case of Transfer of a South Korean Citizen

On 14 March 2009, the police of South Korea sent an official letter to the police of Lao PDR through diplomatic channels to request Lao PDR to detain Mr. Choung Nakguang, a South Korean businessman, in the case of swindling citizen's property. After consideration and according to articles 117 through 119 on international cooperation of the Criminal Procedure Law of Lao PDR, Lao police detained Mr. Nakguang on 15 September 2009. After coordination with South Korean police, Lao PDR sent this offender to South Korea on 29 March 2010. In this transfer, even though there was no mutual agreement or extradition treaty in place between Lao PDR and South Korea, the two sides signed a memorandum of mutual assistance and cooperation.

They also cited the extradition case involving Chinese offenders (quoted under paragraph 1 of article 44 above), as this was received through direct law enforcement channels.

(b) Observations on the implementation of the article

512. While Lao PDR police have communicated and cooperated through ASEANAPOL and INTERPOL to prevent and combat crime across national borders, including exchange and identification of information on offenses, coordination of investigations, and other issues, no information was available on whether cooperation has included tracing the movement of proceeds/instruments of crime or property, or the provision of items/substances for investigative purposes. There was also no information given on

experiences in the exchange of information with other States concerning specific means and methods used to commit offences such as false identities, documents and other means.

513. Lao PDR police appears to have little experience in practice in cross-border investigations especially involving corruption. Communication channels could be strengthened, especially regarding specific means and methods of investigations and involving the use of technology. The exchange of personnel could also be strengthened, for instance through posting or receiving liaison officers in/from other countries.

514. Lao PDR law enforcement officials might also benefit from training or capacity building on how to strengthen law enforcement cooperation, which proceeds largely through INTERPOL and ASEANAPOL and through mechanisms of mutual legal assistance.

(c) Challenges related to article 48

515. There is limited capacity and experience on direct law enforcement cooperation.

(d) Technical assistance needs related to article 48

516. Lao PDR has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Other assistance: As indicated in the observations to this article, communication channels could be strengthened, and the exchange of personnel, as well as training or capacity building on how to strengthen law enforcement cooperation, are needed.

None of the forms of technical assistance has been provided previously.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

517. Lao PDR officials indicated that there is no specific legal authority that addresses the ability of law enforcement to conduct joint investigations, but that the police would proceed under article 118 of the Criminal Procedure Law, which covers international cooperation generally, or on the basis of direct law enforcement treaties and arrangements (including INTERPOL or ASEANAPOL).

The Criminal Procedure Law

Article 118. International Cooperation in Criminal Proceedings

International cooperation in criminal proceedings must carry 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 to 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 co-operation] 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.

518. Lao PDR police has never conducted a joint investigation with police another country.

(b) Observations on the implementation of the article

519. There has been no experience in the use of joint investigations with other countries. In the future, should a case arise where joint investigations are necessary or desirable, Lao PDR should ensure that clear procedures and guidelines are in place, including through adopting relevant agreements or arrangements with other law enforcement agencies.

Article 50 Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived there from.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

520. Lao PDR investigation authorities (as specified in article 23 of the Criminal Procedure Law), including GIAA and the police, explained that they are not precluded from using special investigation techniques, though this power is not specified in the law. Lao PDR has no bilateral or multilateral agreements for using special investigative techniques.

521. Article 39, paragraph 3, of the Anti-Corruption Law establishes the right of anti-corruption organizations to conduct investigations into corruption by using measures that are defined in the Criminal Procedure Law. The relevant provisions of the Anti-Corruption Law and the Criminal Procedure Law are set forth below.

Anti-Corruption Law

Article 39. 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:

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 organization 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 be removed, appointed, or have his job swapped;
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 organization at the central level, the principal governor, the city mayor, the chief of the 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.

Criminal Procedure Law

Article 23. Investigation Organisations

Investigation organisations have the following rights and duties:

1. To accept and record complaints regarding offences;
 2. To immediately report to the public prosecutor regarding offences;
 3. To issue an order to open investigations, and send a copy of the order to the public prosecutor immediately;
 4. **To proceed to investigate;**
 5. To use coercive measures as provided in the laws, as well as to release any suspect who was detained, and to report in writing to the public prosecutor;
 6. To appeal against the orders of lower-level public prosecutors to higher-level public prosecutors;
 7. To summarize the investigation and prepare a case file to be submitted to the public prosecutor.
- In the exercise of such rights and the performance of such duties, the investigation organisations shall carry out their activities within the scope of their authority as provided in the laws.**

522. There are no clear guidelines on the use of special investigative techniques, and officials in the judiciary and investigation agencies of Lao PDR indicated a need to define the ability and limitations on the use of special techniques clearly in the law, as well as the admissibility of such evidence.
523. Lao PDR police indicated that it has conducted surveillance or undercover operations in criminal cases generally, but never in corruption cases.
524. Regarding the admissibility of such evidence in criminal proceedings, officials at the Supreme Court reported that evidence derived from special investigative techniques and electronic evidence could be admitted on a case by case basis subject to examination by the court and authentication to verify its genuineness, provided the court determines that the evidence was legally obtained and the technique employed was permissible. Supreme Court officials further reported that evidence from special investigative techniques is not directly admissible but can be used as an element of the case, in order to build direct evidence. It was explained that the general rules on evidence would be used, and that there is a need to amend the Criminal Procedure Law in this regard.

The Criminal Procedure Law

Article 19. Evidence

Evidence in a criminal case are facts which demonstrate the existence or non-existence of acts which are dangerous to society, the guilt of the individual conducting those acts and other circumstances which are useful for a proper consideration of the case.

Article 20. Types of Evidence

Evidence in criminal proceedings consists of:

- Physical evidence;
- Documentary evidence;
- Evidence from persons.

Physical evidence is derived from material items relating to the offence, such as guns, knives, fingerprints, bloodstains, and other materials.

Documentary evidence is derived from letters, reports of the investigation, reports of the activities of the people's courts, accounts, drawings, sketches, photographs, and other documents relating to the offence.

Evidence from persons is derived from the testimony of suspects, accused persons, or defendants, the testimony of witnesses or injured parties, the identification and confirmation of the offender, and opinions of experts relating to the offence.

The evidence mentioned above includes evidence to prove guilt that confirms that the accused person or defendant committed the offence, and evidence to prove innocence that confirms that the accused person or defendant is innocent.

In criminal proceedings, [concerned persons] shall seek both evidence to prove guilt and evidence to prove innocence.

Article 21. Examination and Evaluation of Evidence

The people's courts, public prosecutors, interrogators, and investigators shall examine, weigh, and evaluate evidence based on a comprehensive, thorough, and objective consideration of the case and with confidence.

In the examination and evaluation of evidence, if the evidence indicates doubt whether the accused person or defendant committed the offence, such person must be released from charges.

Criminal proceedings should not mainly take into account the admission of the accused person or defendant but should seek additional evidence to prove the guilt of such [persons]. Even if the accused person or defendant denies or does not admit [such guilt], if there is strong and reliable evidence, he [may be] regarded as the wrong-doer.

525. No cases involving special investigative techniques were reported.

(b) Observations on the implementation of the article

526. It is unclear whether special investigative techniques may be employed, given the lack of clear regulations and guidelines and the lack of substantial experience. While it was explained that such techniques have been employed on a limited basis in the past, Lao PDR should consider clearly defining the power to conduct such investigations and limitations on use in its law. Importantly, clear rules on the admissibility of evidence, including electronic and evidence from special investigative techniques, are needed, as the provisions on evidence in the Criminal Procedure Law do not allow for the admissibility of such evidence.

(c) Challenges related to article 50

527. Lao PDR has identified the following challenges and issues in fully implementing the article under review:

1. Inadequacy of existing normative measures (constitution, laws, regulations, etc). Officials in the judiciary and investigation agencies indicated a need to clearly define the power to conduct such investigations and establish clear rules on the admissibility of evidence, including electronic and from special investigative techniques. Clear guidelines on admissibility of evidence are needed, and there is a need to amend the Criminal Procedure Law in this regard.

2. Limited capacity: investigative agencies and the judiciary could benefit from further increase in capacity in terms of the ability to conduct special investigative techniques and admissibility of such evidence.

(d) Technical assistance needs related to article 50

528. Lao PDR has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Law reform/model laws and agreements.
2. Summary of good practices/lessons learned.
3. Capacity building for relevant institutions

None of the forms of technical assistance has been provided previously.