

CRIMINAL PROCEDURE LAW

Part 1- General Principles

Part 1 of the Law lays down general principles. Article 4 states that only a court could adjudge a criminal case. No person shall be deemed to be an offender and be punished unless upon the order of a court. Article 5 lays down that judges and layman jurors should act independently and in accordance with the law.

Under Article 6, a case in a Court of First Instance is tried by one judge and two laymen jurors. Laymen jurors have the same rights as judges. This means that the jurors are in effect judges and constitute a majority of the Bench.

Article 10 provides for public hearings except when matters of secrecy of the State and family matters are involved and when the accused is less than 16 years of age. But the judgment shall be pronounced in public. It so happens sometimes that a public trial may prejudice the interests of justice. For example, a woman who has been raped may not come out with the truth if she has to give evidence in public. Article 14 of the ICCPR provides that the press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society or when the interest of the private lives of the parties so requires or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. A similar provision may be included.

No person may be arrested or imprisoned without an order of the Public Prosecutor or a court, except when an offence is committed within sight or in urgency (Article 11).

A criminal case is to be adjudged on the basis of equality before the law. The rights of an accused as laid down by law is guaranteed. In recording statements from accused persons or others, the use of threats, physical violence etc. is prohibited.(Article 12).

Part II - Rights and Obligations of Participants in Criminal Proceedings

A feature of the criminal process in Lao PDR is the right of civil plaintiffs and civilly liable persons to participate in criminal proceedings. A civil plaintiff is a person who has filed a civil suit against the accused or against a person civilly liable for an act of the accused (in respect of the act in question, although this is not explicitly stated), and has the same rights as an injured party. Civilly liable persons may be parents, guardians or an institution which is liable for losses caused. (Article 17).

Rights and obligations of accused are set out in Article 18. Among the obligations is the obligation to explain or make additional statements in response to the charge. This is inconsistent with Article 14 (3) (g) of the ICCPR which provides that no accused person may be compelled to testify against himself or to confess guilt. The right to silence is basic to a fair procedure. Of course, if the accused does not provide an explanation to matters that only he could explain, such as how he came by stolen property soon after a

theft, a court may draw an inference against him. The law needs an amendment to bring it in line with the ICCPR.

Part III - Investigation of Offences

The Lao Women's Union states that in practice, questioning of witnesses, especially by village authorities, takes place in public. This may affect a proper investigation of the crime. Witnesses may not wish to reveal all what they know in public. Also, women victims, especially in cases of sexual offences, may be reluctant to reveal all what they know in public. A provision that interrogation of witnesses, victims and even accused should be done in private may be included.

Article 46 deals with detention of persons to facilitate an investigation. For this Article to apply, there need not be a reasonable suspicion against the person who is detained. A person may be detained for a period of three days for the purpose of investigation. Such detention must be reported to the Public Prosecutor within 24 hours. If there is no basis for the issuance for an order to investigate, the person shall be released immediately and the Public Prosecutor informed. If there is a basis for the issuance of an order to investigate and further detention of the person in prison (i.e. remand or fiscal custody) is deemed necessary, a request has to be made to the Public Prosecutor for an order of detention. The Public Prosecutor shall decide whether to release the person or to issue an order for further detention in prison within 24 hours of the request.

Article 47 deals with arrests. An arrest, except when the offence is committed within sight or in case of urgency, must be on an order of the Public prosecutor or a court. In ordering an arrest the criteria that are followed are whether the offence is punishable with deprivation of personal liberty, sufficiency of evidence, whether the suspect would flee or destroy evidence, hurt the injured party or witnesses, commit further offences and the suspect's own safety.

The investigator shall inform the Public Prosecutor of every arrest within 24 hours. Within 48 hours, the suspect's statement shall be recorded and a decision taken whether he should be released or further detained in a prison. An order must be obtained from the Public Prosecutor not only for further detention but also for release. Upon a request for release or further detention being made, the Public Prosecutor shall make an order within 24 hours.

A suspect who is arrested shall not be beaten or tortured. Relatives or the workplace of the suspect shall be informed of the arrest within 48 hours but not if such notification would affect the case.

Article 48 is about arrests without an order for arrest. A person who commits an offence within sight may be arrested. A person who is suspected of having committed an offence may be arrested without an order if he has a questionable record, has no fixed abode or is fleeing.

Under Article 50, a suspect may be further detained in prison on an order from the Public Prosecutor or court for a period of 3 months, if the criteria set out in Article 47 apply. The Public Prosecutor may extend this period by additional periods of 3 months at a time, but the total period in prison shall not exceed one year. A suspect detained in Prison may be released on bail if the Prosecutor or the court is satisfied that he will not flee, not destroy evidence, not commit further offences, not cause hurt the injured party and that the suspect will not be caused hurt.

Article 53 of the Law provides for keeping a suspect or accused under house arrest on an order from the investigating officer, Public Prosecutor or a court.

The above provisions thus provide for a suspect to be in the custody of an investigator for 3 days and for further detention in Prison up to one year.

The following inconsistencies with the ICCPR are found:

- (a) Article 9(1) of the ICCPR guarantees freedom from arbitrary arrest and detention and Article 9(2) provides that any person arrested shall be informed, at the time of arrest, of the reasons for his arrest and to be promptly informed of any charges against him. These provisions are designed to prevent the arrest and detention of persons against whom there is not even a reasonable suspicion and are in accord with a basic tenet of criminal law. Ordinarily, preventive custody is permitted only in times of emergency and that too if there is reason to believe that the person may commit a serious crime. But Article 46 of the Criminal Procedure Code would permit the arrest and detention of a person against whom there is not even a suspicion, let alone a reasonable suspicion. The provisions need to be suitably amended.
- (b) Article 9(2) of the ICCPR requires that any person arrested shall be informed, at the time of arrest, of the reasons for his arrest and to be promptly informed of any charges against him. A similar provision is not found in the Law. Article 47 needs to be accordingly amended. When a person arrested is told of the reason for his arrest, he could, depending on the circumstances of the case, show that he is not the person the Police wanted to arrest, show that he cannot be the person who committed the offence in question or simply produce evidence that he is innocent.
- (c) Article 9(3) of ICCPR provides that a person arrested or detained on a criminal charge shall be brought before a judge or other officer authorized by law to exercise judicial power. This means that any further detention should be on an order made by such judge or officer exercising judicial power. The Law provides for further detention in prison on the authority of the Public Prosecutor who is not vested with judicial power. This is unsatisfactory. Any detention in Prison should only be on the order of a court. Further, any person arrested must be brought before a court, if not released after the period of initial detention permitted by law. This permits a suspect to complain to court if he has been tortured or if a confession has been extracted from him etc. He could also complain that his detention is illegal etc. Judicial supervision is thus ensured. Article 51 of the Law provides for the Public Prosecutor to grant bail. The grant or refusal of bail is essentially a judicial function and should thus be a matter for court. Also, the

- present provision can lead to corruption as has happened in other countries. The present provisions need to be accordingly amended.
- (d) Under Article 50 read with Article 47, a person suspected of committing any offence punishable with imprisonment can be detained in Prison up to one year. Under Article 9(3) of the ICCPR, detention pending trial should not be the general rule. In many countries long periods of detention are permitted only for serious crimes. The offences in respect of which long periods of detention is permitted should be narrowed down.
- (e) House arrest too should be only on the order of a court and only for the purpose of investigating a serious crime and when there is reasonable suspicion about the person concerned, if the law is to be consistent with Article 9 of the ICCPR.

Part IV- Proceedings in Courts of First Instance

The Law does not contain sufficient provisions relating to the conduct of the trial. In fact, all the trial provisions are found in just one section, Article 63.

The following are the inconsistencies with the ICCPR:

- (a) Article 14(3)(a) of the ICCPR requires the accused to be informed promptly and in detail, in a language which he understands, of the nature and cause of the charges against him. To ensure this, there have to be provisions relating to charges. The date, place and manner of committing the alleged offence/s need to be stated precisely, if the accused is to have a fair trial. When several offences are alleged, there must be separate counts. The charges need to be explained to the accused in a language that he understands and he should be entitled to a copy of the charge sheet.
- (b) If there is to be a fair trial as required by Article 14 of the ICCPR, the accused should have the opportunity to defend himself. For this, the order in which witnesses would be called to testify is important. The case for the prosecution has to be presented first and then, the accused given an opportunity to present his case. If the prosecution needs to present fresh evidence in rebuttal, that could be done with permission of court. The Law does not contain provisions in this regard. Also, there must be specific provision that an accused should the right to obtain the attendance and examination of any witnesses on his behalf under the same conditions as witnesses against him. This is a requirement under Article 14(3)(d) of the ICCPR. The Law needs to be accordingly amended.
- (c) The Law states in Article 63 that additional questions may be put to witnesses with the approval of court. A senior official from the Office of the Public Prosecutor told the writer that in practice, an accused is not permitted to put questions to a witness. When told that the best way of ascertaining whether a witness is telling the truth is by subjecting him/her to cross-examination, his response was that the Public Prosecutor goes through the material available very carefully and that the accused's interests are well looked after. It is hard to see how a prosecutor, who is the authority that leads the prosecution in court, asking

the court to find the accused guilty, would look after the interests of the accused. An accused should have the right to cross-examine witnesses for the prosecution, as required by Article 14(3)(e) of the ICCPR. Of course, the prosecution will have a similar right regarding any witness called by the accused.

- (d) A reading of Article 63 the Law shows that questions may be put to the accused. To ensure a fair trial and if the accused is not to be compelled to testify against himself or confess guilt (Article 14(3)(g) of ICCPR), there needs to be a provision that the accused has a right to silence. If the accused elects to give evidence from the witness box, on oath or affirmation, he would be liable to be cross-examined. In English law, if he decides only to make a statement from the dock, he cannot be cross-examined but the value of what he has stated will be lower as he has not submitted himself for cross-examination.
- (e) Article 14 of the ICCPR speaks of a fair trial. Article 14 (3) (d) requires legal assistance to be provided when the interests of justice so require. In many countries, free legal assistance is provided at least in the case of serious crimes. A similar provision needs to be included.

Part V- Revision etc.

Part V deals with applications for revision (cassation?). Article 68 states that an accused or his representative may request a reconsideration of a decision. The Public Prosecutor may also file an appeal. Other parties such as civil plaintiffs and civilly liable parties may also request a reconsideration of the judgment.

The senior official from the Office of Public Prosecutor informed the writer that in practice, an accused makes an application to the Public Prosecutor for the latter to file an appeal. According to the official, if the Public Prosecutor takes the view that the judgment of the court of first instance is correct, the same matter is referred to the same court for reconsideration, but if the Public Prosecutor is of the view that the judgment is wrong, an appeal would be made to the higher court, that is the Supreme Court in the case of a judgment of a Provincial Court and the Provincial Court in the case of a judgment of a District Court.

Article 73 permits the reception of new evidence in the course of the hearing of an appeal. It may be specifically mentioned that the accused has the right to cross-examine a witness so produced.

Article 74 states that a lesser sentence may be imposed in appeal but that the sentence imposed by the court of first instance shall not be increased.

Part VI deals with enforcement of judgments and Part VII with mentally retarded offenders and offenders addicted to alcohol and drugs while Part VIII deals with appeals.

Article 14(7) of the ICCPR provides that no person shall be tried or punished for an offence for which he has already been finally convicted or acquitted. A similar provision is not found in the laws of Lao PDR. This is an inconsistency.

CERD

There are no apparent inconsistencies with CERD.

CEDAW

There are no apparent inconsistencies with CEDAW.

Convention on the Rights of the Child

Article 37 of the CRC deals with the rights of children who are deprived of personal liberty. Article 40 lays down the minimum guarantees for children accused with a crime. If the Law is amended, as recommended above, to be consistent with the ICCPR, it would, by and large, be consistent with the CRC as well.

There are a few rights recognized by the CRC but which are not found in the ICCPR. Article 37(a) of the CRC states that the arrest, detention or imprisonment of a child shall be only as a measure of last resort and for the shortest appropriate period of time. Under Article 37(b), the needs of a person of his or her age should be respected. Article 37(c) provides that a child deprived of personal liberty shall be separated from adults unless it is considered to be in the child's best interest not to do so and such a child has a right to maintain contact with the family. Article 40(vi) provides that a child accused of a crime shall have the free assistance of an interpreter if the child cannot understand or speak the language used. These and other requirements of the CRC may be guaranteed by formal statements in the law or by appropriate instructions, in accordance with the law, to judges and officials in charge of prisons and other places of detention.