



LAO PEOPLE'S DEMOCRATIC REPUBLIC
PEACE INDEPENDENCE DEMOCRACY UNITY PROSPERITY

National Assembly

No. 34/PO

DECREE
of the
PRESIDENT
of the
LAO PEOPLE'S DEMOCRATIC REPUBLIC

On the Promulgation of the Amended Law on Criminal Procedure

Pursuant to Chapter 6, Article 67, point 1 of the Constitution of the Lao People's Democratic Republic regarding the promulgation of the Constitution and of laws adopted by the National Assembly;

Pursuant to Resolution No. 01/NA, dated 15 May 2004, of the National Assembly of the Lao People's Democratic Republic regarding the adoption of the Amended Law on the Criminal Procedure; and

Pursuant to Proposal No. 13/NASC, dated 24 May 2004, of the National Assembly Standing Committee.

**The President of the Lao People's Democratic Republic
Decrees That:**

Article 1. The Amended Law on the Criminal Procedure is hereby promulgated.

Article 2. This decree shall enter into force on the date it is signed.

Vientiane, 14 June 2004

The President of the Lao People's
Democratic Republic

[Seal and Signature]

Khamtai SIPHANDON



LAO PEOPLE'S DEMOCRATIC REPUBLIC
PEACE INDEPENDENCE DEMOCRACY UNITY PROSPERITY

National Assembly

No. 01/NA
15 May 2004

LAW ON CRIMINAL PROCEDURE

Part I General Provisions

Article 1. Purpose

The Law on Criminal Procedure defines principles, regulations, and measures on criminal procedure aiming to deal with criminal cases correctly and with justice, to eliminate and prevent offences¹, to protect the legitimate rights and interests of citizens, to ensure social security and public order, and to create conditions for the multi-ethnic people to participate in the protection and development of the nation.

Article 2. Criminal Proceedings²

Criminal proceedings [refers to] the process whereby investigators³, public prosecutors⁴, the people's courts and other parties participating in the

¹ The term "offence" is used here, as in the Penal Law, to refer generally to criminal acts. There are three levels of such criminal acts as set out in Article 7 of the Penal Law.

² In Lao, the same word is used to represent the related concepts of "procedure", "process", "proceedings", and "case". The translators have chosen what they believe to be the most appropriate alternative based on the context of usage but readers should bear in mind the possible alternative meanings that might have been intended.

³ The Lao word for "investigation" is a compound word: "investigation-interrogation", where investigation has the sense of inquiries through means other than the questioning of witnesses. Since the English word "investigation" does not connote a similar exclusion or carve-out, the translators have translated the compound word (and its variants) simply as "investigation".

⁴ The term "Public Prosecutor" has been chosen because it is the English term commonly used in Laos for this title/institution. Readers from common law jurisdictions should note that the Lao Public Prosecutor has considerably more powers than public prosecutors in their home jurisdictions and is more akin to a procurator in socialist systems. Another translation in common use is "People's Prosecutor". Readers should also note that the term is principally used to refer to the "office" or "organisation" of public prosecutors rather than to refer to individual prosecutors. Where the context of a literal translation does not clearly indicate which of these two meanings is intended and it is clear from the original that the office is intended, this translation shall use the term "the [Office of the] Public Prosecutor". Here, the reference is to the individual, not the office. Readers may wish to refer to the Law on Prosecutors for more information on this institution.

criminal process search out wrongful acts urgently, completely, and thoroughly in order to subject offenders to proceedings, to ensure the correct application of the laws, [to ensure] justice, to not allow offenders to escape punishment, and to avoid punishing those who are innocent.

Article 3. Necessity for Criminal Proceedings⁵

If any investigator or public prosecutor finds traces of any offence, [he] shall open an investigation⁶ within the scope of his⁷ jurisdiction⁸, [and] use investigative and coercive⁹ measures as provided in the laws in order to search out offences and offenders and then prosecute¹⁰ such offenders in court for their punishment to be decided according to the laws.

Article 4. Causes Leading to the Dismissal of Criminal Cases

Causes which will not lead to the opening of an investigation or which will lead to the discontinuation of criminal proceedings are as follows:

1. Non-existence of the incident [which was alleged to constitute] the offence;
2. Lack of components of an offence;
3. Expiration of the limitation period for commencing criminal prosecution;
4. Pardon is granted;
5. A child who is under fifteen years old commits an act that endangers society. In this case, the child will be sent for re-education;

⁵ “Necessity” appears to be directed at the investigator and public prosecutor and connotes that they have duty to conduct proceedings if they find any trace of an offence.

⁶ The term “open an investigation” is the term for starting or commencing an investigation.

⁷ Readers should note that the Lao language does not distinguish between genders in pronouns. In this translation, a reference to a gender is a reference to all genders, unless the context requires otherwise. The translators’ decision to use the male gender was made in the interests of simplicity and consistency.

⁸ In the Lao language, the same word is used to represent the related concepts of “jurisdiction”, “authority” and “power”. Here, the translators have chosen “jurisdiction” as the appropriate translation because there is a strong implication of geography in the idea of the prosecutor’s scope of authority.

⁹ This may also be translated as “preventive” but in the context of this law, the measures described have strong assertive connotations and include the authority to use force. The translators have therefore chosen “coercive” as the more appropriate translation but readers should note the alternative meaning that might have been intended. Readers may refer to Part III, Chapters 3 and 4 for a description of lawful investigative and coercive measures.

¹⁰ Readers should be careful not to assume that certain words relating to procedure have the same meanings as in their home jurisdictions. In the Lao context, “prosecute” has a narrow meaning and refers only to that part of the proceedings for which the prosecutors are responsible. As judges are much more active in investigative and court proceedings, the word “prosecution” (and its variants) does not have the connotation of “the entire criminal proceedings” as it might in some other jurisdictions.

6. There is a mediation agreement between the injured party and the accused person, in a case where the wrongful act does not endanger society as provided in Article 22 of the Penal Law;
7. The injured party has not lodged a complaint or the injured party withdraws his complaint, in a case where the wrongful act is an offence as provided in Article 22 of the Penal Law;
8. Death of the offender;
9. There is an order to dismiss the case or there is a final decision¹¹ of a people's court regarding the same case.

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 arrest¹² or in the case of urgency. In the case when an arrest or detention contradicts the laws, or is a detention [or] deprivation of liberty¹³ beyond the period provided for in the laws or in a court decision, the public prosecutor¹⁴ shall issue an order to release [the arrested or jailed person] immediately.

Any individual who arrests, detains or conducts any search of buildings or persons¹⁵ 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.¹⁶

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.

¹¹ Readers may wish to refer to the Law on People's Courts and the Law on Judgment Enforcement for more information on when a decision of a court would be considered final.

¹² Literally "offence in the presence". This refers to an offence the commission of which is directly observed by anyone. The observer need not be an official.

¹³ The term "detention [or] deprivation of liberty" is the translation of a compound word in Lao that includes pre-sentencing detention as well as deprivation of liberty within the meaning of Article 29 of the Penal Law.

¹⁴ There is a connotation that this refers to the relevant prosecutor in charge of the case.

¹⁵ The translators are aware that the first paragraph refers only to building searches. The translators are also unable to resolve whether "person" in this paragraph is intended only to refer to "arrests" and "detains".

¹⁶ The term "others" is a literal translation and is not subject to further specificity.

Article 7. Guarantee of Right of Defence to Accused Person

An accused person has the right to defend the case. The accused person may defend himself or have a lawyer to provide him legal assistance.

The people's courts, public prosecutors, interrogators¹⁷ and investigators shall guarantee the right of defence in the proceedings to an accused person in order to protect his legitimate rights and interests.

The claimant¹⁸ 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.

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 9. The Right of the Courts to Adjudicate Cases

Only the people's courts have the jurisdiction to adjudicate a criminal case[;] no individual shall be deemed an offender or be punished criminally without a court decision.

Article 10. Collective Consideration of Case

Judicial tribunals of the People's Supreme Court, the appellate people's courts, the people's provincial or city courts, and the people's district or municipal courts consist of three judges, one of them taking on the role of presiding judge, and the other two as members [of the tribunal].

Only judges who are appointed in accordance with the laws may be assigned to judicial tribunals.

The decision of each tribunal must be reached by a majority vote.

The [deliberations]¹⁹ of judicial tribunals shall be secret.

¹⁷ See footnote 3. "Interrogator-investigator" is translated as "investigator" while "interrogator" refers to those authorised to question persons.

¹⁸ "Claimant" includes public prosecutors and civil plaintiffs.

¹⁹ Literally "consideration and decision". However, the words consideration and decision are wide enough to include sessions that, under Part IV of this law, are required to be public. The translators have therefore chosen "deliberations" as an appropriate translation.

Article 11. Independence of Judges

In considering and deciding a case, judges shall be independent and comply with the laws only.

Article 12. Language Used in Proceedings

Court proceedings must be in the Lao language. Persons who participate in the proceedings who do not know the Lao language have the right to use their own language or other languages through translation.

Article 13. Trial²⁰ in Open Court Hearing

All trials in the courtroom shall be conducted openly, except for cases that concern secrets of the State or society, the offences of individuals who are from fifteen years old but under eighteen years old, or some offences that concern the spousal relationship or customs and traditions²¹ that shall be conducted in [a] closed-door [hearing].

In all cases, the court's decision must be read out openly.

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.²²

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

²⁰ Readers from common law jurisdictions should note that the role of the Lao court as active taker or "investigator" of evidence is akin to that of civil law judges and that investigations by judges before the trial would constitute part of the "proceedings" in a "case". Where the Lao text makes a clear reference to a specific part of such proceedings (e.g., the investigation or the actual public hearing), specific words are used. In this translation, the words "trial" and "hearing" are used specifically to refer to those parts of the case that involve a "meeting of the judges with the participants" (which is the actual Lao term used). The word "trial" is used for such "meetings" at first instance or on appeal (to reflect the fact that the courts at these levels can consider evidence and facts). The word "hearing" is used for such "meetings" on cassation. Readers should note that these two English words are translations of the same Lao term.

²¹ Readers may wish to refer to Part VI of the Specific Part of the Penal Law for examples of offences against customs and traditions.

²² Lao has three different words for (i) "decision at first instance", (ii) "decision on appeal" or "at second instance", and (iii) "decision on cassation" or "on appeal from an appeal". Where the Lao text is not specific about the level of decision or proceedings, the terms "decision" or "decide" might be used without qualification. In addition, the terms "consider" and "adjudicate" are also used in a general sense (i.e., without distinguishing the level of the decision-making). Readers may wish to refer to the Law on People's Courts for information on the jurisdiction of courts. The term "instruction" is used to refer to directions of a court on matters collateral to the subject matter of the claim (e.g., an instruction that expert evidence is required). The term "order" is used to refer to decisions of a court that are rendered without a trial or hearing (e.g., an undisputed declaration of affiliation).

for National Construction, mass organisations, social organisations, enterprises, and citizens; concerned²³ 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.

Article 15. Recusal and Challenge

If a judge, public prosecutor, court clerk, interrogator, investigator, expert, or translator is a relative of, or has any interest in or conflict with, any party to the case, he shall recuse himself from the proceedings.

If such person does not voluntarily recuse himself, either party has the right to challenge such person [and require that he be] recused from the proceedings.

Article 16. Prohibition from Considering the Same Case Twice

A judge who is involved in the consideration of a criminal case once shall not be allowed to participate in the consideration of the [same case] a second time at any level of the people's courts, except as otherwise provided by the laws.

Article 17. Comprehensive, Thorough, and Objective Case Proceedings

The people's courts, public prosecutors, interrogators, and investigators must apply measures provided by the laws to ensure that the proceedings are comprehensive, thorough, and objective, with the aims of finding evidence to prove the guilt or to confirm the innocence of the accused person or defendant and of examining reasons to reduce or increase criminal liability.

In the taking of testimony from the accused person or defendant, or from individuals who participate in the proceedings, it is prohibited to use violence, force, threats, beating, or other unlawful measures.

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

²³ The term "concerned" means the individuals and organisations who have specific obligations under the decision.

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.

Part II

Evidence in Criminal Proceedings

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 circumstances²⁴ 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 materials²⁵.

Documentary evidence is derived from letters, reports of the investigation, reports of the activities of the people's courts²⁶, accounts²⁷, 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 confirmation²⁸ of the offender, and opinions of experts relating to the offence.

²⁴ Literally "incidents" or "happenings".

²⁵ "Materials" is used in sense of tangible things.

²⁶ As in civil law jurisdictions, judges may be tasked to investigate the case and may render reports.

²⁷ The term "accounts" is used in the sense of financial records.

²⁸ Identification occurs when a witness or other person physically identifies the offender. Confirmation connotes determining the identity of the offender without actually viewing the offender.

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.²⁹

Article 21. Examination and Evaluation of Evidence³⁰

The people's courts, public prosecutors, interrogators, and investigators shall examine, weigh³¹, and evaluate evidence based on a comprehensive, thorough, and objective consideration of the case and with confidence³².

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 account³³ 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]³⁴ regarded as the wrong-doer.

²⁹ Readers from jurisdictions where parties in court take oppositional stances may find this somewhat surprising. However, the criminal process in Laos is less oppositional and partisan.

³⁰ "Examination" is also sometimes translated as "consideration". "Evaluation" is also sometimes translated as "assessment". The translators have chosen the alternative that better reflects the gravity of criminal proceedings.

³¹ Literally "balance".

³² There is a connotation of "having confidence in one's own abilities".

³³ Literally "regard".

³⁴ The Lao language does not require that verbs include information as to tense. A literal translation would be in the present tense – he "is" regarded the wrong-doer. However, the context suggests that "may be" is the better translation.

Part III
Organisations [with Responsibility for] Criminal Proceedings
and Participants in Criminal Proceedings

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.³⁵

Article 23. Investigation Organisations

The investigation organisations are:

1. The investigation organisation of police officers³⁶;
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 sectors³⁷ 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;

³⁵ Here, the reference is to the “overall institution or organisation of the People’s Courts”, not to individual people’s courts. The translators have therefore translated this term as “the People’s Courts” (with initial capitals).

³⁶ Here, the intention is to refer to those persons within the police department who actually carry out investigation and interrogation work as a group (i.e., as an “organisation”).

³⁷ The word “sector” is often used, as it is used here, to refer to the cluster of government ministries or agencies responsible for a certain area.

³⁸ There is a connotation that this should be the “relevant” public prosecutor, depending on the gravity and location of the offence but this is not made explicit.

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;

³⁹ The quotation marks have been included and are not in the original.

⁴⁰ This has the formal connotation of being escorted by the police or an investigation officer with a warrant or summons.

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 prosecutors⁴¹.

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.⁴²

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.⁴³

⁴¹ As of the time of this translation, there is only one office of military prosecutors.

⁴² As of the time this law was promulgated, only the high military court has been established (see Part II, Chapter 5 of the Law on the People's Court). However, the translators have used the plural form in anticipation of other military courts being established (and the Law on the People's Court is drafted consistently with such anticipation).

Chapter 2

Participants in Criminal Proceedings

Article 27. Participants in Criminal Proceedings

Participants in criminal proceedings are as follows:

1. Accused or defendant;
2. Injured party;
3. Civil plaintiff;
4. Civilly liable party⁴⁴;
5. Witnesses;
6. Experts;
7. Translators;
8. Lawyers and protectors.

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 prosecution⁴⁵.

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;

⁴³ The translators are aware that military courts are not directly covered in the Law on the People's Court.

⁴⁴ Lao courts decide criminal cases and civil rights relating to the criminal case in the same proceedings. The "civilly liable person" here is a person (who may be the defendant or some other person) who has civil liability.

⁴⁵ See Article 40 of this law. An order to open investigations would not be required in those circumstances.

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.

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.

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.

⁴⁷ Literally "to fight".

⁴⁸ Literally "sees".

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, guardians⁴⁹, or users [of the accused or defendant]⁵⁰, [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;

⁴⁹ Readers may wish to refer to Part III, Chapter 3 of the Family Law for descriptions of these relationships.

⁵⁰ This is the literal translation of an informal term that includes employers and other persons who might use the accused or defendant to do some task whether pursuant to any formal relationship or not.

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.

Article 32. Witness

A witness is an individual who knows about [or] saw⁵¹ the incident constituting the offence or the circumstances of the case.

Persons who are deaf, mute, or incompetent⁵², 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 33. Expert

An expert is an individual who has knowledge and experience in a specific field and is recognized by a relevant competent institution, which makes him able to clarify issues relating to his field of expertise.

In verifying evidence, investigators, interrogators, public prosecutors, or the people's courts shall issue an order to appoint an expert.

The expert shall conduct the verification of evidence within the scope and the period provided in such order.

Experts provide their opinions on their own behalf and are liable for such opinions, and must also keep confidential information in the case confidential.

⁵¹ The term "knows about [or] saw" is the translation of a single Lao word that has both the meaning of "see" and "to know by other means".

⁵² The term "incompetent" is used in the sense of mentally disabled or incapable.

Article 34. Translators

A translator is an individual who has knowledge, ability, or experience in translating a language used by a participant in the proceedings who does not know the Lao language.

Translators shall be liable for their translations and have the obligation to keep confidential information in the case confidential.

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.

Part III Investigation of Criminal Cases

Chapter 1 Opening an Investigation in a Criminal Case

Article 36. Causes for Opening an Investigation

Causes for opening an investigation in a criminal case are as follows:

- 1 There is a claim or complaint regarding an offence from an individual or organisation. Such claim or complaint shall be submitted to an investigator or a public prosecutor;
- 2 The offender turns himself in;
- 3 Discovery of traces of an offence by an investigator or a public prosecutor.

During the examination and consideration, if the court finds evidence of a new offence, [it] has the right to request that an investigation be opened.

An investigation in a criminal case shall only be opened if there is sufficient information⁵³ demonstrating the components of an offence.

⁵³ The term “information” is used in this article and the next in the sense of a “report of information” or “statement of information”. However, the Lao original does not permit further specificity.

Article 37. Order to Open Investigation

In the case where there is sufficient information relating to the offence, the head of an investigation organisation, [or] a public prosecutor shall issue an order to open an investigation within the scope of their respective authorities. The contents of that order shall set out the date, time, and location of the issuance of the order, the name, surname, position, and title of the issuer and the investigator, the information [that is the basis] for opening the investigation, the location of the offence, and the relevant article of the Penal Law.

In the case where the investigator issues an order to open an investigation[, he shall] immediately report to the public prosecutor⁵⁴.

In the case where there is insufficient information to open an investigation or there is cause for the dismissal of the criminal case, the head of the investigation organisation or the public prosecutor shall issue an order not to open an investigation and shall also inform the individuals or organisations that have brought the claim or complaint of such order.

Parties on either the plaintiff's or the defendant's side can appeal to the public prosecutor against an order not to open an investigation by the head of an investigation organisation. Parties on either the plaintiff's or the defendant's side can appeal to a higher-level public prosecutor if such order not to open an investigation is issued by the public prosecutor, within seven days from the day they have been informed of such order.

Article 38. Monitoring and Inspection by the Public Prosecutor Relating to the Opening of an Investigation

The public prosecutor⁵⁵ has the duty to monitor and inspect⁵⁶ the adherence to laws in respect of the opening of an investigation.

In the case where the head of an investigation organisation has issued an order to open an investigation without sound legal information as provided in Article 37 of this law, the public prosecutor shall issue an order to cancel such order and dismiss the case.

In the case where the head of an investigation organisation has issued an order not to open an investigation without sufficient reason, the public prosecutor shall issue an order to cancel such order and shall issue an order to open an investigation by himself.

⁵⁴ There is a connotation that this is a "relevant" public prosecutor, but this is not stated.

⁵⁵ There is a connotation that this is a "relevant" public prosecutor with supervisory authority over the investigator, but this is not stated.

⁵⁶ In the Lao language, the same word is used to represent all of the following related (but slightly different) concepts: "control", "inspection", "supervision", "audit" and "monitoring". Here, the context suggests that two of the connotations of this Lao word are intended and have the translators have therefore included both: "monitor" and "inspect". Readers should note the other possible meanings intended.

Chapter 2 Investigation

Article 39. Activities of Investigators

Upon receipt of a credible⁵⁷ complaint regarding an offence or upon the discovery of any trace of an offence, investigators shall report to the public prosecutor⁵⁸ within 24 hours.

If it is an important case, the report shall be made immediately.

In the case where an offence requires urgent investigation, the head of the investigation organisation shall issue an order to open an investigation as provided in Article 37 of this law. At the same time, the investigators shall use investigative and coercive measures as provided in the laws.

When the investigation has been completed, if it is found that there is no credible evidence or there are other causes as provided in the laws to dismiss or suspend the case, the head of the investigation organisation shall issue an order to dismiss or suspend the proceedings and then report to the public prosecutor.

If reliable evidence is found to prove that the accused has committed an offence, the investigator shall make a summary of the investigation, and prepare a case file and exhibits, and send [them] to the public prosecutor.

Article 40. Direct Prosecution to the Court

When the offence is a minor offence or major offence for which the law defines a term of deprivation of liberty not exceeding three years, and if there is complete evidence⁵⁹, the investigator or interrogator may, as an alternative [to the usual procedure], send the case file together with exhibits and the accused person to the public prosecutor to directly prosecute such accused person in court without the need to open an investigation.

Article 41. Period for Investigation

The investigator shall proceed to investigate, summarize the investigation and prepare the case file together with exhibits, to send [them] to the public prosecutor within sixty days from date of the order to open an investigation.

If there is reliable information or traces but the investigation is not complete and there is a need to continue [the investigation], the public

⁵⁷ This word may also be translated as “sound”, “solid”, or “reliable”.

⁵⁸ In Parts III to X of this law, references to “the public prosecutor” typically have the connotation of “the prosecutor responsible for the case”.

⁵⁹ The idea is that the evidence is complete even without investigating.

prosecutor may extend the period for investigation for [periods of] two months [at a time] according to the request of the investigation organisation.

In the case where there is a return of the case file to the investigation organisation for additional investigation, the additional period for investigation shall not exceed sixty days from the date when the investigation organisation receives the case file.

In the case where there is a resumption of investigation into a suspended or dismissed case, the investigation shall be performed in accordance with the provisions of paragraph 1 and paragraph 2 of this article from the date of the order to resume investigation.

In authorizing or not authorizing an extension of the period for investigation, the public prosecutor shall issue an order in writing containing his reasons within forty-eight hours from the date [it has] received the request for extension.

Chapter 3 **Investigative Measures**

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 43. Taking Testimony

Taking of testimony from an accused person:⁶⁰

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:⁶¹

⁶⁰

This clause appears to be in the nature of a sub-title rather than a substantive provision.

Investigators and interrogators shall notify [witnesses, injured parties and civilly liable persons] of their rights and obligations, and shall warn them of their [legal] liabilities⁶² 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.⁶³

Article 44. Taking Testimony from Children under Eighteen Years Old, Deaf Persons, Mute Persons, and Insane and Mentally Ill Persons

In taking testimony from a child under eighteen years of age, a deaf person, a mute person, or an insane or mentally ill person, who is unable to exercise his rights, there shall be the participation of a protector, teacher, parent, guardian, or some other representative.

Article 45. Record of Testimony

Each time testimony is taken, the investigator or interrogator shall make a record.

The record of testimony must indicate: location, date, [and] time [when the testimony was taken;] the given name and surname, and the rank and title of the investigator or interrogator[;] the given name and surname, and a brief biography of the person giving the testimony[;] and others as provided for in the [standard] form.

Upon completion of the testimony, the investigator or interrogator must read the contents of the record of testimony to the person giving the testimony or allow the individual to read it by himself. Afterwards, all⁶⁴ the parties involved in the taking of testimony shall sign or affix their thumbprint on each page [of the record]. When taking testimony of a child under eighteen years of age, a deaf person, a mute person, or an insane or mentally ill person, the protectors shall be required to sign or affix their thumbprints on [the record of testimony] to certify such testimony.

If any word is crossed out or added to the record of testimony, the investigator or interrogator, the recorder, and the person giving the testimony

⁶¹ This clause appears to be in the nature of a sub-title rather than a substantive provision.

⁶² This includes liabilities of a penal nature.

⁶³ The “recorder” here is different from the “court clerk” referred to in Article 73 of the Law on Civil Procedure who records testimony in civil cases. In the Law on Civil Procedure, the investigation is conducted by a judge and recorded by his court clerk.

⁶⁴ Literally “together”.

have to sign and affix their thumbprints at the start of the line where the word has been crossed out or added.

In the event that the person giving the testimony does not agree to sign or affix his thumbprint, the investigator or interrogator shall make a note of this at the end of the record.

The record of testimony must be made in three copies⁶⁵: the original copy must be kept in the case file, the second copy shall be kept by the investigator or interrogator and the other copy shall be given to the person giving the testimony.

Article 46. Questioning in Confrontation⁶⁶

When the testimony [of several persons] do not conform [to each other], the investigator or interrogator has the right to question those persons in confrontation[;] each confrontation shall not involve more than two individuals. The record of the questioning in confrontation shall be performed in accordance with Article 45 of this law.

Article 47. Inspection of Incident Site

When searching for traces of an offence or for evidence, especially physical evidence, with the aim of making the circumstances of the offence clear, the investigator or interrogator shall inspect the incident site and gather material items⁶⁷, documents, and others relating to the offence.

The inspection of incident site may be made before or after the opening of an investigation. The inspection of an incident site shall be made during the day [at any time] from 6.00 a.m. to 6 p.m., except in necessary and urgent cases. When the inspection of incident site cannot be completed [by 6 p.m.], it shall continue until it is completed.

During the conduct of an inspection of incident site, at least two witnesses shall be present. When deemed necessary, public prosecutors and representatives of village administrations shall be invited to participate.

Investigators or interrogators have the right to bring accused persons and suspects, to request injured parties and witnesses, and to invite relevant experts to participate in the inspection of incident site.

⁶⁵ All three “copies” are signed. The top copy (in previous times when copies were made through the use of carbon paper) is regarded as the “original” or “authentic” copy. In current practice, there may be no longer be this distinction because copies are printed out and all signed.

⁶⁶ Readers from civil law jurisdictions will be familiar with this procedure.

⁶⁷ Material is used in the sense of tangible things.

In the inspection of incident site, the investigator or the interrogator shall make a sketch of the incident site, collect material items relating to the offence and traces of the offence, and take photographs.

Article 48. Inspection of Dead Body

The investigator or interrogator shall conduct an inspection of dead body at the location where the corpse is situated and it is required that at least two witnesses and a forensic specialist or other relevant expert participate in [such inspection of dead body]. When deemed necessary, public prosecutors and representatives of village administrations shall be invited to participate.

Article 49. Record of Inspection

During the conduct of an inspection of incident site or inspection of dead body, the investigator or interrogator shall make a record on the spot⁶⁸. The record [of inspection] shall indicate: the location, date, time of initiation, and time of termination of the inspection[;] the given name, surname, address, occupation, position, and title of the investigator, the interrogator, and other individuals participating in the inspection[;] the circumstances that are observed or that occur during [the inspection]⁶⁹[;] and the material items and other things seized by indicating the type, number, appearance, size, weight, and quality.

After making a record of inspection, making sketches, and reading out⁷⁰, all individuals participating in such inspection shall sign or affix their thumbprints⁷¹.

Article 50. Appointment of Experts to Conduct Verification

When it is deemed necessary to conduct a verification, specifically in cases where there is a death from unknown causes, a rape or there are doubts about the age or mental capacity of the accused person, the head of the investigation organisation or the public prosecutor shall issue an order to appoint a forensic specialist or other relevant expert to conduct the verification.

Such order shall state: the given name and surname of the forensic specialist or relevant expert, the issues to be verified, the time period for verification, [and] the rights and duties of the relevant [forensic specialist or other] expert.

⁶⁸ Literally “at the place”.

⁶⁹ Literally “at the time”.

⁷⁰ The text does not state what is “read out” but this is presumably a reference to the record of the inspection.

⁷¹ The text is silent as to whether these persons sign both the record and the sketches. In practice, both are signed.

The investigator or interrogator shall notify the accused person, the injured party, the civil plaintiff, and the civilly liable party of such order.

When the verification is complete, the expert⁷² shall summarize his opinions and send such summary to the investigator or the interrogator within the time period assigned.

Verification may be undertaken by one or several experts and several times[;] in re-verifying [any matter established by an expert], a larger number of experts is required.

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,⁷³ 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, barges⁷⁴ 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*⁷⁵, churches, and towers, shall have the participation of the head monk⁷⁶, the head priest⁷⁷, or the persons in charge or representatives of the concerned religious organisations.

⁷² Here, the reference is generic and is to either the forensic specialist or other expert.

⁷³ "honesty [and] good faith" is the translation of a Lao compound word with both meanings. An example of such demonstration of honesty and good faith is when the searcher allows the owner to check his bags in order to ascertain that he is not bringing any unauthorised thing into the house.

⁷⁴ This is a translation of a specific Lao word referring to flat-bottomed unpowered vessels made of bamboo that ply the waters.

⁷⁵ This is a Buddhist term referring to the boundary or territory within which the monastic sangha's formal acts (such as recitation or settling of disputes) must be performed in order to be valid.

⁷⁶ Literally "head of temple".

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 53. Search of Vehicles and Individuals

Search of vehicles such as: cars, boats or other vehicles which are suspected to conceal illegal objects or offenders, can be conducted at any time but must be in the presence of the owner of such vehicles.

The search of any person who is arrested, detained, or suspected of concealing objects can be conducted without an order [for such search].

Officials conducting searches shall be individuals who are of the same gender as the individual being searched.

The search of a female shall be conducted at enclosed premises.

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 record⁷⁸ 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

⁷⁷ Literally “head of church”.

⁷⁸ See explanation to Article 45. Here, there is no reference to an “original” or authentic copy, presumably because this article has been drafted to reflect current practice where carbon copies are no longer used.

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.

Article 56. Protection of Exhibits

An exhibit is an asset⁷⁹ 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 seal⁸⁰, 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 sector⁸¹.

Any individual who uses, damages, loses, exchanges⁸², or embezzles any exhibit shall be subject to penalties as provided in Articles 112 and 157 of the Penal Law.

⁷⁹ This includes both tangible and intangible things.

⁸⁰ This is an exact literal translation.

⁸¹ The term "sector" refers to the cluster of governmental agencies responsible for public security (i.e., the police).

⁸² Exchange means "to substitute something else for".

The list of exhibits shall accompany⁸³ the case file. The level⁸⁴ that the case file has reached is the level that has the authority to deal with the exhibits.

Article 57. Re-Enactment

Re-enactment is an act to verify the correctness of information [which] an investigator, interrogator, or public prosecutor may undertake by requiring the accused person or defendant to demonstrate his actions again. In re-enactment, injured parties or witnesses may be requested to demonstrate their actions again. The re-enactment [scene] shall be photographed, measured, and sketched.

Re-enactment shall be conducted in the presence of at least two witnesses and injured parties may also participate. If deemed necessary, the public prosecutor and relevant expert may also participate.

A re-enactment shall only be conducted if it does not endanger life, health, or the environment and does not cause damage to human dignity.

A record of re-enactment shall be made in accordance with Article 54 of this law.

Article 58. Identification and Confirmation

Identification is an investigative measure whereby a witness or injured party identifies the accused person or defendant [to be the person] whom he knows or saw commit the offence.

Confirmation is an investigative measure whereby a witness or injured party certifies an object relating to the offence or dead body that he knows about or has seen.

When necessary, the investigator, interrogator, or public prosecutor shall require witnesses, injured parties, suspects, or accused persons to identify individuals or confirm objects or dead bodies.

Before identification or confirmation, the person identifying individuals or confirming objects or dead bodies shall give testimony regarding the circumstances that he knows about or has seen, [and shall also] inform about the distinguishing features, appearance, and special characteristics of the individual, object, or dead body.

In identification of individuals, the individual to be identified shall be brought together with at least three individuals who have similar physical features, [and] the person identifying shall be brought to carry out the

⁸³ Literally “be sent together with”.

⁸⁴ The organisation that is conducting the relevant stage (or level) of the proceedings.

identification [in a way that] ensures the anonymity⁸⁵ and safety of such person.

In confirmation of objects, the objects to be confirmed shall be brought with at least three objects that have similar characteristics and are of the same type.

A record of identification or confirmation shall be made in accordance with Article 54 of this law.

Chapter 4 Coercive Measures

Article 59. Types of Coercive Measures

Types of coercive measures consist of:

- Issuance of warrants;
- Detention;
- Arrest;
- Remand;
- Pre-sentencing release;
- Pre-sentencing house arrest;
- Suspension of position or duties.

Article 60. Issuance of Warrants⁸⁶

In the event that a suspect, accused person, witness, civil plaintiff, or civilly liable person has received a summons three times, but failed to appear without any reason, the head of the investigation organisation or the public prosecutor will issue a warrant to bring such person [to appear].

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:

⁸⁵ Literally “secrecy”.

⁸⁶ Literally “to bring someone by warrant”.

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 defrock [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.

Article 64. Record of Arrest

In every case, an arrest shall be recorded to be used as evidence.⁸⁷

The record of arrest shall indicate: the given name, surname, rank, position, function, and office⁸⁸ of the investigator together with the given name, surname, age, occupation, rank, position, function, and address of the arrested person[;] the date, time, and location of the arrest[;] the charge, causes, information, and evidence leading to the arrest.

The record of arrest shall indicate: the name,⁸⁹ amount, type, quality, and distinguishing features and characteristics of objects that have been seized as exhibits and other objects which were on the body of the arrested person.

Materials items found on the body of the arrested person that are lawful shall be returned to his family in full and in the same condition, and, at the same time, a record of acknowledgment of receipt shall be made⁹⁰ in the presence of the arrested person. In the event that [such] material items found on the body of the arrested person are not in full or in the same condition, the officers in charge of the protection of such material items shall be criminally liable as provided in Articles 112 and 113 of the Penal Law.

Article 65. Remand

Remand is temporary detention for [the purpose of] investigations⁹¹ before a final decision of the court.

To remand, there must be a written order from the public prosecutor and [such remand] shall be based on the conditions provided in Article 62 of this law.

Persons remanded shall be detained separately from prisoners and shall be in appropriate conditions because such persons are regarded as innocent.

The period of remand shall not exceed three months from the date of the issuance of the order to remand. If it is deemed necessary to undertake further investigations, the public prosecutor may extend the period of remand for additional periods of three months at a time according to the request of the head of the investigation organisation, but the total period of remand shall not

⁸⁷ Simply, the record of arrest is put in the case file and forms part of the evidence in the case.

⁸⁸ Here, “offices” is used in the sense of “work premises”.

⁸⁹ E.g, the brand of the object.

⁹⁰ The family acknowledges receipt.

⁹¹ Common law readers may wish to note that “investigation” can continue even into a court hearing and may include investigation by judges.

exceed three months for minor offences⁹² and one year for major offences. If the remand continues beyond that period and there is insufficient evidence to prosecute [such person] in court, the public prosecutor shall issue an order to release [such person] immediately and to return lawful material items that were found on his body to such person in full and in the same condition by making a record of acknowledgement of receipt.

The period of remand shall be included when calculating the period of implementation of the penalty of deprivation of liberty.

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 liberty⁹³.

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 defendant⁹⁴ 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.

⁹² The term “minor offences” is used in the sense as defined in Article 7 of the Penal Law.

⁹³ Literally “from the outside”.

⁹⁴ The translators are aware that there is a slight inconsistency in the fact that “the defendant” is expressly mentioned here but not in the last clause of this paragraph or in some other paragraphs of this article.

Article 67. Pre-Sentencing House Arrest

A suspect or an accused person may be detained at his home or other premises, and forbidden from going out without authorisation from the investigator or the public prosecutor.

For pre-sentencing house arrest, there must be an order from the head of the investigation organisation or the public prosecutor [which order] shall define the conditions with which the person must comply at such place⁹⁵.

In the event that a suspect or an accused person breaches any regulation on pre-sentencing house arrest, [concerned officials] may use other more serious coercive measures.

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.

Chapter 5 Case Suspension and Case Dismissal

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.

⁹⁵ I.e., at his home or other premises.

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.

Article 70. Resumption of Suspended Case

When the cause for the suspension of a case ceases to exist and the limitation period for prosecution has not yet expired, the head of the investigation organisation or the public prosecutor shall issue an order to resume the suspended proceedings.

Article 71. Case Dismissal

Case dismissal is the termination of proceedings because of the following causes:

1. When there exists any cause set out in Article 4 of this law;
2. When there is insufficient evidence to prove that the accused person committed the offence.

In the event that there is a case dismissal, the public prosecutor shall immediately issue an order to release the accused person. The investigator, the interrogator and the public prosecutor shall immediately return lawful material items, including objects seized as exhibits, which are the property of the accused person.

There are two types of case dismissal:

- Dismissal of the case based on law;
- Dismissal of the case based on evidence.

Dismissal of the case based on law is the dismissal of a case as provided in point 1 of this article.

Dismissal of the case based on evidence is the dismissal of a case as provided in point 2 of this article.

Article 72. Re-Opening of a Case which has been Dismissed

Cases dismissed based on law cannot be re-opened.

Cases dismissed based on evidence can be re-opened.

Re-opening of a case that has been dismissed can only occur when there is new evidence and the limitation period for prosecution has not expired.

In re-opening a case that has been dismissed, the public prosecutor shall issue an order to cancel the order to dismiss the case and then shall issue an order to re-open the case.

Chapter 6
Rights and Duties of Public Prosecutors
in Monitoring and Inspecting
Adherence to Laws by Investigation Organisations

Article 73. Rights and Duties of Public Prosecutors

In the monitoring and inspection of adherence to laws by investigation organisations, the public prosecutor⁹⁶ has the following rights and duties:

1. To lodge a complaint, open an investigation and prosecute offenders, [and] to use measures to prevent an offender from being let off from the proceedings;
2. To monitor and inspect the adherence to regulations regarding investigations;
3. To monitor and inspect in order to ensure that individuals are not detained, arrested, or put in prison in contravention of the laws;
4. To strictly monitor and inspect in order to ensure that innocent persons are not punished;
5. To demand the criminal case file, documents, and other information relating to an offence from the investigation organisation for review;
6. To participate in investigations and, when it is necessary, to himself conduct investigations;
7. To cancel an order of the head of the investigation organisation that is in conflict with the laws or that is [not supported by] sufficient reasons;
8. To provide written instructions on investigations, search for offenders, the interpretation of an offence, [and] the use of investigative and coercive measures;
9. To issue warrants, orders to arrest, orders to detain, orders for building searches, and orders of pre-sentencing release;
10. To extend the period for investigation and the period of remand, as provided in this law;
11. To send the case file to investigators or interrogators together with instructions for additional investigation;
12. To order investigators or interrogators who breach the laws during the proceedings to cease investigation and to take legal action against such persons if the breach constitutes an offence;

⁹⁶ This is a reference to an individual prosecutor and has the connotation of the public prosecutor responsible for the case.

13. To suspend and dismiss cases in accordance with the causes provided in Articles 69 and 71 of this law;
14. To exercise such other rights and perform such other duties as provided by the laws.

Article 74. Opinions of the Public Prosecutors

The public prosecutor shall study the case which he has received from an investigation organisation or interrogator no later than fifteen days⁹⁷ from the date he receives the case file and shall issue any of the following orders:

1. If it is deemed that the investigation of the case is still incomplete, the public prosecutor shall send the case file back to the investigation organisation or interrogator together with his written instructions for additional investigation;
2. If it is deemed that there is any cause for suspension of the case, as provided in Article 69 of this law, the public prosecutor shall issue an order to suspend the case;
3. If it is deemed that there is any cause for dismissal of the case, as provided in Article 71 of this law, the public prosecutor shall issue an order to dismiss the case;
4. If it is deemed that any investigative or coercive measure that the investigator or the interrogator has used is not appropriate for the circumstances of the case, the public prosecutor has the right to modify, nullify, or cancel such measure;
5. If it is deemed that there is sufficient information and evidence, the public prosecutor shall issue an order to prosecute the accused person in court.

Part IV Proceedings in the Court of First Instance⁹⁸

Article 75. Acceptance of the Case for Consideration

The court shall accept a criminal case for consideration only when there is an order for a prosecution from the public prosecutor. The court shall consider such case within one month from the date it receives such order from the public prosecutor.

For direct prosecutions as provided in Article 40 of this law and for cases relating to minor offences, the court shall consider and decide the case within fifteen days from the date it receives the prosecution order from the public prosecutor.

⁹⁷ The meaning here is that the public prosecutor must commence review of the file within this time.

⁹⁸ Readers should note that, throughout this law, the reference to a “court of first instance”, a “court of second instance” or a “court of cassation” is not a reference to any specific court but to the jurisdiction which a court is exercising in a particular case. E.g., a people’s provincial court may be a court of first instance for certain purposes and a court of second instance for other purposes.

Article 76. Consideration of the Case by the Court

After receiving the case file from the public prosecutor, the president of the court assigns one judge to review the case and then to submit it to the president of the court to decide as follows:

1. To send the case file back to the public prosecutor for additional investigation if it is deemed that the investigation is yet incomplete;
2. To send the case file back to the public prosecutor to issue additional orders for prosecution if it is deemed that there are other offences or other individuals [not covered in] the prosecution order which was sent to the court;
3. To determine the time for the court hearing if it is deemed that the investigation has been conducted correctly and completely.

Article 77. Court Measures

In court proceedings, the court has the right to use investigative and coercive measures as provided in Articles 42 to 68 of this law.

Article 78. Case Hearings at the Court of First Instance

Case hearings at the court of first instance shall be made directly, verbally, openly or in closed sessions⁹⁹ in certain cases, with debate [by the parties], continuously and before the same judicial tribunal.¹⁰⁰

The presiding judge of the judicial tribunal has the duty to lead the trial in an impartial manner.

After a trial is declared open, the presiding judge must announce [the following matters:] the names of the members of the judicial tribunal, the public prosecutor, and the court clerk[;] the case to be considered, the right to request recusal of the entire judicial tribunal, any member of the judicial tribunal, public prosecutors, court clerks, experts, and translators[;] and the rights of the litigants and the participants in the proceedings. If there is any modification in the judicial tribunal because of a request for recusal, the judicial tribunal shall [declare] a temporary recess for the court to consider and make a decision regarding such matter.

After this, the presiding judge of the judicial tribunal asks for the biography of the defendant, [and asks that the defendant be informed of] the order of prosecution of the public prosecutor and the charges.¹⁰¹

⁹⁹ Literally “in secret”.

¹⁰⁰ Literally “without any changes in the judicial tribunal”.

¹⁰¹ The “asking” is in open court.

Thereafter, the judicial tribunal shall hear the statement of the injured person or civil plaintiff, the defendant, the civilly liable party, lawyers, witnesses, and other participants in the proceedings.

During a trial, the litigants and participants in the proceedings, the public prosecutor, and the judicial tribunal have the right to ask other participants in the proceedings additional questions with the approval of the presiding judge. The judicial tribunal shall bring exhibits and evidence of the case to the courtroom and shall open the debate.

When the debate has ended, the judicial tribunal shall propose to the public prosecutor to make a statement. After that, the judicial tribunal shall allow the defendant or his lawyer to make a last statement. Thereafter, the presiding judge shall close the debate and declare a temporary recess of the trial in order to make a decision in a closed session.

If there is a change to any member of the judicial tribunal, the trial must be re-conducted.

Article 79. Decision Made During Closed Session of the Court

Deliberations during closed sessions of the court must be in detail, comprehensive, thorough, complete and objective and based principally on the results of the hearing in the courtroom to ensure a proper and fair decision.

The final decision made at a closed session of the court must be reached based on a majority vote; the junior judges shall be allowed to express their opinion and vote first, and the presiding judge shall be the last person to express his opinion and give a vote.

The dissenting judges have the right to express their opinion in writing to be kept in the file for the consideration of the court at the higher level, if any appeal or request for cassation is submitted.

Article 80. Pronouncement of Decision in Trial

Once a decision has been reached at a closed session of the court, the presiding judge and members of the judicial tribunal must pronounce the final decision in an open court session and also instruct [the litigants] of their right to appeal the court's decision.

If the final decision cannot be pronounced at that time, it may be adjourned to another day not exceeding seven days.

Article 81. Suspension and Adjournment of Trial

A suspension of a trial is when case proceedings temporarily cease due to circumstances which create an obstacle to the trial. For instance, the defendant suddenly falls ill or loses his legal capacity.

An adjournment of the trial is the decision to adjourn the case to another day because of the need to collect new evidence, or in the event that a person who is important to the consideration of the case did not appear at trial, or because of other reasons.

Article 82. Decision Made in the Presence of the Parties, Decision Considered to be Made in the Presence of the Parties, and Decision Made in Default

“Decision made in the presence of the parties”¹⁰² is a decision made by the court where the civil plaintiff and the defendant have participated in the proceedings, but excludes a decision of the court on cassation.

“Decision considered to be made in the presence of the parties”¹⁰³ is the decision of the court when a civil plaintiff or defendant has received a summons but does not appear in court without reason, or when the offence is a minor offence where the civil plaintiff or the defendant proposes to the court to decide the case without participation of such concerned person. In such case, neither the civil plaintiff nor the defendant has the right to object to the decision, but has the right to appeal.

Decision in default is the decision of the court when the civil plaintiff or defendant does not come to the court hearing, in [circumstances] where the court has sent a summons and understands that such person has received the summons but that person did not [actually] receive such summons for any reason. For instance, the summons was sent but did not reach such person, or such person fled. In such case, the civil plaintiff or defendant has the right to object to the decision within twenty days from the date he is informed of the decision. The same judicial tribunal shall re-adjudicate the case in the presence of such concerned person in accordance with regulations governing the consideration of cases in a court of first instance.

Article 83. Jurisdiction of the Court to Decide the Case at First Instance

The people’s court that has jurisdiction to decide a criminal case [at first instance] is the people’s court where the incident occurred or where the defendant lives.

The people’s district, municipal, provincial or city court has jurisdiction to decide cases as a court of first instance.

The people’s district or municipal court has jurisdiction to decide criminal cases relating to minor offences as provided in Article 22 of the Penal Law.

¹⁰² The quotation marks have been added and are not in the original text.

¹⁰³ The quotation marks have been added and are not in the original text.

The people's provincial or city court has jurisdiction to decide criminal cases that do not fall under the jurisdiction of the people's district or municipal court.

Article 84. Types of Decision of the Court at First Instance

The types of decision that the court at first instance may issue are as follows:

1. Decision to punish;
2. Deprivation of liberty, fine, and others;
3. Total or partial stay of the execution of the penalty;
4. Decision of acquittal.

After the court of first instance decides a case, it has to print out such decision within ten days from the date of the decision.

In the case where there is no appeal or objection to the decision of the court of first instance, the decision shall be final and [no one] shall have right to request for cassation of such decision.

Part VI Proceedings on Appeal

Article 85. Right to Request Appeal or Object to Court Decision

The defendant, or his lawyer or protector, has the right to request an appeal against an instruction, order, or decision of the court [at first instance].

The public prosecutor has the right to object to the court of appeal in respect of an instruction, order, or decision of the court [at first instance] which is not in conformity with the laws or which does not have sufficient reasons.

The civil plaintiff and civilly liable party, or their lawyers or protectors, have the right to request an appeal against an instruction, order, or decision [at first instance] of the court only in respect of civil matters.

The request for appeal against any instruction, order, or decision [at first instance] of the court shall be presented to a court only¹⁰⁴.

Article 86. Time Period for Appeal and Objection

The court of appeal can only accept the case for consideration if there is a request for appeal from the litigants or an objection from the public prosecutor.

¹⁰⁴ The objection must be raised to a court, not to any extra-judicial organ.

Litigants have the right to request an appeal against, and the public prosecutor has the right to object to, an instruction or order of the court of first instance within seven days from the date they were informed. The period for request for appeal or objection to the decision of the court of first instance is twenty days from the date when the decision was read out or the date [the concerned parties] were informed.

Article 87. Regulations Regarding Appeal or Objection

When there is a request for appeal from the litigants, or any objection by the public prosecutor, against any instruction, order, or decision [at first instance] of the court, such request for appeal or objection must be submitted to the court of appeal through the court of first instance. The court of first instance must inform the person who wishes to appeal about the timeframe of appeal, the [pleadings to be submitted in]¹⁰⁵ an appeal, fees in relation to the appeal and other rights of such person. The court of first instance must accept the request for appeal or objection even if the timeframe has expired, and within thirty days, the court of first instance shall send the request for appeal or objection together with the case-file to the court of appeal for its further consideration.

In the event that the court of first instance does not accept or delays the acceptance of a request for appeal or an objection, the litigant or the public prosecutor has the right to submit the request for appeal or the objection directly to the court of appeal.

Once the timeframe for requesting an appeal [or making an objection] has ended, if the court of first instance which received the request for appeal or the objection delays the submission of the case-file, the litigant or the public prosecutor has the right to request the court of appeal to demand the case-file [from the court of first instance] for consideration.

The court of appeal must consider the case within two months from the date of receipt of the case-file.

In the event of a request for appeal or an objection against the decision, the court of first instance shall give notice of the request for appeal or the objection to the other party to allow him to lodge a defence or objection. If the defendant is in prison, he should be informed through the prison officers.

Before the consideration and adjudication [on appeal] at the court of appeal begin, the litigants and the public prosecutor [each] has the right to submit a written statement to the court of appeal to give additional reasons for his appeal or objection, [and] to comment on the appeal of the other party or the objection of the public prosecutor.

¹⁰⁵ Literally “the method for writing out such appeal”.

Article 88. Right to Withdraw an Appeal or Objection

Before the consideration and adjudication [on appeal] at the court of appeal take place, the litigants[,] other concerned parties¹⁰⁶ in the case[,] and the public prosecutor [each] has the right to withdraw his request for appeal or objection.

In the event that the request for appeal or the objection is withdrawn, the litigants, other concerned parties or the public prosecutor does not have the right to request an appeal or to object again.

Article 89. Presentation of Evidence to the Court of Appeal

In the court of appeal, persons who are described in Article 85 of this law have the right to present new evidence before the public prosecutor makes his statement in the court hearing.

Article 90. Regulations Relating to Consideration of a Case at the Court of Appeal

Regulations relating to consideration of a case at the court of appeal are the same as the regulations relating to consideration of a case at the court of first instance[,] as provided in Articles 77, 78, 79, 80, 81, and 82 of this law.

After the presiding judge of the judicial tribunal opens the trial in accordance with the regulations and after the responsible member reports on the case, the presiding judge of the judicial tribunal shall allow the person who requested the appeal or the public prosecutor who objected to the decision to give the reasons for such person's appeal or objection.

In the case where there is presentation of new evidence, the court shall inform the appellate public prosecutor and other participants in the proceeding. After that, the defendant, or his lawyer or protector, [and] the injured party [and] the civilly liable party, or their lawyers or protectors, will give explanation to the court. After the court has heard the statement of the appellate public prosecutor, it shall allow the defendant, or his lawyer or protector, to make a final statement[;] then the court will close the debate and declare a temporary recess of the trial in order to make a decision in a closed session. Finally, it will bring the judgment to read out in court.

Article 91. Scope of Jurisdiction in Consideration of the Case by the Court of Appeal

In consideration of a criminal case, the court of appeal shall review the legal correctness and reasons for the decision [at first instance], based mainly on the result of the court hearing [at appellate level] and new evidence. The

¹⁰⁶ The defendant and the civil plaintiff are considered the litigants and the civilly liable party or injured party is the "other concerned party".

court of appeal not only considers the matters of appeal or objection, but it has to review the total case proceedings that related to all the defendants in the same case, even though some defendants do not appeal or the public prosecutor does not object to matters concerning such defendants.

In consideration of the case, the appellate court has the right to reduce the penalty, but has no right to increase the penalty, except when there is an objection of the public prosecutor.

Article 92. Types of Decisions of the Court of Appeal

The types of decision that the court of appeal can issue are as follows:

1. To confirm the decision of the court of first instance entirely;
2. To amend the decision of the court of first instance in part or in its entirety and to decide to increase or reduce the penalty for the offence that the court of first instance imposed;
3. To nullify¹⁰⁷ the decision [at first instance] and send the case to a new tribunal at the court of first instance in order to consider the case or send the case back to the original tribunal to reconsider if such tribunal has not considered a certain claim of the litigants or [a certain] request of the public prosecutor; [and]
4. To nullify the decision of the court of first instance, and then to [issue a] decision of acquittal.

The decision of the court of appeal is the final decision as to the contents of the case.

The court of appeal that has made a decision on the case must print out the decision within twenty days from the date of the decision.

Article 93. Reasons for Nullifying or Amending a Decision

The reasons for nullifying or amending a decision of the court of first instance are as follows:

1. The investigation is not comprehensive, thorough, and objective;
2. The court's reasoning is not in conformity with the facts of the case;
3. The imposition of the penalty is not appropriate to the nature [of the offence], the danger to society of the offence, or the characteristics of the offender;
4. There is a breach of the regulations on criminal procedure or incorrect use of the Penal Law.

¹⁰⁷ The word “nullify” here has a meaning similar to the idea of “set aside” or “vacate” and is distinguished from point 2 where the court of appeal issues its own decision in the case.

Article 94. Re-consideration of the Case by the Court of First Instance

In the case where the appellate court sends the case back to the court of first instance to reconsider, the consideration of such case shall be in accordance with the general regulations.

In the re-consideration of the case, the court of first instance may only increase the penalty when the re-investigation reveals new facts that prove that the defendant committed another offence,¹⁰⁸ there is an additional order to prosecute from the public prosecutor.

**Part VII
Proceedings in the Court of Cassation**

Article 95. The Jurisdiction of the Court of Cassation

Only the People's Supreme Court has the right to adjudicate a case on cassation and at a final level for legal aspects of the case.

Article 96. Request for Cassation and Objection to Court Decisions

A civil plaintiff, defendant, lawyer or protector of either party, or the appellate public prosecutor has the right to request for cassation or object to an instruction, order, or decision of the court of appeal to the court of cassation [pursuant to which the court of cassation is requested to] review the conformity of such instruction, order, or decision to the laws.

The court of cassation shall accept [requests for cassation regarding] the instruction, order, or decision of the court of appeal for consideration, only when there is a request for cassation by the civil plaintiff, defendant, or their lawyers or protectors, or when there is an objection of the appellate public prosecutor.

A civil plaintiff, defendant, and the appellate public prosecutor [each] has the right to request cassation or the right to object to an instruction or order of the court of appeal no later than seven days from the date when they were informed. For the decision of the court of appeal, [they] have to request for cassation or objection within two months from the date such decision was read out or the date they were informed.

Article 97. Regulations on Cassation

In requesting for cassation or objecting against any instruction, order, or decision of the court of appeal, the litigants or the public prosecutor shall submit a request for cassation or an objection against such instruction, order, or decision to the court of cassation through the court of appeal which decided the case. The court of appeal shall instruct the person who has asked for

¹⁰⁸ The translators are unable to resolve whether this comma should be interpreted as an “and” or an “or”.

cassation about the time period to request for cassation, how to write a request for cassation, the fee for the request for cassation and his other rights. The court of appeal must accept the request for cassation or objection even if the timeframe has expired, and within thirty days, the court of appeal shall send the request for cassation or objection together with the case-file to the court of cassation for its further consideration.

In the event that the court of appeal does not accept or delays to accept a request for cassation or objection, the litigants and the public prosecutor [each] has the right to submit the request for cassation or the objection directly to the court of cassation.

Once the timeframe for the request for cassation or objection has ended, if the court of appeal which received the request for cassation or objection delays the submission of the case-file to the court of cassation, the litigants and the public prosecutor [each] has the right to request the court of cassation to demand the case-file [from the court of appeal] for consideration.

The court of cassation shall consider the case within two months from the date of receipt of the case-file.

In the case where there is a request for cassation or objection, the court must inform the other litigants to allow them to respond to the request for cassation or objection. If the defendant is in prison, he should be informed through the prison officers.

Before the consideration and adjudication of the case at the court of cassation begin, the litigants and the public prosecutor [each] has the right to submit a written explanation to provide additional reasons for his request for cassation or objection, [and] to comment on the request for cassation of the other party or the objection of the public prosecutor.

Article 98. Consideration of the Request for Cassation or Objection at the Court of Cassation

The court of cassation considers the request for cassation or objection in the courtroom with the presence of the Supreme Public Prosecutor who shall make a statement.

If necessary, the court of cassation will summon the sentenced person or other concerned persons to participate [in the court hearing].

After the opening of the court hearing, the presiding judge or member of the judicial tribunal who is responsible for the case, shall report the status of the case, the relevant instruction, order, or decision, [and] the contents of the request for cassation or objection[,] together with his comments on the case. After that, the other members of the judicial tribunal and the Supreme Public Prosecutor [each] has the right to question [the person] who has presented the report of the case, and other concerned persons have the right to request and provide comments on the case during the court hearing.

After the Supreme Public Prosecutor makes his statement¹⁰⁹, the presiding judge of the judicial tribunal shall declare a temporary recess of the hearing in order to make a decision in a closed session. Finally, he will bring the judgment to read out in the court.

Article 99. Type of Decisions of the Court of Cassation

The types of decision of the court of cassation are as follows:

1. To not accept the request for cassation or objection, if the litigants or the public prosecutor do not comply with regulations relating to requests for cassation or objections;
2. To cancel the request for cassation or objection, and confirm the entire instruction, order, or decision of the court of appeal;
3. To amend the instruction, order, or decision of the court of appeal¹¹⁰ in part or in its entirety [to the extent] that it contradicts the laws;
4. To nullify¹¹¹ the instruction, order, or decision of the court of appeal entirely without sending the case back to the appellate court, and then to issue a decision of acquittal;
5. To nullify the instruction, order, or decision of the court of appeal partially or in its entirety, and then send the case-file to a new or the previous judicial tribunal of the court of appeal, when the [previous] judicial tribunal has not yet considered certain request.

Article 100. Reasons for Nullifying or Amending an Instruction, Order, or Decision

The court of cassation has authority to nullify or amend any instruction, order, or decision of the court of appeal partially or entirely when there is any cause set out in paragraphs 3 and 4 of Article 93 of this law.

Article 101. Scope of Jurisdiction in Consideration of the Case at the Court of Cassation

In its consideration of the request for cassation or objection, the court of cassation has a duty to consider only matters relating to legal aspects as presented in the request for cassation or objection and shall not question as to matters of fact in the case.

¹⁰⁹ This appears to be a reference to a closing statement.

¹¹⁰ The term “court of appeal” is used in the sense of a court exercising its appeal jurisdiction. This term should be distinguished from the term “people’s appellate court” which is used to refer to actual courts within the system of the people’s courts.

¹¹¹ The word “nullify” here has a meaning similar to the idea of “set aside” or “vacate” and is distinguished from the third bullet point where the court of appeal issues its own decision in the case.

If there are many persons who were convicted in that case, but the request for cassation or objection only relates to one or a few persons, the court shall consider the case relating to all convicted persons in the same case, even if the request for cassation or objection does not relate to such persons.

If it is found that the court of appeal decided to acquit incorrectly or if it is found that the imposition of the penalty on the convicted defendant is consistent with the actual offence, the court of cassation shall nullify the decision [of the court of appeal] and then send the case to the court of appeal to re-consider.

Article 102. Re-consideration of the Case by the Court of Appeal.

In the event that the court of cassation nullifies the decision [of the court of appeal] and sends it back to the court of appeal to reconsider, the re-consideration of such case shall be in accordance with Article 90 of this law.

In the event that the new judicial tribunal of the court of appeal delivers a decision that is not in conformity with the decision of the court of cassation, and if the defendant does not request for cassation, the Supreme Public Prosecutor, by law, shall object against that decision to the People's Supreme Court.

In the re-consideration of the case, if the court of cassation delivers the same decision, and it sends the case back to the court of appeal for the second time, the new judicial tribunal of the court of appeal shall strictly comply with the decision of the court of cassation.

**Part VIII
Judgment Enforcement**

Article 103. Court Decisions to be Enforced¹¹²

The instructions, orders or decisions of the courts which shall be enforced are:

1. An instruction, order, or decision of a district or municipal court that has become final;
2. An instruction, order, or decision of the court of first instance that has to be enforced temporarily;
3. An instruction, order, or decision of the court of first instance, and a decision of the people's appellate court at provincial or city level, that has become final;
4. An instruction, order, or decision of the court of appeal that has become final;
5. An instruction, order, or decision of the People's Supreme Court.

¹¹² Readers may wish to refer to the Law on Judgment Enforcement for more information.

Article 104. Judgment Enforcement Organisations

Judgment enforcement organisations are:

1. Judgment enforcement offices of the provincial or city justice division, and judgment enforcement units of the district or municipal justice offices, that are in charge of enforcement of penalties relating to compensation for civil damages, fines, confiscation of assets, and re-education without deprivation of liberty;
2. Prisons [that are in charge of enforcement of penalties relating to] deprivation of liberty, [and] the details will be provided in specific regulations.

Enforcement of instructions, orders, or decisions of the military courts that have become final is the responsibility of the judgment enforcement officers of the military courts, [and] the details will be provided in specific regulations.

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.

Article 106. Method for Release

Release shall be carried out as follows:

1. After the prisoner has served the sentence completely as defined in the court decision, or has received a release before the term, or received a release in accordance with the order of the public prosecutor, the committee in charge of the prison shall prepare and

bring the person who is to be released to educate as well as to ask him to write and swear to an oath.¹¹³ The village administration and the family of such person shall be invited to be present at the time of the release, and the village administration shall be assigned to continue to educate such person;

2. The officer in charge of keeping material items lawfully possessed by the person to be released shall return such material items to the concerned person in full and in the same condition by making a record of acknowledgment of receipt of such items. If the material items are not returned in full and in the same condition, the officer in charge shall be liable as provided in Article 64 of this law;
3. In the event that the released person does not have a family or relative to take such person or is in no condition to return home by himself, the committee in charge of administration of the prison shall pay an allowance and travel fee that is appropriate in the circumstances to such person together with documents¹¹⁴ to be handed over to the village administration;¹¹⁵
4. The committee in charge of the administration of the prison shall make a record of the release as provided in laws and regulations;
5. In releasing a prisoner who is a foreign citizen who has not yet made compensation for civil damages, there shall be preventive measures not to allow such person to exit from the country until such person makes compensation in full.

Article 107. Implementation of Death Penalty

When the decision on death penalty has become final, to review the correctness of such decision, the President of the People's Supreme Court will issue an order regarding the implementation of the death penalty. If the order of the President of the People's Supreme Court confirms the decision on death penalty, the person subject to death penalty has the right to request the President of the State for a pardon within thirty days from the date of such order or from the date when he was informed about such order.

The implementation of the death penalty will be carried out after one year from the issuance of a decision not to grant pardon or from the date when the People's Supreme Court issues the order on such matter in a case where there is no request for a pardon.

There will be specific regulations on the implementation of the death penalty.

¹¹³ Although not stated, this refers to an oath of good behaviour or allegiance to the State and society in a prescribed form.

¹¹⁴ This refers to documents that inform the village administration about the released person.

¹¹⁵ The implication is that there must someone responsible for the released person and, if there is no one else, the village administration will fulfil this role.

Part VIII **Re-Opening of the Case**

Article 108. Acceptance of Consideration of a Re-Opened Case

Final decisions may be re-opened.

Only the People's Supreme Court has jurisdiction to consider a re-opened case.

The People's Supreme Court shall accept a criminal case for consideration at the level of a re-opening only if there is a request from the Supreme Public Prosecutor based on new information or evidence.

The re-opening of a case shall take place upon a request of the litigants [through the Office of the Supreme Public Prosecutor] or of the Supreme Public Prosecutor under its duties. The Supreme Public Prosecutor's request to re-open a case is made to ensure compliance with the laws.

Article 109. Reasons for Re-Opening a Case

The reasons for re-opening a case in the event that new information or evidence is discovered are as follows:

1. The witnesses gave false testimony, an expert gave a false opinion, the translation was false, or the evidence presented was false, which lead to a wrong decision;
2. The judge, the public prosecutor, the interrogator, or the investigator was not impartial, which lead to a wrong decision;
3. There are other facts which indicate the guilt or innocence of the person who was convicted, which were unknown when the court delivered the decision¹¹⁶.

Article 110. Time Limit for Re-Opening of a Case

The re-opening of a case, in the event that new information or evidence is found, with the purpose to increase the criminal liability of the person who was convicted, shall be conducted only within one year from the date of final decision. The re-opening of a case to lighten or discharge the criminal liability of a party against whom a decision was rendered may be conducted at any time without limitation.

Death of the party against whom a decision was rendered shall not be a barrier to the re-opening of the case for the purpose of searching for the truth regarding the charges made against that concerned individual.

¹¹⁶ At whatever level.

Article 111. Investigation of a Criminal Case Upon Discovery of New Circumstances or New Evidence

Any individual or organisation which discovers new circumstances or evidence regarding a case which has had a final order or decision rendered upon it shall submit a request or shall inform the provincial or city public prosecutor.

When there exists any cause which is set out in Article 109 of this law, the public prosecutor shall issue an order to open an investigation regarding such discovery of new circumstances or evidence.

In the event that the public prosecutor deems that it is unreasonable to re-open the case, the public prosecutor shall issue an order not to re-open the investigation. This order shall be notified [by the public prosecutor] to relevant individuals and organisations and such persons shall have the right to request a cancellation of such order by a higher-level public prosecutor.

Article 112. Conduct of the Public Prosecutor in Re-Opening the Case

After investigations arising from the discovery of new circumstances or evidence have been completed, if it is deemed that there are sufficient reasons to re-open the case, the public prosecutor shall send the case file, together with other documents of the investigation, and his statement to the Supreme Public Prosecutor to request re-opening of the case to the People's Supreme Court. If there is no sufficient reason to re-open the case, the Supreme Public Prosecutor shall issue an order to dismiss the case and to inform concerned individuals or organisations.

Article 113. Jurisdiction of the People's Courts in Re-Opening of the Case

In the consideration of a re-opened case, the People's Supreme Court has the jurisdiction to:

1. Nullify the request of the Supreme Public Prosecutor;
2. Cancel the court decision and then issue a decision of acquittal;
3. Cancel the final decision and send the case file to a new judicial tribunal at the court of first instance to re-consider the case.

The consideration of the case by the new judicial tribunal shall comply with general regulations relating to proceedings at the court of first instance.

**Part X
Treatment Measures**

Article 114. Use of Treatment Measures

During the investigation or court hearing, or during the serving of a sentence of deprivation of liberty, the public prosecutor or the people's court

has the right to apply treatment measures to the detainee¹¹⁷ or the person serving the sentence who is insane, has lost his mental capacity, is seriously ill, has an infectious disease, [or] is addicted to alcohol or drugs[, where such condition] has been certified by a doctor¹¹⁸[,] by sending such person to a hospital or to a special treatment centre. After having received effective treatment, such person shall be brought to the proceedings if the limitation period for prosecution has not expired or the time-limit for serving the sentence has not expired.

The time for medical treatment shall be included in the time for serving the sentence.

Article 115. Approval for Treatment in Emergency Case

When the accused person, defendant, or prisoner is suddenly sick and the doctor at the place of detention cannot provide treatment to such person, the officers in charge of the place of detention shall send such person for treatment at a State hospital and shall inform the public prosecutor or the people's court.

Article 116. Protection and Supervision of Persons under Treatment

An accused person, defendant, or prisoner who is sent for treatment, shall be sent for treatment only to a State hospital or a special State treatment centre.

Protection and supervision of a person under treatment is the responsibility of the police in order to prevent such person from escaping from proceedings or punishment. If a police officer causes an accused person or prisoner to escape from criminal punishment, he shall be liable to criminal charges as provided in Article 161 of the Penal Law.

The expenses relating to the treatment are the responsibility of the State.

Part XI

International Cooperation in Criminal Proceedings

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.

¹¹⁷ This is a reference to a person subject to pre-sentencing remand.

¹¹⁸ The requirement of medical certification qualifies all of the conditions listed.

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.

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.

Part XII Final Provisions

Article 121. Implementation

The government of the Lao PDR issues regulations to implement this law.

The People's Court, the Office of Public Prosecutor, and other concerned sectors shall strictly implement this law.

Article 122. Effectiveness

This law shall enter into force on the date when the President of the Lao People Democratic Republic issues a decree for its promulgation.

This law replaces the Law on Criminal Procedure No. 30/SPA, dated 23 December 1989.

Regulations and provisions which contradict this law are null and void.

Vientiane, 15 May 2004
The President of the National
Assembly

[Seal and Signature]

Samane VIGNAKET