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SUMMARY

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The first constitution of the Lao People's Democratic Republic (LPDR) is likely to be adopted soon, according to statements made by authorities in the capital Vientiane. Amnesty International is concerned that the draft constitution published on 4 June 1990 in the official newspaper Pasason fails to give constitutional recognition to fundamental human rights and lacks comprehensive provisions for human rights protection. The present document sets forth 17 Amnesty International recommendations on safeguards which in the organization's view should be included in the new constitution to help strengthen human rights protection in Laos.

Laos has been without a constitution and a comprehensive legal system since the establishment of the LPDR in 1975. Amnesty International understands that the draft constitution is expected to be amended before a final draft is published and adopted by the Supreme People's Assembly (SPA), the legislative organ of Laos, in 1991. The draft constitution has reportedly been the object of a public debate organized nationally by the ruling Lao People's Revolutionary Party (LPRP).

Although amendments may have made to the text of the draft since it was published in June, no amended version is known to have been published to date. It is reportedly due to be submitted for approval to the ruling LPRP before it is adopted by the legislature, the majority of whose members belong to the LPRP. Amnesty International knows of no plans to submit the constitution to a referendum.

The present document examines the provisions of the draft constitution of Laos which cover areas of concern to Amnesty International. Amnesty International submitted the substance of the present document to the Constitution Drafting Committee and to the Lao authorities on 29 October 1990, and urged them to amend the draft to bring it more fully in line with principles set forth in international standards for human rights. Amnesty International's recommendations on amendments to the draft constitution concern the protection of the right to life and the abolition of the death penalty; safeguards guaranteeing the inalienability of fundamental rights; the prohibition of torture; safeguards against arbitrary arrest and detention; safeguards for people deprived of their

liberty; provisions on fair trial; safeguards for the rights to freedom of opinion and expression, peaceful assembly, and association; and on the independence of the judiciary.

Amnesty International also urged that Laos accede to international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

This summarises a 38 page document, The Draft Constitution and Human Rights (AI Index: ASA 26/03/90), issued by Amnesty International in November 1990. Anyone wanting further details or to take action on this issue should consult the full document.

**INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ,
UNITED KINGDOM**

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Amnesty International
International Secretariat
1 Easton Street
London WC1X 8DJ
United Kingdom

LAO PEOPLE'S DEMOCRATIC REPUBLIC (LAOS) :

THE DRAFT CONSTITUTION AND HUMAN RIGHTS

1. INTRODUCTION

1.1 Adoption of a constitution by Laos

The first constitution of the Lao People's Democratic Republic (LPDR) is likely to be adopted soon, according to statements made by authorities in the capital, Vientiane. Amnesty International is concerned that the draft constitution published on 4 June 1990 in the official newspaper Pasason fails to give constitutional recognition to a number of fundamental human rights and to include comprehensive provision for protection against human rights violations. The present document sets forth Amnesty International's recommendations on safeguards which in the organization's view should be included in the new constitution to help strengthen human rights protection in Laos.

Laos has been without a constitution and a comprehensive legal system since the establishment of the LPDR in 1975. Ministries and other state agencies have produced ad hoc decrees and regulations which, to Amnesty International's knowledge, were not always made public.

Amnesty International understands that the draft constitution is expected to be amended before a final version is published and adopted by the Supreme People's Assembly (SPA), the legislative organ of Laos, in 1991. The draft constitution has reportedly been the object of a public debate organized nationally by the ruling Lao People's Revolutionary Party (LPRP). Amendments may have been made to the text of the draft constitution since it was published in June. No amended version of the draft is known to have been published to date, however, and it is as a consequence not known whether serious omissions with respect to human rights protection have been remedied in the draft. The draft constitution is reportedly due to be submitted for approval to the ruling LPRP before it is adopted by the legislature, the majority of whose members belong to the LPRP. Amnesty International knows of no plans to submit the constitution to a referendum.

1.2 Aims of Amnesty International's Recommendations

The present document examines the provisions of the draft constitution of Laos which cover areas of concern to Amnesty International. It includes the organization's recommendations to improve provisions for fundamental constitutional safeguards of human rights. On 29 October, 1990 Amnesty International submitted the substance of the present document to the Constitution Drafting Committee and to other Lao authorities, and urged them to amend the draft constitution to bring it more fully in line with principles set forth in international standards for human rights. In a letter accompanying its submission, Amnesty International expressed the hope that some or all of the recommendations the organization was making to strengthen human rights protection in the constitution might no longer be germane because amendments in the June draft had obviated its concerns. However, the letter at the same time urged that any of the Amnesty International recommendations that remained relevant be considered by all those involved in finalizing a draft and adopting the completed constitution. The letter stated that Amnesty International was planning in due course to make its views on constitutional and other legal provisions for human rights protection in Laos public, and solicited the authorities' comments on Amnesty International's concerns in this regard. As of the beginning of December 1990, no reply had been received.

Amnesty International takes no position with regard to political systems, and therefore takes no position at provisions in the draft constitution relating to the political system in Laos. However, Amnesty International generally promotes the adoption of constitutions which guarantee fundamental human rights in accordance with, among others, such international instruments as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Although Laos has not yet acceded to the ICCPR, Amnesty International recommends that its constitution should conform to the stipulations of this instrument, which represent the international minimum standard for protection against human rights violations.

On various occasions in the past, Amnesty International has submitted recommendations to authorities involved in preparing constitutions, in order to ensure that constitutional provisions are included for the safeguard of human rights, in particular those that fall within the organization's mandate. The following comments on the draft available to Amnesty International draw upon the organization's experience to contribute to the strengthening of the constitutional safeguards for a number of basic civil and political rights.

Amnesty International takes the view that comprehensive safeguards in accordance with international standards should be enshrined in the constitution of Laos, and that laws and judicial practice should be made consistent with these safeguards. Amnesty International is primarily concerned:

- that it should fully afford citizens those rights which will safeguard against the detention of prisoners of conscience¹,

¹ Prisoners of conscience are people imprisoned, detained or otherwise physically restricted by reason of their political, religious or other

including the protection of the rights to freedom of thought, conscience and religion, freedom of expression and opinion, peaceful assembly and association, and other rights and safeguards provided in the Universal Declaration of Human Rights; and

- that it should clearly afford all citizens the right to be free from arbitrary arrest or detention and include safeguards for the protection of the rights of people lawfully deprived of their liberty;
- that it should better ensure protection of the right to fair trial and to freedom of conscience at all times, including in time of war or public emergency; and that this protection should include guarantees pertaining to the independence of the judiciary and the judicial supervision of enquiries;
- that the constitution of Laos should afford citizens protection for the right to life;
- that it should afford citizens clear protection against torture and other cruel, inhuman or degrading treatment or punishment, in accordance with the United Nations Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment² and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³;
- that it should provide other safeguards consistent with international human rights instruments such as the ICCPR.

The recommendations contained in the present document address these concerns. They are based on international instruments and agreed principles and take into account the organization's concerns in Laos.

Amnesty International notes that Laos has yet to accede to any international human rights instrument. In the organization's view, it is essential that nothing in the Constitution of Laos should hinder the future accession of Laos to these instruments, and especially that no constitutional amendment be required prior to accession. It is therefore advisable that the constitution be made consistent with these instruments before Laos' accession to them.

Amnesty International is aware that constitutional human rights safeguards do not in themselves guarantee adequate protection. The constitution should not only protect fundamental rights; it should in addition set forth the following safeguards and procedures:

conscientiously held beliefs or by reason of their ethnic origin, sex, colour or language, provided that they have not used or advocated violence.

² This Declaration was adopted by the General Assembly of the United Nations on 9 December 1975 "as a guideline for all States and other entities exercising effective power." It is referred to in the present document as the Declaration Against Torture.

³ The Convention was adopted by the United Nations on 10 December 1984. It is referred to in the present document as the Convention Against Torture.

- safeguards for the implementation of fundamental human rights in laws and regulations. The constitution should ensure that no law or regulation may derogate from constitutional safeguards. In particular, the constitution should spell out clearly that certain rights, such as the right to life, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and the right to freedom of thought, conscience and religion (see ICCPR, Article 4), may never be curtailed.
- procedures for the systematic and independent review of the implementation of human rights safeguards. Any individual who believes that his or her fundamental rights have been infringed upon should have the constitutional right to seek appropriate redress before an independent judicial organ or other independent authority.

In accordance with international standards, the constitution of Laos should provide for the independence of the judiciary and for systematic and independent review by the judiciary of the implementation of constitutional and legal safeguards for human rights. The constitution should establish the competence of the judiciary to deal with allegations of human rights violations by agents of the state.

2. THE JUNE DRAFT CONSTITUTION OF LAOS

2.1 Official Statements on the Constitution

Decisive steps were taken by Laos in 1989 towards the adoption of a constitution. The Supreme People's Assembly appointed in 1975 was dissolved and a new 79-member SPA was elected in March after a series of local elections. All 121 candidates were approved by the authorities and all but 14 of the elected SPA deputies were members of the ruling LPRP. At the opening session of the new SPA the adoption of a constitution was described by Chairman of the Council of Ministers Kaysone Phomvihane as one of the assembly's "main tasks". A report in the newspaper Pasason in October 1989 said that the draft constitution would be completed by early 1991 at the latest.

2.2 The Drafting Process

An 18-member Constitutional Drafting Committee composed of SPA members was appointed in August 1989. According to official sources, a number of foreign constitutions and legal systems were examined in the course of the drafting.

In October 1989, it was reported that provincial officials were discussing the draft constitution, particularly a section dealing with the "rights and duties" of citizens. In an interview with Swedish correspondents published in February 1990, Kaysone Phomvihane described constitutional and legal developments in the following terms:

"...We are of the view that the constitution which is the basic law of the People's Democratic Republic must translate into detail the party's economic and political line...The constitution must clearly define the fundamental rights of

the people, the political system, the social system, the obligations of citizens and the state's organizations and structures.

"As for the legal system, it must act as an effective measure covering all sphere of social life, such as the political, economic, cultural, social, national defence and public security maintenance aspects; and [it must] govern the relations between the state and people, among members of society, and among the organizations under the People's Democratic Republic regime.

"In the final analysis, the constitution and other related laws must be suitable to the conditions and special factors in the socio-economic fields and in the national and cultural characteristics of Laos. At present the Supreme People's Assembly is urgently carrying out its important duty, drafting the constitution for the public to study, debate and contribute its opinion as to its merits, so that it can be endorsed for promulgation in the year 1991..."

In early May 1990, following the completion of the draft, the official Lao national radio reported the start of a "movement to hold discussions on the draft constitution of the LPDR among cadres [office-holders in the administration and the party] throughout the country".

The draft constitution was published in the context of a debate organized under the leadership of the LPRP. A directive issued by the Central Committee of the LPRP on 14 June 1990 stated that, by that date, the "initial phase" of the debate had been completed. It had apparently started in May following the 30 April issuance of Directive No. 21, which reportedly stated that "the campaign for discussion on the draft constitution is aimed at enriching political life and extensively promoting democracy."

According to the 14 June directive, such questions as "faith", "ethnic tribes" and "freedom of domicile and travel within the country" were debated in the "initial phase" of the discussion movement. However, the directive noted that "in many cases" where people were called to a discussion meeting, question-and-answer sheets "were simply handed to [them] to study".

Excerpts of the draft constitution of the LPDR quoted in the following pages are drawn from an unofficial translation of the text in Lao published in the official newspaper Pasason on 4 June 1990.⁴ To Amnesty International's knowledge, no official translation of the draft constitution has been published.

3. THE DRAFT CONSTITUTION AND INTERNATIONAL STANDARDS

3.1 Laos' Accession to International Instruments

The preamble of the draft constitution refers to the establishment in 1975 of a new state under the popular democratic system and

⁴ The full text of that unofficial translation appears in Appendix I of the present document.

says that a constitution is now required by "social" factors. It notes that the forthcoming constitution is the first under the new regime and describes it as conforming to "objective laws" and reflecting the "intentions and aspirations of the multi-ethnic Lao people." The preamble refers to "peace, independence, democracy, unification and... prosperity" as "objectives to be attained".

Amnesty International encourages all countries to provide legal and constitutional safeguards for human rights in accordance with international instruments, and to enforce those safeguards in practice. It notes that Laos has yet to accede to any of the international instruments for the protection of human rights. It recommends, therefore, that the constitution should explicitly refer, for example in its preamble, to international human rights standards and to the international obligations of Laos in the area of human rights. Such a reference would help demonstrate a commitment to human rights protection.

I. Amnesty International recommends early LPDR accession to the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. It further urges that constitutional provisions and domestic law and legal practice be made fully consistent with the provisions of these instruments and that the provisions of the UN Universal Declaration of Human Rights be referred to in the Constitution of the LPDR.

3.2 Protection of the Right to Life and Abolition of the Death Penalty

The draft constitution of the LPDR does not provide for the protection of the right to life. This right is protected by both the UDHR and the ICCPR, Article 6 of which states that:

"1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

The protection of the right to life is an essential safeguard against certain forms of human rights violations. Article 25 of the draft constitution, which states inter alia that "the rights of Lao citizens in their bodies and domiciles are inviolable", does not offer the protection of the right to life called for under international standards. A suitable way to protect this right would be to add a specific provision to Chapter III of the constitution, which concerns the "fundamental rights and obligations of Lao citizens".

II. Amnesty International recommends that the constitution should contain a provision protecting the right to life.

While the protection of the right to life helps prevent abuse of the death penalty, Amnesty International considers that the death penalty itself is not only a violation of the right to life, but also the ultimate form of cruel, inhuman or degrading punishment. To the organization's knowledge, there is no conclusive evidence to suggest that the death penalty is a more effective deterrent against crime than other, less severe, forms of punishment. A study prepared for the Sixth United Nations

Congress on the Prevention of Crime and the Treatment of Offenders in 1980 stated that "despite much more research effort mounted to determine the deterrent value of the death penalty, no conclusive evidence has been obtained on its efficacy". In practice, the death penalty is an arbitrary punishment. It is irrevocable and always carries the risk that the innocent may be put to death.

For these and other reasons detailed in its publications⁵, Amnesty International opposes the death penalty in all circumstances.

Article 6 of the ICCPR contains significant language which limits the imposition of the death penalty. For example, it states in paragraph 2:

"In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes. . . and not contrary to the provisions of the present Covenant".

The relevant "provisions of the present Covenant" include Article 14, which contains an important recitation of procedural safeguards in the determination of criminal charges. These safeguards are set forth in Section 3.7 of the present document.

Article 6(4) requires that anyone ". . . sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

Article 6(5) further provides that "Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women."

Article 6 also anticipates the progressive abolition of the death penalty. Paragraph 6(6) indicates that nothing in that article "shall be invoked to delay or to prevent the abolition of capital punishment."

In a statement made in 1982 to the United Nations, the Government of Laos said that "in actual practice" capital punishment was "invoked only in cases of extreme gravity. . . [for] crimes which testify to the unusually cruel character of the offender. . . threatening the highest interests of the state." Although Amnesty International knows of no execution publicly announced since 1980, the Criminal Law of 1989 has retained the death penalty for a large number of offences, some of which are ambiguously defined.⁶

⁵ See in particular, When the State Kills... , The Death Penalty v Human Rights, published by Amnesty International in 1989

⁶ Article 30 of the Criminal Law adopted in 1989 specifies that the death penalty is to be carried out by shooting. Capital offences include "insurrection" (Article 52), "disruption of the affairs of state and society . . . by intentional action or negligence" (Article 57), and other vaguely-defined offences.

III. Amnesty International recommends that the constitution specifically protect the right to life by abolishing the death penalty.

3.3 Inalienability of Fundamental Rights

While some derogation from certain provisions guaranteeing civil and political rights is not prohibited by international standards in times of public emergency, there are some rights which are so fundamental that they may never be derogated from in any circumstances. These non-derogable rights include the right to life, the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment, and the right to freedom of thought, conscience and religion.

Amnesty International is concerned that no provision in the draft constitution provides for the inalienability of fundamental rights. On the contrary, it provides for amendments to be made to the constitution by a qualified majority vote of the legislature, without specifying the inviolable character of fundamental rights.

Article 32 of the draft constitution states that the SPA is empowered to "enact and amend" the constitution and laws, to "supervise" their implementation, to "decide on questions of war and peace", and to carry out other "rights and duties". Article 38 states that the Standing Committee of the SPA is given powers to "interpret" the constitution and laws, to "issue decrees" and to "declare war" at times when the full SPA is in recess. The State President is empowered, *inter alia*, to "declare the state of war" (Article 44). Article 73 allows the SPA to amend the constitution by a majority of two-thirds of the votes.

There is no guarantee that the constitution and laws cannot be amended or interpreted in a manner which limits the scope of those non-derogable rights that are formally safeguarded under the draft constitution. Although the "state of war" is mentioned in Article 44, the draft constitution contains no provision concerning the implementation of the state of war or of any form of state of emergency in so far as it concerns fundamental human rights.

It is therefore not precluded that rights and safeguards provided for in the constitution or in international standards could be curtailed by amendments to the constitution. In the absence of provisions on the terms of states of war or emergency, there is no safeguard against constitutional guarantees being overruled.

IV. Amnesty International recommends that guarantees be included in the Lao Constitution that certain fundamental rights, including the right to life, the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment, and the right to freedom of thought, conscience and religion, may never be suspended in any circumstances, including instances of public emergency.

Amnesty International also recommends that any derogation provisions that are included in the constitution be clearly defined and restricted to the most exceptional circumstances Such

restrictions should be consistent with the principles set forth in the ICCPR, which provides in Article 4 that states may only derogate from its provisions "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed". Even then, permissible measures of derogation may only be those "strictly required by the exigencies of the situation".

3.4 Prohibition of Torture

Although the recently published Criminal Law of the LPDR contains a provision against torture, this legislation is not backed up by strong constitutional safeguards against the use of torture and other cruel, inhuman and degrading treatment or punishment. Article 7 and Article 25 provide for safeguards against torture or ill-treatment, but Amnesty International is concerned that they may be insufficiently direct and explicit. The last sentence of Article 7 reads:

"All acts of bureaucratism and threats that are physically harmful to the people and detrimental to their lives and property are prohibited."

Article 25 reads:

"The rights of Lao citizens in their bodies and domiciles are inviolable. Lao citizens cannot be arrested or searched without decision or approval from authorized organizations, with the exception of cases prescribed by law."

Articles 7 and 25, read together with Articles 46(6) and 52(7), which deal with the respective "rights and duties" of the Council of Ministers and local People's Councils to "protect the legitimate interests" of citizens, indicate the responsibility of organs of the state in the protection of human rights. To that extent, they offer a degree of protection against illegal acts, including torture and ill-treatment, committed by agents of the state or with their knowledge.

However, such proclamations fall short of the clear guarantees set forth in international standards such as the Declaration Against Torture. This document condemns torture and other cruel, inhuman and degrading treatment or punishment as an offence to human dignity and calls on all states to take effective measures to prevent these from being practiced.

The adoption by Laos of a constitutional provision against torture and ill-treatment would be consistent with both the Universal Declaration of Human Rights, the Declaration Against Torture and the ICCPR, Article 7 of which reads:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

V. Amnesty International recommends that an unalterable provision specifically prohibiting the use of torture and other cruel, inhuman or degrading treatment or punishment as an offence to human

dignity be included in the constitution of Laos and that all acts of torture and ill-treatment be made criminally punishable by law.

A constitutional prohibition of torture and ill-treatment is not sufficient in itself. It would be important to supplement such a provision with further legal provisions against torture, inspired by the Declaration Against Torture and the Convention against Torture. They should cover in particular the systematic review of the custody and treatment of people deprived of their liberty.

The Convention against Torture, adopted by consensus by the United Nations General Assembly on 10 December 1984, provides for specific measures to be taken by governments for protection against torture. By ratifying this Convention, States pledge to take specific steps against torture in law and practice. The General Assembly has called on all governments to consider signature and ratification of this convention "as a matter of priority". Accession to the Convention by Laos is, in Amnesty International's view, of the utmost importance.

VI. Amnesty International urges the government of Laos to sign and ratify the Convention against Torture without reservation, as many other states have done.

In Amnesty International's experience torture usually takes place in particular conditions, especially when detainees are held in incommunicado or secret detention, without access to relatives, lawyers or doctors, or without being brought before a judicial authority such as a magistrate or judge. It is, therefore, clearly necessary not only for torture to be prohibited explicitly, but also for safeguards to be introduced to prevent torture and to prevent the situations in which torture is likely to take place.

In this regard Amnesty International is concerned that neither the LPDR Criminal Law nor the draft constitution contain provisions forbidding the use during investigation and trial of evidence obtained by the use of torture or ill-treatment, and that they do not define torture or outlaw "other cruel, inhuman and degrading treatment or punishment".

Article 160 of the Criminal Law adopted in November 1989 does, however, make torture punishable:

"Any person who uses torture, abuses regulations, or exhibits other unlawful actions towards criminal suspects or prisoners at the time of arrest, while undergoing prosecution, or while serving sentence, will be sentenced to imprisonment for a term of three months to three years, or rehabilitation without imprisonment."

Amnesty International welcomes this provision and believes that its implementation would be facilitated by an explicit prohibition of torture in the Constitution of Laos.

The United Nations Human Rights Committee has made the following comment on Article 7 of the ICCPR, which prohibits torture and ill-treatment:

"The Committee notes that it is not sufficient for the implementation of this article to prohibit such treatment or punishment or to make it a crime. Most States have penal provisions which are applicable to cases of torture or similar practices. Because such cases nevertheless occur, it follows from Article 7, read together with Article 2 of the Covenant, that States must ensure an effective protection through some machinery of control. Complaints about ill-treatment must be investigated effectively by competent authorities. Those found guilty must be held responsible, and the alleged victims must themselves have effective remedies at their disposal, including the right to obtain compensation. Among the safeguards which may make control effective are provisions against detention incommunicado, granting, without prejudice to the investigation, persons such as doctors, lawyers and family members access to the detainees, provisions requiring that detainees should be held in places that are publicly recognized and that their names and places of detention should be entered in a central register available to persons concerned, such as relatives, provisions making confessions or other evidence obtained through torture or other treatment contrary to Article 7 inadmissible in court, and measures of training and instruction of law enforcement officials not to apply such treatment." (general comment 7[16] on Article 7 of the ICCPR)

Neither the draft constitution nor the Criminal Law provide for the various safeguards suggested by the Human Rights Committee. It does not specifically guarantee the right of anyone who alleges to be a victim of torture or ill-treatment to seek recourse and effective remedy through the courts.

The only constitutional provision for recourse is that of "petitions, denunciations and recommendations" to be lodged with "state organizations" (Article 24). These, Article 24 adds, "must be considered" and "corrective actions [must be] taken as stipulated by law."

Article 24 refers to "grievances, denunciations and recommendations" as instruments to be used "in connection with both collective and individual interests." While allegations of human rights violations, especially torture and ill-treatment, would be covered by Article 24, Amnesty International is concerned that its language may be too vague to provide adequate protection.

The responsibility to deal with petitions is not vested in the judicial system, but in administrative organs not clearly designated in Article 24. Article 52(8) gives "local people's councils" the power to "consider and resolve", such petitions and Article 55(9) provides that "local administrative committees" shall "review and resolve" the "requests, denunciations and recommendations made by the people within the scope of their rights... specified by law." This is despite the provisions of Article 64 of the draft constitution, which states that the procuracy⁷ shall "follow and control the fair and uniform enforcement of laws by all ministries. . . state and social organizations. . . state employees and citizens".

⁷ ongkan ayakan pasason

The draft constitution therefore provides only for administrative and locally elected organs to review and answer complaints by citizens. Amnesty International's experience suggests that the absence of explicit provisions for judicial recourse might in practice lead to the judicial review of allegations of human rights violations being deemed inappropriate, on the grounds that the constitution provides only for administrative, not judicial, reviews. The absence of formal guarantees of judicial recourse against human rights violations is thus a concern to the organization while it welcomes the fact that other avenues such as petitions to administrative organs are open to citizens.

Article 24 also fails to provide for complainants and witnesses who allege that torture or ill-treatment were used to be protected against all ill-treatment or intimidation as a consequence of their complaint and of any evidence given. Article 13 of the Convention against Torture requires state parties to guarantee such protection.

The lack of strong legal guarantees for protection is disturbing because Lao citizens have been officially reported to fear bringing human rights violations to the attention of the authorities. The 14 June 1990 LPRP central committee directive, which mentioned this issue, said:

"The main problem in the campaign to discuss the draft constitution is that cadres, soldiers, policemen and people were not encouraged to exercise their democratic rights and freedom of expression. Consequently, they dare not report abuses of power and violations of the right to mastery and democratic freedom of the people [committed] by cadres, soldiers, policemen and party and state organizations. Offices, organizations, and military and police units are reluctant to admit the mistakes they made against the people, thus failing to improve relations among the party, state, and people..."

VII. Amnesty International recommends that specific guarantees be included in the constitution or Lao law that any complaint of torture or ill-treatment be promptly and impartially examined by independent judicial authorities.

VIII. It also recommends that the use during investigation or trial of evidence obtained by torture or ill-treatment be prohibited by the constitution or Lao law, and that the judiciary be given powers of supervision over detention and imprisonment before and after trial.

IX. It further recommends that the constitution or other instruments of Lao law guarantee the protection of complainants and witnesses who allege that torture or ill-treatment were used.

3.5 Safeguards Against Arbitrary Arrest or Detention

Amnesty International is concerned that the draft constitution may provide inadequate safeguards against arbitrary or unlawful arrest and detention.

Article 25 says arrest may take place pursuant to a "decision or approval from authorized organizations", although this safeguard against arbitrary arrest may be derogated from in "cases prescribed by law". The prohibition under Article 7 of "harmful" "acts of bureaucratism", offers some protection against unlawful acts by agents of the state. Amnesty International is concerned that in the absence of further specification, these provisions may not be sufficient to bring Lao law into full conformity with internationally accepted standards.

Article 9 of the Universal Declaration of Human Rights states: "No one shall be subjected to arbitrary arrest, detention or exile." Article 9 of the ICCPR, in its Paragraph 9(1) states,

"No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

X. It is advisable, especially in view of the continued occurrence in Laos of cases of long-term detention without charge or trial and without any apparent legal basis, that the language of the UDHR and ICCPR prohibiting arbitrary or unlawful arrest and detention be incorporated in the constitution of Laos in order to help prevent such human rights violations.

Amnesty International also recommends that further safeguards against arbitrary or unlawful arrest and detention set out in international human rights instruments be explicitly incorporated into the constitution, namely:

- that anyone who is arrested be informed at the time of arrest of the reasons for the arrest and be promptly informed of any charges against him or her;
- that anyone arrested or detained be brought promptly before a judicial authority and either tried within a reasonable time, or released;
 - that anyone who is arrested or detained has the right to seek and obtain without delay a judicial review of the lawfulness of his or her arrest or detention; and
- that anyone who has been a victim of unlawful arrest or detention should have an enforceable right to compensation, in accordance with Article 9 of the ICCPR.

3.6 Other Safeguards for People Deprived of their Liberty

People deprived of their liberty have the right to be treated "with humanity and with respect for the inherent dignity of the human person" (Article 10 of the ICCPR). In addition to safeguards against arbitrary or unlawful arrest or detention, it is essential to ensure that no detainee be held in incommunicado detention or in a place other than an officially registered detention centre or prison. All detainees should be guaranteed the right to be visited by lawyers, doctors and relatives, as provided in the Body

of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Principle 16)⁸.

Principle 4 states that "a judicial or other authority" shall order or control detention and imprisonment. It is important that this safeguard be specifically reflected in the Constitution of Laos. This would strengthen provisions in the draft constitution's Article 64, which provides for the People's Judiciary Institute to "follow and control" all state institutions.

XI. Amnesty International recommends that a provision guaranteeing the right of people deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person be included in the chapter of the Constitution of Laos concerning the rights and duties of citizens.

It also recommends that the constitution prohibit incommunicado detention and guarantee the right of detainees to consult a legal practitioner promptly after arrest and also to have prompt access to their family (the Body of Principles states in Principle 15 that communication of the detainee with the outside world and in particular with his or her family or lawyer may not be denied for more than a matter of days).

3.7 Provisions Concerning Fair Trial

The draft constitution includes a number of provisions on investigation and trial procedures, but Amnesty International is concerned that these may need to be strengthened in order better to guarantee the right to a fair trial set forth in international standards for fair trial.

In the chapter on the "rights and duties" of citizens, Article 21 of the draft constitution states inter alia that "all citizens are equal before the law." Elements of trial procedures are alluded to in Chapter VIII, entitled "The People's Courts and People's Procuracy". Article 56 provides that only the "people's courts", consisting of the "Supreme People's Court, local people's courts and military courts", have authority to conduct trials. Under Article 61, the accused are "entitled to a defence" and an association of lawyers is to be established to provide legal assistance to "the accused and related people". Under Article 59,

"When examining cases, judges and people's assessors are to be independent in passing judgment in accordance with the law only."

While these constitutional provisions would be useful in protecting human rights, there are omissions which could reduce their effectiveness.

The right to a fair trial is fundamental: it should be guaranteed as such and states have the duty to ensure that conditions for fair trials exist. A provision on the right to fair trial should

⁸ This document, hereafter referred to as the "Body of Principles", was adopted without a vote by the UN General Assembly on 9 December 1988.

be incorporated in the section of the constitution which deals with the rights and duties of citizens.

The Universal Declaration of Human Rights states (Article 10) that everyone is entitled to a fair trial "before an independent and impartial tribunal". Articles 14 and 15 of the ICCPR set forth minimum standards for fair trial. Article 14(1) of the ICCPR states that a "fair and public hearing" must be held by a "competent, independent and impartial tribunal established by law." The same paragraph specifies circumstances in which trials may be held in camera; it makes clear that judgments rendered should always be made public except in exceptional and limited circumstances, such as when this is in the interest of a juvenile.

In contrast, Article 61 of the draft constitution appears to leave open the possibilities that trials might be held in secret more generally, when "provided for by law", which would be contrary to Article 14(1) of the ICCPR, which sets forth that trials should as a matter of principle be open to the public with as few exceptions as possible.

The principle that judgments should be made public in all cases, including non-public trials, should be constitutionally guaranteed, allowing only for the exceptions provided for in Article 14 of the ICCPR.

The Lao Constitution should also include all the guarantees for fair trial recognized by Articles 14 and 15 of the ICCPR. It and Lao law should specifically incorporate the following points:

- presumption of innocence of everyone charged with a criminal offence, until proved guilty according to law;
- the defendant's right to be informed promptly and in a language he or she understands of the nature and cause of the charges against him or her;
- the defendant's right to be tried in his or her own presence and to defend himself or herself through legal assistance of his or her own choosing;
- the right of everyone convicted of a crime to have the conviction and sentence reviewed by a higher court;
- the non-retroactivity of laws: no one shall be held guilty of any criminal offence on account of acts which did not constitute a criminal offence at the time when they were committed; and
- the prohibition of a second trial or punishment for anyone who has already been finally convicted or acquitted in accordance with the law (double jeopardy, prohibited under Article 14(7) of the ICCPR).

These guarantees should apply to all judicial proceedings, including those carried out before military tribunals.

3.8 Provisions on Freedom of Opinion and Expression

International instruments agree that governments must guarantee the respect of the right of everyone to freedom of conscience, opinion and expression, without any form of discrimination. The guarantees provided in this regard by the draft Constitution of Laos appear to be narrower in scope than those offered under these standards. Article 26, which concerns some of these rights, reads:

"Lao citizens have the right to profess or not to profess any religion, freedom of speech, the press and assembly, to set up associations and stage demonstrations, in a lawful manner. All Lao citizens have the right to study and apply sciences and technologies, create artistic and literary works and engage in cultural activities."

Article 10 contains a clause protecting "lawful" religious activities and prohibiting discrimination against "religious groups or classes of people". Article 10 reads:

"The state protects all lawful activities of Buddhist monks and novices as well as of the followers of other religions. All acts of division amongst religions and amongst the people are prohibited."

The right to freedom of thought, conscience and religion protected under Article 18(1) of the ICCPR is wider in scope than the right "to profess or not to profess any religion". It includes freedom to have or adopt a religion or belief of one's choice and to manifest it in worship, observance, practice and teaching, in public or private, individually or in community. Limitations on the exercise of these freedoms specified by law are permitted, under Article 18(3) of the ICCPR, only insofar as they are necessary to protect public safety and the fundamental rights of others.

Guarantees of the rights to freedom of opinion and expression set out in the draft constitution appear to fall short of international standards. Article 26 of the draft constitution provides for the exercise of freedom of speech and freedom of the press "in a lawful manner". Such legal restrictions may be necessary for, among other things, the respect of the rights or reputation of others, but international standards provide that exercise of the rights to freedom of opinion and expression include the right to "hold opinions without interference" and the freedom to seek, receive and impart information and ideas of all kinds and in any form. The draft constitution does not specifically protect these aspects of freedom of opinion and expression.

XII. Amnesty International recommends that safeguards concerning the freedom of religion and speech, contained in Article 26 of the draft constitution, be amended in accordance with Articles 18 and 19 of the ICCPR. The Constitution of Laos should specifically safeguard the following rights:

- **right to freedom of thought, conscience and religion, including freedom to have or adopt a religion or belief of one's choice and to manifest it in worship, observance, practice and teaching, in public or private, individually or in community.**

- right to hold opinions without interference, including freedom to seek, receive and impart information and ideas of all kinds and in any form.

These rights should be subject only to the legal limitations provided for under Articles 18(3) and 19(3) of the ICCPR.

3.9 Provisions on Association and Peaceful Assembly

Article 26 of the draft constitution provides that Lao citizens "have freedom. . . [of] assembly, to set up associations and stage demonstrations, in a lawful manner."

It is advisable that the draft constitution be amended to recognize the right to peaceful assembly together with the guarantee that it can be exercised with no legal restriction other than those "necessary in a democratic society" (Article 21 of the ICCPR).

Amnesty International is concerned that human rights safeguards provided for in the draft constitution might, if left unamended, be jeopardized by a restrictive interpretation of the constitution and by legislation.

XIII. Amnesty International recommends that safeguards on the right to freedom of association and peaceful assembly be amended in accordance with Articles 21 and 22 of the ICCPR. The Constitution should specifically safeguard the following rights:

- right to peaceful assembly, exercised with no legal restriction other than those "necessary in a democratic society";
- right to freedom of association, including the right to form and join trade unions, exercised with no legal restriction other than those "necessary in a democratic society".

Restrictions on the exercise of rights and freedoms recognised in the constitution should be limited to those allowed under international instruments such as the ICCPR.

3.10 Freedom of Movement

The question of "freedom of domicile and travel within the country" was reportedly debated in the public discussion of the draft constitution. However, the draft available to Amnesty International does not contain any guarantee of the right to freedom of movement and residence.

The UDHR provides in Article 13 that:

- "1. Everyone has the right to freedom of movement and residence within the borders of each State.
- "2. Everyone has the right to leave any country, including his own, and to return to his country."

Article 12(3) of the ICCPR strictly limits the restrictions which may be imposed on the exercise of the right to liberty of movement, the freedom of residence and the freedom to leave any country, including one's own.

XIV. Amnesty International recommends that the Constitution of Laos guarantee the right to liberty of movement, the freedom to choose a residence and the freedom to leave Laos. These guarantees should be subject only to restrictions consistent with those set forth in Article 12(3) of the ICCPR.

3.11 The Judiciary

Chapter VIII of the draft constitution deals with the judiciary and the procuracy. The latter appears to combine the functions of public prosecution and administrative supervision: under Article 64, its role is to "control the fair (thouk-tong) and uniform enforcement of laws by all ministries, state commissions, offices, units, enterprises, state and social organizations, local administrative committees, state employees and citizens" (Article 64).

Local People's Court judges and assessors (tolakan pasason) are elected by local People's Councils. Judges and assessors "have equal rights" in adjudicating cases (Article 60). Judges and deputy judges of the Supreme People's Court are elected by the SPA standing committee (Articles 57 and 38).

Article 59 provides that judges and assessors shall be "independent in passing judgment" and shall do so solely on the basis of the law. Despite incorporation of this important principle, Amnesty International is concerned that this provision needs to be further strengthened in order better to guarantee the independence of the judiciary as set forth in international standards. It may be necessary to provide further safeguards consistent with the Basic Principles on the Independence of the Judiciary adopted by the UN in 1985.⁹

⁹ This document, referred to hereafter as "the Basic Principles", was adopted in September 1985 at the Seventh UN Congress on Prevention of Crime and Treatment of Offenders, which invited governments to take them into account within the framework of their national legislation practice. The Basic Principles were subsequently approved in November 1985 by the UN General Assembly.

Basic Principle 1 provides that the independence of the judiciary should be guaranteed by the state. The draft constitution, however, does not impose on the government and its agencies the duty to "respect and observe" the independence of the judiciary, as set forth in Basic Principle 1. A provision to that effect included in the draft constitution would encourage members of the judiciary to act independently in accordance with the Basic Principles and the constitution.

Article 56's provision that only the constitutionally established courts have authority to conduct trials is welcome. It would be advisable to add, in accordance with Basic Principle 3, that the judiciary has exclusive authority to decide whether an issue submitted to it is within its jurisdiction.

Article 56 does not specify the respective areas of competence of people's courts and military courts. These should be made clear to ensure that, as a general rule, anyone has the right to be tried by ordinary courts under established legal procedures in accordance with Basic Principle 5. The authority of military courts should be clearly limited to the trial of military personnel for offences covered by military codes. All guarantees for fair trial provided in international standards should also apply to trials before military courts.

Amnesty International notes with concern that many of the Basic Principles are not addressed in the draft constitution and that some of its provisions may run counter to the Basic Principles. Article 32(3) gives the SPA powers to "supervise the enforcement of the constitution and laws" and Article 38(3) entitles the SPA standing committee -- rather than a judicial organ -- to "interpret and provide explanations for the provisions of the Constitution and various laws."

Articles 32 and 38 should make clear, in accordance with Basic Principle 3, that the powers of the SPA and of its standing committee to interpret and explain laws do not extend to authority to interfere with the judiciary, and in particular should not limit the authority of the judiciary to decide on the applicability of a law, or interpretation and explanation thereof, in relation to any specific case.

The draft constitution empowers the SPA standing committee to "follow and inspect" the work of the Supreme People's Court and People's Judiciary Institute (Article 38[6]) and allows SPA members to interpellate the chairmen of these two organs, who "must give answers at SPA sessions" when thus questioned (Article 41). These provisions, as well as those giving local People's Councils the power to "follow the activities" of local people's courts, should be restricted in view of the Basic Principles, in particular Basic Principles 1 to 7, 15 and 16.

It is important that, in accordance with Principle 14, judges have guaranteed tenure until the expiry of their term of office. Article 38(8) and 52(2) enable the SPA standing committee and local people's councils to appoint and remove judges at the appropriate level. These articles fail to indicate whether and for what cause the removal of judges may take place before the end of a normal term of office.

This lack of precision may entail a risk that the SPA or a local assembly could decide to remove a judge or assessor in a manner that could adversely effect judicial independence. The Basic Principles provide detailed guidelines on the conditions of service and tenure, professional immunity and suspension and removal procedures, which if implemented help ensure effective judicial independence. These principles, particularly Basic Principles 12 to 20, should be reflected in the constitution, either by inclusion or by reference.

XV. Amnesty International believes that the independence and impartiality of the judiciary should be enshrined in the constitution and that the constitution should also guarantee the jurisdiction of the judiciary over all issues of a judicial nature, without the judicial process being subjected to inappropriate or unwarranted interference or review. Amnesty International therefore recommends that Articles 32(3), 38(3), 38(6), 41 and 59 be amended and made consistent in particular with Basic Principles 1 to 7, 15 and 16. It also recommends:

- that Articles 38(8) and 52(2) of the draft constitution be amended to provide guarantee of tenure for the full length of the original term of office, without prejudice of legal disciplinary procedures that may affect judges;
- that principles regulating the service of judges and assessors, worded in accordance with or by reference to the Basic Principles, be included in the constitution.

XVI. Amnesty International recommends that the competence of military courts be restricted to the trial of military personnel convicted of offences covered by military codes. It also recommends that the constitution should guarantee the jurisdiction of the judiciary over all issues of a judicial nature and its exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

3.12 Transitory Clause

All safeguards on human rights contained in the Constitution of Laos should become enforceable immediately after its adoption. To that effect, the constitution should overrrule any existing legal provision which contradicts the rights it provides for.

XVII. Amnesty International recommends that a provision be included in the draft constitution, guaranteeing that all legal provisions which contradict the constitution be abrogated.

APPENDIX I**DRAFT CONSTITUTION OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC****(UNOFFICIAL TRANSLATION)**

The following is an unofficial translation of the Lao text of the draft constitution of the Lao People's Democratic Republic (LPDR) as it was published in the official newspaper Pasason on 4 June 1990. Amnesty International believes this translation is an accurate rendering of the text published in Pasason, but it takes no position on any point of interpretation which may arise in connection with it. To Amnesty International's knowledge, no official translation of the draft constitution has been published in the LPDR.

Introduction

The multi-ethnic Lao people have survived and developed in this beloved land for thousands of years. More than six centuries ago, during the time of Prince Fa Ngeum, our ancestors established the unified Lan Xang country and built it into a prosperous country.

Since the 18th century, Lao land had been repeatedly threatened and invaded by various outside powers. The multi-ethnic Lao people had promoted and expanded the heroic and resolute traditions of their ancestors and continually fought persistently to gain the independence and freedom for the nation.

For more than 60 years, under the correct leadership of the former Indochinese Communist Party and the present Lao People's Revolutionary Party (LPRP), the multi-ethnic Lao people has heroically carried out difficult struggles until they crushed the yokes of domination and oppression of the colonialists, imperialists and feudalists, completely liberated the country, and established the LPDR, thus ushering in the new era - an era of the building and development of the Lao fatherland and an era in which the multi-ethnic Lao people genuinely maintain the rights of ownership of the country.

In this new period, the multi-ethnic Lao people have been jointly implementing the two strategic tasks of defending the country and building a new life, thereby achieving satisfactory results in the initial stage. However, following the establishment of a new state under the popular democratic system, the social life now requires a constitution.

The constitution to be promulgated is the first constitution of our country under the popular democratic system and reiterates the past achievements of the revolution and the objectives to be attained, namely peace, independence, democracy, unification and the prosperity of the country. The constitution is a legal act in the new stage of history, conforms to the objective laws and reflects the intentions and aspirations of the multi-ethnic Lao people.

Chapter 1

Political System

Article 1. The LPDR is a popular democratic state under the leadership of the LPRP.

Article 2. The LPDR is an independent, sovereign and unified country with territorial integrity covering both airspace and territorial waters; belongs to the multi-ethnic people and is indivisible.

Article 3. All powers in the LPDR belong to the multi-ethnic people of all strata and social status; namely workers, farmers, craftsmen, small proprietors, traders, national capitalists and intellectuals. Among them, workers, farmers and revolutionary intellectuals are regarded as the core elements.

Article 4. The people's power is exercised through the system of the representative organs and bodies of the state power which is composed of the Supreme People's Assembly (SPA) and the local people's councils at all levels.

Article 5. The elections of the people's representatives to the SPA and local people's councils at all levels shall be carried out through general, impartial, direct and secret balloting.

Voters have the right to propose the dismissal of representatives they have elected on the grounds of misconduct and untrustworthiness.

Article 6. The SPA, local people's councils and other state organizations are established and function in conformity with the principle of democratic centralism.

Article 7. The fundamental essence of the popular democratic system is the enhancement of the people's right of ownership. All state organizations and cadres are required to popularise and propagate policies, regulations and laws and together with the people organise their implementation so as to guarantee the aforementioned legitimate rights and interests. All acts of bureaucratism and threats that are physically harmful to the people and detrimental to their lives and property are prohibited.

Article 8. The Lao Front for National Construction, the Federation of the Lao People's Revolutionary Youth Union, the Federation of Lao Women's Union and other mass organizations function in accordance with their own rules and regulations, rally, unite and mobilise the people of all strata and ethnic tribes on the basis of the worker-farmer alliance with the aim of implementing state policies, regulations and laws and turning the LPDR into a peaceful, independent, unified and prosperous country.

Article 9. The state implements the policy of unity in line with the principle of equality among ethnic tribes. All acts of sowing discord and racial discrimination are prohibited. All ethnic tribes have the right to safeguard and promote their fine customs and culture.

The state impartially implements every measure to upgrade the economy, education, culture and social welfare of all ethnic tribes on the plains and in mountainous regions.

Article 10. The state protects all lawful activities of Buddhist monks and novices as well as of the followers of other religions. All acts of division amongst religions and amongst the people are prohibited.

Article 11. The state manages society by the provisions of the Constitution and laws. All party, state and mass organizations and citizens must observe the provisions of the Constitution and laws.

Article 12. The LPDR implements the policies of national defense and ensures the security of the whole people.

The armed forces must be loyal to the country and people and protect and safeguard the fruits of the revolution, and the lives and peaceful labour of the people.

Article 13. The LPDR pursues a foreign policy of peace, independence, friendship and non-alignment; promotes friendly relations and co-operation with all countries on the basis of the five principles of peaceful coexistence: respect for each other's independence, sovereignty and territorial integrity; non-interference in each other's internal affairs; equality; mutual interest; and persistent support for the world peoples' struggle for peace, national independence, democracy and social progress.

Chapter II

Socio-economic System

Article 14. The central objective of the economic policy is to transform the natural economy into a market economy, aimed at developing production and improving the material and spiritual life of the multi-ethnic people.

The state pays attention to developing production forces on the basis of implementing the agricultural-forestry, industrial and services economic structure; expanding communications and transport work; and vigorously utilising trade with a view to developing the foundation of the national economy.

The state promotes economic relations with foreign countries based on the principle of respect for each other's independence and mutual benefits.

Article 15. The state safeguards and enhances the forms of state, collective and individual ownership; the private ownership of both domestic and foreign capitalists who have invested in Laos; and the ownership in partnerships between the state and other economic sectors as well as among the various economic sectors.

The state promotes the relations between the various economic sectors and the state under the form of state capitalism.

The state protects the freedom of competition and equality before the law among the various economic sectors.

Article 16. The state protects the right of ownership and the rights in utilising, transferring and inheriting property of organizations and individuals. Land ownership belongs to the national community, which is represented by the state. The state guarantees the right of utilising land, including the rights of inheriting and transferring it to other people in accordance with the law.

Article 17. The state has a policy of managing the economy in accordance with the mechanisms created by the extensive application of the goods-money relations by linking planning with the markets, implementing the principle of democratic centralism, increasing the efficiency of the socio-economic sector, and harmoniously combining the state and collective interests with individual interests.

Article 18. All offices, organizations and citizens must protect the environment, forests, including all animals, water sources and land.

Article 19. Educational and cultural movements are aimed at heightening the sense of patriotism and love of the popular democratic system, strengthening unity among the multi-ethnic people, and holding aloft the sense of and the capability in being the owners of the country; enhancing fine traditional national culture and combining it with the progressive culture of the world; and rectifying all negative phenomena in the cultural and ideological spheres. The state implements a policy of taking education one step ahead and linking it with the building of the new men/women, and in building schools at all levels so as to turn education into a comprehensive system; pays particular attention to developing education in areas where ethnic people reside; vigorously promotes cultural, artistic and literary movements; and expands the mass media network to mountainous regions and remote areas.

Article 20. The state pays attention to expanding public health services; expanding acrobatic, sports and tourism work; and taking care of disabled combatants, the families of people who sacrificed their lives for the country, the families of soldiers, pensioners and the families of those people who have committed virtuous deeds towards the revolution, and the policy on mothers and children.

Chapter III

Fundamental Rights and Obligations of Lao Citizens

Article 21. All citizens are equal before the law. All Lao citizens 18 years of age and over, regardless of their gender, social status, education, faith or ethnic tribe have the right to vote, and at the age of 21 and over, the right to stand for election unless they are of unsound mind, or have their rights to vote and stand for election revoked by a court.

Article 22. Women and men are equal in all political, economic, cultural, social and family aspects.

Article 23. Lao citizens have the right to work and engage in occupations not contrary to the law. Labouring people are entitled to respite and material assistance in old age, in time of ailment, in cases of incompetence and disability, and in other cases as stipulated by law.

Article 24. Lao citizens have the right to lodge petitions, denunciations and recommendations with state organizations in connection with problems of both collective and individual interests.

Such recommendations must be considered and corrective actions taken as stipulated by law.

Article 25. The rights of Lao citizens in their bodies and domiciles are inviolable. Lao citizens cannot be arrested or searched without decision or approval from authorized organizations, with the exception of cases prescribed by law.

Article 26. Lao citizens have freedom to profess or not to profess any religion, freedom of speech, the press and assembly, to set up associations and stage demonstrations, in a lawful manner. All Lao citizens have the right to study and apply sciences and technologies, create artistic and literary works and engage in cultural activities.

Article 27. The legitimate rights and interests of Lao citizens in foreign countries are protected by the LPDR.

Article 28. All Lao citizens are obliged to respect the constitution, laws, labour discipline, public order and tranquility, rules of social life and pay taxes according to the law.

Article 29. All Lao citizens must fulfil their sacred obligations in defending their country and public tranquility and perform military service as prescribed by law.

Article 30. The rights and freedom of aliens and those who have no nationality are also protected by the provisions of Lao law. They have the right to lodge complaints with courts and various organisations of the LPDR to defend their personal rights, property, families and other rights.

The LPDR grants the right to seek asylum to foreigners being suppressed for their struggle for freedom, justice, peace and scientific causes.

Aliens and those who have no nationality, must abide by the provisions of the Constitution and laws of the LPDR.

Chapter IV

The Supreme People's Assembly [SPA]

Article 31. The SPA is the highest representative organ of the people and the supreme body of the state power endowed with legislative power and controlling the whole of the state's and society's activities.

Article 32. The SPA has the following powers and duties:

- (1) To enact and amend the constitution;
- (2) To enact, amend and abolish various laws;
- (3) To supervise the enforcement of the Constitution and laws;
- (4) To approve the state's socio-economic development plans and state budget;
- (5) To elect and remove the chairman, vice-chairman and other members of the SPA standing committees; the president of the state; the chairman and members of the Council of Ministers; the President of the Supreme People's Court and the People's Procurator General;
- (6) To appoint the commissions attached to the SPA;
- (7) To establish and abolish ministries and state commissions as proposed by the Council of Ministers;
- (8) To establish the boundaries of provinces and municipalities and to set up new provinces or zones under the management to the centre;
- (9) To fix, amend and abolish taxes;
- (10) To decide on general amnesty;
- (11) To decide on questions of war and peace;
- (12) To ratify or abolish international treaties as proposed by the standing committee of the SPA; and
- (13) All rights and duties as stipulated by the SPA.

Article 33. The tenure of the SPA is five years. The election of the new SPA must be held no later than two months prior to the expiration of the term of the incumbent SPA.

In time of war or in any event that obstruct the election, the SPA may extend its term but must organise the election not later than six months after the situation returns to normal.

Article 34. The SPA convenes its first session within two months following its election.

The SPA convenes two ordinary sessions per year. The SPA Standing Committee calls for such sessions.

An extraordinary session of the SPA can be proposed by the SPA Standing Committee or by two-thirds of the SPA members.

Article 35. The SPA session is legal only with the presence of more than half of the total number of the SPA members.

Article 36. The organizations that have the right to propose draft laws are as follows:

- (1) The SPA Standing Committee;
- (2) The commissions attached to the SPA;
- (3) The Council of Ministers;
- (4) The Supreme People's Court and People's Judiciary Institute; and
- (5) Mass organizations at the central level.

Article 37. Laws and resolutions of the SPA are valid only after they are voted for by more than half of the total number of the SPA members present at each meeting, unless the Constitution is amended as prescribed in Article 73.

The promulgation of laws must be made not later than 30 days after the SPA endorsement.

Article 38. The tenure of the SPA Standing Committee is equal to that of the SPA.

The SPA Standing Committee has the following duties:

- (1) To fix the date for each SPA session;
- (2) To call for the SPA sessions;
- (3) To interpret and provide explanations for the provisions of the constitution and various laws;
- (4) To issue decrees;
- (5) To decide on plebiscites;
- (6) To follow and inspect the performances of the Council of Ministers, Supreme People's Court, People's Judiciary Institute and local people's councils;
- (7) To amend, abolish or suspend the normative acts of the Council of Ministers and local people's council if they are deemed contradictory to the Constitution and existing laws;
- (8) To appoint or remove deputy judges and judges of the Supreme People's Court and deputy People's Procurator Generals;
- (9) To appoint or remove the plenipotentiary representatives of the LPDR to foreign countries;
- (10) To ratify or abolish agreements signed with foreign countries unless the SPA Standing Committee deems it necessary to propose them to the SPA to do so;
- (11) To consider promotions for military and police officers at the rank of colonel and above, as well as diplomatic cadres working abroad;
- (12) To decide on pardons;
- (13) To decide granting or revoking Lao nationality;
- (14) To decide on the conferment of the state victory medals, commemorative medals and titles;
- (15) To decide on the conferment of the national gold medal;
- (16) To decide general or partial military conscription;
- (17) To declare war in any case of the country facing aggression while the SPA is in recess;
- (18) To exercise other rights and to execute other duties defined by the SPA.

Article 39. The Chairman of the SPA Standing Committee is the chairman of the SPA, who is charged with directing and supervising all sessions of the SPA and representing the SPA in carrying out duties on promoting internal and foreign relations.

Article 40. The SPA creates its own commissions to carry out the duties of studying and considering draft laws, draft statutes, draft decrees, draft plans, budgets and other issues as assigned by the SPA or the SPA Standing Committee and to assist the SPA and the SPA Standing Committee in exercising their rights of supervision of work under the scope of their responsibilities.

If it deems necessary, the SPA may appoint an ad hoc commission to execute a particular task.

Article 41. Members of the SPA have the right to interpellate the Council of Ministers or members of the Council of Ministers, the Chairman of the Supreme Court and the chief prosecutor of the People's Judiciary Institute. All organizations or people interpellated must give answers at the SPA sessions.

Article 42. Members of the SPA cannot be prosecuted in court or be detained without the approval of the SPA or of the SPA Standing Committee during the two sessions of the SPA.

In cases involving immediate and urgent offences, the organization detaining SPA members must report to the SPA or the SPA Standing Committee for consideration and decisions concerning them.

Chapter V

The State President

Article 43. The state President, who is elected by the SPA, is the chief of state of the LPDR and the representative of the multi-ethnic Lao people both at home and abroad.

Article 44. The tenure of the state President is equal to the tenure of the SPA.

Relying on decisions made by the SPA or the SPA Standing Committee, the state President declares the implementation of laws and statutes; gives ratification to treaties signed with foreign countries; appoints and recalls plenipotentiary representatives of the LPDR to and from foreign countries; approves the plenipotentiary representatives of foreign countries accredited to the LPDR; issues decrees on the conferment of national gold medals, awards and the highest victory medals of the LPDR; announces pardons and amnesties; declares the state of war; and issues orders on general or partial conscription.

Chapter VI

Council of Ministers

Article 45. The Council of Ministers is the government of the LPDR. It is the highest working and administrative organisation of the highest organ of state power.

The Chairman of the Council of Ministers is elected by the SPA.

The Council of Ministers manages in a unified manner the execution of the duties of state in the political, economic, cultural, social, national defence and public security maintenance fields and external affairs.

The Council of Ministers is responsible for and reports its activities to the SPA. During the interval of the two sessions of the SPA, it must report them to the SPA Standing Committee.

The tenure of the Council of Ministers is equal to the tenure of the SPA.

The Council of Ministers is composed of:

- the Chairman of the Council of Ministers;
- the vice-chairmen of the Council of Ministers;
- the ministers; and
- chairmen of state committees.

Article 46. The Council of Ministers has the following rights and duties:

- (1) To ensure the implementation of the constitution and laws;
- (2) To propose draft laws and statutes to the SPA and the SPA Standing Committee;
- (3) To design socio-economic development plans and state budgets to be submitted to the SPA for approval;
- (4) To organise, guide and supervise the implementation of the socio-economic development plans and state budgets;
- (5) To guide and supervise the activities of all ministries and organisations attached to the Council of Ministers;
- (6) To protect the lawful interests of citizens and to create conditions for all citizens to fulfil their obligations;
- (7) To ensure peace and happiness for the country and order for society;
- (8) To organise national defence among the entire masses and to build the people's armed forces;
- (9) To sign agreements with foreign countries in the name of the LPDR;
- (10) To guide and supervise the activities of the local administrative committees;
- (11) To define the boundaries of all districts;
- (12) To change or revoke all decisions, instructions, announcements and releases of all ministries, state committees and other organisations attached to the Council of Ministers when they are considered to be incompatible with the law;
- (13) To change or revoke decisions, instructions, announcements and releases of the local administrative committees when they are considered to be incompatible with the law; and
- (14) To suspend the implementation of decisions reached by the provincial and municipal people's councils when they are considered to be incompatible with the law, and to recommend that the SPA modify or revoke such decisions.

Article 47. The Council of Ministers is the body that issues decrees, resolutions, instructions and releases for which implementation is imperative throughout the country.

Article 48. The Chairman of the Council of Ministers guides the work of the Council of Ministers and represents the Council of Ministers in guiding the work of all ministries, state committees, other organisations attached to the Council of Ministers and the administrative committees at all levels.

The Chairman of the Council of Ministers issues decrees, resolutions, instructions and releases for organising the execution of the said work.

The vice-chairmen of the Council of Ministers are the assistants in the work of the Chairman of the Council of Ministers. In his absence, the Chairman of the Council of Ministers will delegate his authority to one of the vice-chairmen, who will act on his behalf.

Article 49. All ministers and chairmen of state committees supervise the services or spheres of work throughout the country.

Ministers and chairmen of state committees rely on the Constitution and the law, plans, policies, resolutions and instructions of the Council of Ministers in outlining decisions and actual regulations and in recommending detailed methods for organising their implementation in the services or spheres of work under their responsibilities.

Chapter VII

Local People's Councils and Administrative Committees

Article 50. The territory of the LPDR is divided into provinces and municipalities. The provinces and municipalities are divided into districts.

The districts are divided into villages. Provinces, municipalities and districts have their own people's councils.

Article 51. Local people's councils are organs of state power in the localities.

Local people's councils decide on issues regarding economic and cultural development, ensure political tranquility and public order in the localities, protect the peaceful life of the people, and carry out the roles and duties assigned by the next higher organs.

Article 52. Local people's councils have the following rights and duties:

- (1) To ensure the implementation of the Constitution and laws in the localities;
- (2) To elect or to remove from positions the administrative committees and judges of the people's courts at the same levels;
- (3) To follow the activities of the administrative committees and the people's courts at the same levels and of the people's councils at the lower levels;
- (4) To endorse the establishment or abolishment of working bodies as proposed by the chairmen of the local administrative committees;
- (5) To map out the socio-economic development plans and budgets of the localities and to supervise the implementations of these plans;

- (6) To change or revoke decisions found to incompatible with the law which were made by the administrative committees at the same level or by the people's council at the lower levels;
- (7) To protect the legitimate interests of the citizens and to ensure that citizens are able to exercise their rights and to fulfil their obligations;
- (8) To consider and resolve the requests, complaints and recommendations of the people within the scope of their rights and authorities specified by law;
- (9) To elect the standing committee of the local people's council, whose duty is to execute the decisions and tasks within the authority of the local people's council, when it is not in session.

Article 53. The tenure of the provincial and municipal people's councils is five years and the tenure of the district people's councils is two and a half years.

Article 54. The local administrative committees are the standing organs of the local people's councils as well as the working organs of the people's councils and state administrative organs in the localities.

The local administrative committees are responsible for and report their activities to the people's councils at the same levels and report to or seek approval for their activities from the administrative organs at the next higher level.

A local administrative committee is composed of a chairman, one or more vice-chairmen, and a number of members.

The tenures of the local administrative committees are the same as those of the people's councils at the same levels.

Article 55. The local administrative committees have the following rights and duties:

- (1) To organise the execution of resolutions and recommendations of the people's councils at the same levels;
- (2) To organise the execution of all duties outlined by the higher levels and to ensure the strict implementation of the Constitution and laws;
- (3) To direct and supervise the activities of all working bodies under the scope of their responsibilities;
- (4) To call meetings of the people's councils at their own levels;
- (5) To design local socio-economic development plans and budgets to be submitted to the people's councils at their own levels for approval;
- (6) To organise, guide and supervise the implementation of local socio-economic development plans and budgets;
- (7) To change or revoke the decisions, instructions, recommendations and releases of any working body under their own control or of the administrative committees at the lower levels when they are deemed to be incompatible with the regulations and laws;
- (8) To suspend the implementation of resolutions adopted and recommendations made by the local people's councils at the lower levels when they are deemed to be incompatible with

the regulation and laws and to propose to the people's councils at their own levels to change or to revoke them;
 (9) To review and resolve the requests, denunciations and recommendations made by the people within the scope of their rights and authorities specified by law.

Chapter VIII

The People's Courts and People's Procuracy

A. The People's Courts

Article 56. The people's courts constitute the LPDR's judicial organization comprising the Supreme People's Court, local people's courts and military courts. Only these courts are empowered to conduct trials of cases.

Article 57. The people's courts are established on the basis of the election of judges and people's assessors by the local people's councils.

The local people's councils elect and remove the people's tribunals judges and people's assessors of the same level. The tenure of the people's tribunals is equal to that of the local people's councils.

Article 58. The Supreme People's Court is the highest judicial organ of the LPDR.

The Supreme People's Court supervises trials of cases and controls rulings by the local people's courts and military courts.

The Supreme People's Court is responsible before and reports to the SPA, and to the SPA Standing Committee during the SPA recess.

The local people's courts are responsible before and report their activities to the local people's councils of the same levels.

Article 59. When examining cases, judges and people's assessors are to be independent in passing judgment in accordance with the law only.

Article 60. Tribunals pass judgement in a collective manner. When cases are adjudicated, judges and people's assessors have equal rights.

Article 61. Court proceedings must be heard in public; nevertheless cases may be held in secret if provided for by law.

The accused are entitled to a defence. The association of lawyers is established to provide legal assistance for the accused and related people.

Article 62. Representatives of social organizations have the right to take part in court proceedings as prescribed by regulations.

Article 63. Court rulings attaining legal effectiveness must be respected by party, state and mass organizations and every citizen, and be strictly implemented by individuals and units concerned.

B. The People's Judiciary Institute [Les Parquet Populaires]

Article 64. The People's Procurator General and the People's Judiciary Institute follow and control the fair and uniform enforcement of laws by all ministries, state commissions, offices, units, enterprises, state and social organizations, local administrative committees, state employees and citizens.

Article 65. The People's Procurator General is appointed and removed by the SPA and has a tenure equal to that of the SPA.

The People's Procurator General reports his activities to the SPA and the SPA Standing Committee during the SPA recess.

Deputy People' Procurator Generals are appointed and removed by the SPA Standing Committee on the recommendation of the People's Procurator General.

Article 66. Procurators, deputy procurators, members of provincial or municipal people's procuracies, district people's procurators and military procurators are appointed and removed by the People's Procurator General, and those responsible to him report their activities to him and their next higher people's procuracies.

Article 67. In conducting their duties, local people's procuracies and military procurators are not under the jurisdiction of the local state organizations.

Chapter IX

Alphabet, Language, National Emblem, National Flag, National Anthem and Capital City

Article 68. The Lao alphabet and language are the official written and spoken language.

Article 69. The national emblem of the LPDR is a circle depicting in the bottom part half of a toothed wheel and a red ribbon with the inscription The Lao People's Democratic Republic, and decorated with crescent-shaped ears of rice on the two sides and a red ribbon stretched between the middle of the rice ears with the inscription Peace, Independence, Unity, and Social Progress. A gold star is located between the tips of the rice ears. A road, a paddyfield, a forest, an ore mine, and a hydroelectric dam are depicted in the middle of the circle.

Article 70. The national flag of the LPDR is blue with red edges. The area of the red edges is half that of the blue area. A white moon, the area of which is equal to four-fifths of the blue area, is in the middle of the flag. Its width is two-thirds of its length.

Article 71. The national anthem of the LPDR is "Xat Lao".

Article 72. The capital city of the LPDR is Vientiane.

Chapter X

The Last Provision

Article 73. Only the SPA is has the right to amend the Constitution. Any amendment to the Constitution requires the votes of two-thirds of the total number of SPA members.