

ACCESS TO JUSTICE FOR CHILDREN: LAO PEOPLE'S DEMOCRATIC REPUBLIC

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

The Lao People's Democratic Republic ("Lao PDR") acceded to the CRC on 8 May 1991.¹ Lao PDR has also acceded to the Optional Protocols on children in armed conflict² and the sale of children.³

The status of the CRC and other international conventions within the domestic legal system is unclear. The Constitution provides that, before a treaty signed by the Government can enter into force it must be ratified by the National Assembly and promulgated by the President of the Republic.⁴ However, it does not specify whether a treaty to which Lao PDR is a signatory requires a law to incorporate it or is automatically incorporated. In practice, however, conventions are treated as aspirational rather than enforceable, and the Government is tasked with implementing international obligations in domestic legislation and policy.⁵

B. Does the CRC take precedence over national law?

It is unclear whether the CRC takes precedence over national laws. The Government stated during its review in 2011 by the Committee on the Rights of the Child that the CRC takes precedence over domestic law "in the event of a normative conflict",⁶ and that "[i]n the event of conflict between a domestic law and international law, the Government tries to bring the domestic legislation into line with the international law".⁷ However, given that the status of the CRC in the domestic legal system is unclear, it is unlikely that the CRC would take precedence over national law.

C. Has the CRC been incorporated into national law?

¹ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

² https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

³ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en.

⁴ Constitution of Lao PDR, Articles 53(11), 67(13), 70(8).

⁵ CRIN, 'Laos: national laws', available at: <https://www.crin.org/en/library/publications/laos-national-laws>.

⁶ *Summary record of the 1600th meeting*, CRC/C/SR.1600, 19 April 2011, para. 31. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSR.1600&Lang=en.

⁷ *Second periodic report of Lao PDR to the UN Committee on the Rights of the Child*, CRC/C/LAO/2, 10 August 2010, para. 13. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fLAO%2f2&Lang=en.

The CRC has not been incorporated into national law. However, the National Assembly has adopted and amended certain laws concerning children's rights. For example, Article 3 of the Law on the Protection of the Rights and Interests of Children⁸ provides for certain "basic rights" of children, which reflect certain provisions of the CRC.⁹

D. Can the CRC be directly enforced in the courts?

No. The courts in the Lao PDR only recognise the Lao laws promulgated by the National Assembly,¹⁰ and only have jurisdiction to consider matters governed by domestic laws and regulations.¹¹

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

No. The domestic courts have not applied the CRC during court proceedings.¹²

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children may file claims in court through their legal representatives to protect their rights and interests that have been violated.¹³

Regarding criminal cases, only prosecutors are authorised to initiate criminal proceedings in court. Victims are not allowed to pursue criminal charges by themselves.

In addition, any person or organisation that is aware of any situation regarding any child at risk or needing special protection must promptly notify or report the situation to the Committee on Protection and Assistance to Children or to an investigation agency if it is a criminal offence.¹⁴ The Committee has the duty to receive reports on such children, and identify and use emergency measures to protect and assist them.¹⁵

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Children - defined as any person below 18 years of age¹⁶ - are not permitted to bring cases by themselves, but the case may be brought through legal representatives of the children — parents¹⁷ or a guardian.¹⁸ Both parents have equal rights and obligations as

⁸ No. 05/NA on 27 December 2006.

⁹ Ibid., Article 3.

¹⁰ Article 5 (New) of the Law on People's Court No. 09/NA on 26 November 2009.

¹¹ *Second periodic report of Lao PDR to the UN Committee on the Rights of the Child*, para. 13.

¹² Verbal information obtained from court officers of the Juvenile Division. Due to the lack of a computerised system to review court precedents, this is the only available source of information.

¹³ Law on Civil Procedure (Amended) No. 13/NA 4 July 2012, Article 71.

¹⁴ Law on the Protection of the Rights and Interests of Children No. 05/NA, Article 38.

¹⁵ Ibid., Article 36.

¹⁶ Ibid., Article 2(1).

¹⁷ Article 43 of the Law on Family states that guardians of children or incompetent individuals have the

legal representatives to protect the rights and interests of their children.¹⁹ However, a child under 18 years of age without a guardian may be represented by a public prosecutor.²⁰ In criminal proceedings, public prosecutors would pursue the criminal lawsuit against the offender.

C. In the case of infants and young children, how would cases typically be brought?

Cases concerning infants and young children are treated no differently to general children's cases when brought to the courts (see parts II.A and B above).

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Under the Law on Criminal Procedure, a child who is an accused or defendant is entitled to a "protector", whose role is to participate in proceedings to protect the rights and interests of the child. With respect to children, a protector may be a lawyer, representative of an organisation, parent, guardian, or close relative. If the accused or defendant does not have a protector, the people's court is required by law to appoint a lawyer. A lawyer and protector must "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" and provide legal assistance to that person.²¹

Additionally, children who are victims or witnesses in criminal proceedings have a right to have support from parents, guardians or legal protectors at all stages of the proceedings to protect their legitimate rights and interests.²²

The Law on the Protection of the Rights and Interests of Children provides that Juvenile Courts (or the Juvenile Divisions of the People's Courts in their absence) shall operate on the principle that children shall have the right to legal assistance from a lawyer or other protector.²³ However, in practice, free or subsidised legal assistance from the court in civil cases concerning the rights and interests of children is not available to children or their legal representatives.²⁴

duty to care for and educate them when their parents are deceased or have had their parental rights withdrawn or are ill or are in need of care for other reasons. Such guardians also have the duty to protect the rights and interests of children or incompetent individuals.

¹⁸ Article 71 of the Law on Civil Procedure (Amended) No. 13/NA dated 4 July 2012 states that litigants who are under 18 years of age or who are incompetent, such litigants must act through legal representatives.

¹⁹ Articles 86 and 89 of the Law on Civil Procedure (Amended) No. 13/NA dated 4 July 2012. Article 87 states that a guardian shall have the right and duties to proceed with a civil case for the child i.e. submit a plaint or a petition, propose and submit evidence relating to the case to the court, or attend the court hearings and provide opinions at the court's meeting.

²⁰ Article 62 of the Law on Civil Procedure (Amended) No. 13/NA dated 4 July 2012 states that public prosecutors participate in civil cases to monitor and inspect the implementation of laws in the court, and may also participate as plaintiffs in civil cases, as provided by the laws, to protect the interests of a person who is unable to act, such as a child under 18 years of age without a guardian.

²¹ Law on Criminal Procedure, Article 35, available at:

<http://www.mfa.gov.sg/content/dam/mfa/images/om/vientiane/Lao%20Law/Crim%20Pro%20Law%20and%20Decree%20Final%20200306.pdf>.

²² Law on the Protection of the Rights and Interests of Children, Article 44.

²³ Ibid., Article 70.

²⁴ Verbal information from the Juvenile Division of the People's Court.

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

Children do not have the right to bring a complaint or seek reparation without the consent of their parents or guardians.²⁵ Children are also prohibited from seeking legal advice without their parents' or guardians' consent.²⁶

Section 25 of the Law on Juvenile Criminal Procedure²⁷ indicates that no person listed below shall be a legal representative or a protector of a child:

1. Those who have committed an offence against a child;
2. Those who were not properly or legally assigned the right (e.g. parents, grandparents, relatives of the child, or any person appointed by the court). However, parents may appoint a legal representative for the child;
3. Those who are incompetent,²⁸ as prescribed by law;
4. Those who are responsible for child correction or procedures (e.g. judge, prosecutor, police); and
5. Those who the child, the child's legal representatives, prosecutor or any stakeholders have objected to.

III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

See part II.A above.

Under Article 41 of the Constitution, Lao citizens have the right to lodge complaints and petitions with state organisations in connection with issues pertaining to the public interest or to their own rights and interests. Legislation allows persons to phone in and register a complaint at the National Assembly. However, there is no independent human rights institution to monitor the implementation of the CRC or to receive and investigate complaints on violations of the rights of children.²⁹

B. What powers would courts have to review these violations, and what remedies could they offer?

The Juvenile Division of the People's Court ("Division") has the power to consider all cases relating to children, including children in conflict with the law and civil cases.³⁰

²⁵ UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Lao PDR*, CRC/C/LAO/CO/2, 8 April 2011, para. 30. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fLAO%2fCO%2f2&Lang=en.

²⁶ <http://www.childrightsconnect.org/wp-content/uploads/2013/10/Lao-PDR-CRC-Amended-56.pdf>.

²⁷ No. 41/NA dated 20 December 2013.

²⁸ Incompetent means a person under 18 years old or a person of unsound mind.

²⁹ UN Committee on the Rights of the Child, para. 14.

³⁰ Article 69 of the Law on the Protection of Rights and Interests of Children No. 05/NA; according to the Law on the Protection of the Rights and Interests of Children, the Juvenile Court will have jurisdiction over cases concerning child protection under the supervision of the People's Supreme Court. However, the Juvenile Court has not yet been established. As a result, the Juvenile Division of the People's Court

The Division can issue various remedies, including the enforcement of measures for the protection of the interests of children.³¹

In civil proceedings, a court may, amongst other things, order the defendant to compensate, pay a penalty, or make payment for loss of opportunity to the plaintiff, as appropriate, or that the defendant be responsible for various costs relating to the restoration of the plaintiff's moral rights.³²

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Claims must specify the name of the offender and victim regardless of their age, therefore the lawsuit must be brought in the child's name. However, the proceedings may be undertaken as confidential proceedings.³³

Children's legal representatives are obliged to represent the children when the challenge is brought against the violation. In practice, children are not permitted to appear in court for hearings or other legal actions.³⁴ Their legal representatives are responsible for all relevant matters concerning the lawsuits brought on their behalf.³⁵ Therefore, actions in court are able to be pursued without naming the children involved.

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

No. The laws of Lao PDR do not recognise collective action or group litigation.

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

An organisation that "has been authorised by the laws to protect the rights and interests of other persons" may file a claim in court to initiate civil proceedings.³⁶ Organisations may also participate in cases as third parties on the side of the plaintiff or defendant, or may join in proceedings upon the requests of the litigants, the public prosecutor or the court.³⁷ The testimony of organisations as third parties is considered and assessed together with evidence collected in the case.³⁸

Despite these provisions, all activities of non-governmental organisations (NGOs) must be approved by the government. For an NGO to file challenges based on children's rights violations or intervene in cases that have already been filed, it must first obtain approval from the government.³⁹ Such approval is granted at the discretion of the government, based on certain conditions and policies. The likelihood of obtaining governmental approval for such activities is not high due to the sensitive nature of such

(the "Division") has been assigned to preside over juvenile cases.

³¹ Law on Civil Procedure (Amended) No. 13/NA dated 4 July 2012, Articles 51-52.

³² Ibid., Article 250.

³³ Verbal information from the Juvenile Division of the People's Court.

³⁴ Ibid.

³⁵ Law on Civil Procedure (Amended) No. 13/NA dated 4 July 2012, Article 71.

³⁶ Ibid., Article 70.

³⁷ See Law on Civil Procedure (Amended) No. 13/NA 4 July 2012.

³⁸ Ibid.

³⁹ Verbal information from the Juvenile Division of the People's Court and Ministry of Foreign Affairs.

cases and concerns over internal security.⁴⁰

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Cases concerning violations of children's rights currently must be filed at the Juvenile Division of the People's Court, which has been assigned to preside over cases concerning children pending the establishment of Juvenile Courts. As the particular procedural law for cases concerning children is under the deliberation of the legislative body, children's legal representatives must follow the ordinary civil procedure for filing a claim.⁴¹

In civil cases, the child's parents or legal representative may file a lawsuit against the defendant by submitting the complaint and supporting documents to the Juvenile Division of the People's Court whose jurisdiction covers the child's place of residence. The claim, which is a document submitted by an individual or organisation to a court to complain about damage suffered as a result of a violation of its rights and interests, must include, amongst other things, the name and details of the plaintiff, the amount of the claim, and the remedies requested.⁴²

The child's parents or legal representative cannot file a criminal lawsuit against the offender by themselves; rather, they must file a report with the police. Following investigation, the police will transfer the case file to the prosecutor to decide whether or not to prosecute the suspect. If the case contains legal grounds, then the prosecutor will pursue the charges against the suspect on behalf of the child.

B. Legal aid / Court costs. Under what conditions would free or subsidized legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

Children's legal representatives are initially responsible for court fees and other expenses arising from legal proceedings. When the court renders a final decision, the losing party must reimburse the winning party for expenses previously incurred. If the court decides to dismiss all or part of a claim of the Office of the Public Prosecutor, a State administrative agency, or a social organisation for the protection of the legitimate rights and interests of other persons, the defendant shall be reimbursed his or her expenses for the proceedings by deducting from the parties who filed the lawsuit.⁴³

⁴⁰ Decree on the Establishment of Non-Governmental Organisation, Article 12.

⁴¹ Verbal information from the Juvenile Division of the People's Court.

⁴² Law on Civil Procedure (Amended) No. 13/NA 4 July 2012, Article 166.

⁴³ Law on Court Fees (Amended) No. 07/NA dated 27 December 2006, Article 26

In criminal cases, public prosecutors usually bring the cases to court. The initial expenses arising from legal proceedings will be advanced by the State. The defendant, if convicted, will be responsible for court fees and other expenses arising from the legal proceedings. In the event that the court decides to release the defendant from the charges or convicts a defendant who is not in a position to pay court fees, the State will be responsible for court fees and other expenses.⁴⁴

According to Sections 51 to 53 of Law on Lawyers,⁴⁵ there is a fund for legal assistance under the supervision of the Ministry of Justice. The assistance is available in cases where there is a party in need. The fund provides both financial assistance and services from pro bono lawyers during the lawsuits.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Legal assistance from lawyers on a pro bono basis and from children's rights organisations is available.

The Lao Bar Association (LBA), supported by the Ministry of Justice and Asia Foundation, has three legal aid clinics located in Oudomxai (north), Vientiane (central), and Champasak (south), which focus on providing legal aid to poor and vulnerable people, especially women, children, and minority populations.⁴⁶ The LBA also hosts a legal aid hotline, as well as a mobile legal aid clinic for Vientiane and its surrounding villages.⁴⁷

The LBA provides free consultations on legal issues and free legal representation to eligible clients. Eligibility is based partly on income, and partly on if the client falls within the target group of vulnerable people, which includes children, disabled people and ethnic minorities. In addition to legal representation, eligible people may also be entitled to have their travel to court and other expenses covered.⁴⁸

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

There are no specific provisions in relation to the prescription of children's rights violations. The timing, in this regard, falls under the general provisions (see below). Also, there is no special provision that allows young adults to bring cases about violations of their rights that occurred when they were children after expiration of the general prescriptions.

In civil cases, Section 102 of the Law on Contract and Tort requires challenges to be brought to the court within 10 years in respect of claims for compensation for damages, commencing from the date the damages arise.

⁴⁴ Ibid., Article 5.

⁴⁵ No. 010/NA dated 21 December 2011.

⁴⁶ <https://asiafoundation.org/resources/pdfs/LaosA2J2013.pdf>.

⁴⁷ http://www.nichibenren.or.jp/library/ja/bar_association/word/data/Laos.pdf.

⁴⁸ Ibid.

In criminal cases, Section 26 of the Penal Law regulates criminal prescriptions as follows:

- one year for minor offences (i.e. offences punished under the law by public criticism or fine, such as physical injuries caused by negligence);
- seven years for major offences (i.e. offences punished under the law by re-education without deprivation of liberty, imprisonment from three months to 10 years, or fines, such as rape); and
- 15 years for crimes/felonies (i.e. offences punished under the law by imprisonment from five years up to the death penalty, such as murder).⁴⁹

E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

Evidence in civil, family and juvenile cases may be of the following types: physical evidence, documentary evidence, and witness evidence.⁵⁰

The Law on the Protection of the Rights and Interests of Children provides that child victims and witnesses in criminal proceedings have a right to express their views, which must be considered based on the balancing of the child's age and level of discernment, and to have their privacy protected.⁵¹

However, under Article 30 of the Code of Civil Procedure and Article 32 of the Code of Criminal Procedure, children do not have capacity to give testimony before the court in civil or criminal proceedings. They may nevertheless be called to provide information to the court, but not in the capacity of a witness.⁵²

Interviews of child victims and witnesses in criminal proceedings must be conducted by specially trained investigators and public prosecutors in collaboration with social workers. During the course of interviews, the investigator and public prosecutor must:

- use “sensitive and friendly methods towards children”;
- allow the child's parents, guardian or legal protector to participate in the interview;
- conduct the interview in a special separate room with no disturbance;
- question the child using simple language suitable to their age and level of discernment; and
- take appropriate methods to prevent the child from having contact with the accused or defendant during the interview.⁵³

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

There are no specific provisions in connection with timing for the resolution of cases concerning violations of children's rights. In this regard, resolution is subject to the

⁴⁹ Law on Penal No. 12/NA 9 November 2005, Article 8.

⁵⁰ Law on Civil Procedure (Amended) No. 13/NA 4 July 2012, Article 98.

⁵¹ Law on the Protection of the Rights and Interests of Children, Article 44.

⁵² *Second periodic report of Lao PDR to the UN Committee on the Rights of the Child*, para. 25.

⁵³ Law on the Protection of the Rights and Interests of Children, Article 45.

general provisions under the Law on Civil Procedure.

Pursuant to Article 30 of the Law on Civil Procedure, the duration of fact finding, considering and making a decision in civil cases must not exceed:

- nine months, commencing from the date the case has been assigned to the judge in the People’s Court at the first instance;
- four months, commencing from the date the case has been assigned to the judge in the Court of Appeal in the appellate instance;
- three months, commencing from the date the case has been assigned to the judge in the People’s Supreme Court in the supremacy instance; and
- two months, commencing from the date the case has been assigned to the judge in the People’s Supreme Court for the cassation.⁵⁴

G. Appeal. What are the possibilities for appealing a decision to a higher court?

It is possible to appeal to a higher court under Lao procedural laws. Decisions of the court of first instance (including the Juvenile Division) may be appealed to the Court of Appeal by submitting an appeal request to the court of first instance within 20 days of the date of the decision.⁵⁵ Decisions of the Court of Appeal may be appealed to the Supreme Court by submitting a request for cassation within 60 days of the date of the decision.⁵⁶

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

According to a report by Freedom House, the “judiciary is subject to frequent executive, legislative, and [Lao People's Revolutionary Party] interference”, despite the constitutional protection of the independence of the judiciary. Furthermore, in “cases of political or personal interest, state authorities ignore judicial decisions with impunity or change them arbitrarily”.⁵⁷ According to a 2013 report by the US State Department, enforcement of court orders in civil matters remained a problem due to the lack of judicial independence.⁵⁸

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

See part IV.H above.

V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

⁵⁴ The cassation can be made only at the People’s Supreme Court, regardless of the verdicts of other courts, when there are new or hidden facts or evidence which have not previously been presented to the courts.

⁵⁵ Law on Civil Procedure (Amended) No. 13/NA dated 4 July 2012, Article 262.

⁵⁶ Ibid., Article 260.

⁵⁷ <https://freedomhouse.org/report/laos#.VRLcHPiP8xA>.

⁵⁸ US Department of State, ‘Laos 2013 human rights report’, 2013, available at: <http://www.state.gov/documents/organization/220418.pdf>.

Political background

Lao PDR is a one-party Communist state that has been governed continuously by the Lao People's Revolutionary Party (LPRP) since 1975.⁵⁹ According to a report by Freedom House, “[i]mportant safeguards, such as judicial oversight, independent monitoring, and a functioning court system are virtually nonexistent.” The “long absence of the rule of law has created an environment in which the authorities often apply the law arbitrarily and inhibit or violate the rights of citizens.” There are some domestic NGOs, but “they are prohibited from pursuing political agendas and are subject to strict state control”.⁶⁰

Relevant laws

The most relevant laws in regard to the rights of children are as follows:

- Law on the Protection of Rights and Interests of Children No. 05/NA dated 27 December 2006;
- Law on Family No. 05/NA dated 26 July 2008;
- Law on Criminal Procedure No. 13/NA dated 4 July 2012; and
- Law on Civil Procedure (Amended) No. 13/NA dated 4 July 2012.

Mediation

Small disputes and certain family disputes must be settled by mediation. The matter will initially be dealt with by the village mediation unit or, if the parties cannot reach a settlement, the justice office of the district followed by the judicial tribunal will mediate the matter between the parties. Parties in disputes involving a large claim may also request mediation, or can submit a claim to a court directly.⁶¹

This report is provided for educational and informational purposes only and should not be construed as legal advice.

⁵⁹ <https://freedomhouse.org/report/laos#.VRLcHPiP8xA>.

⁶⁰ <https://freedomhouse.org/report/freedom-world/2014/laos#.VRLg0viP8xA>.

⁶¹ Law on Civil Procedure (Amended) No. 13/NA 4 July 2012, Article 194.