

Asia Pacific Labour Law Review

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Workers' Rights for the New Century

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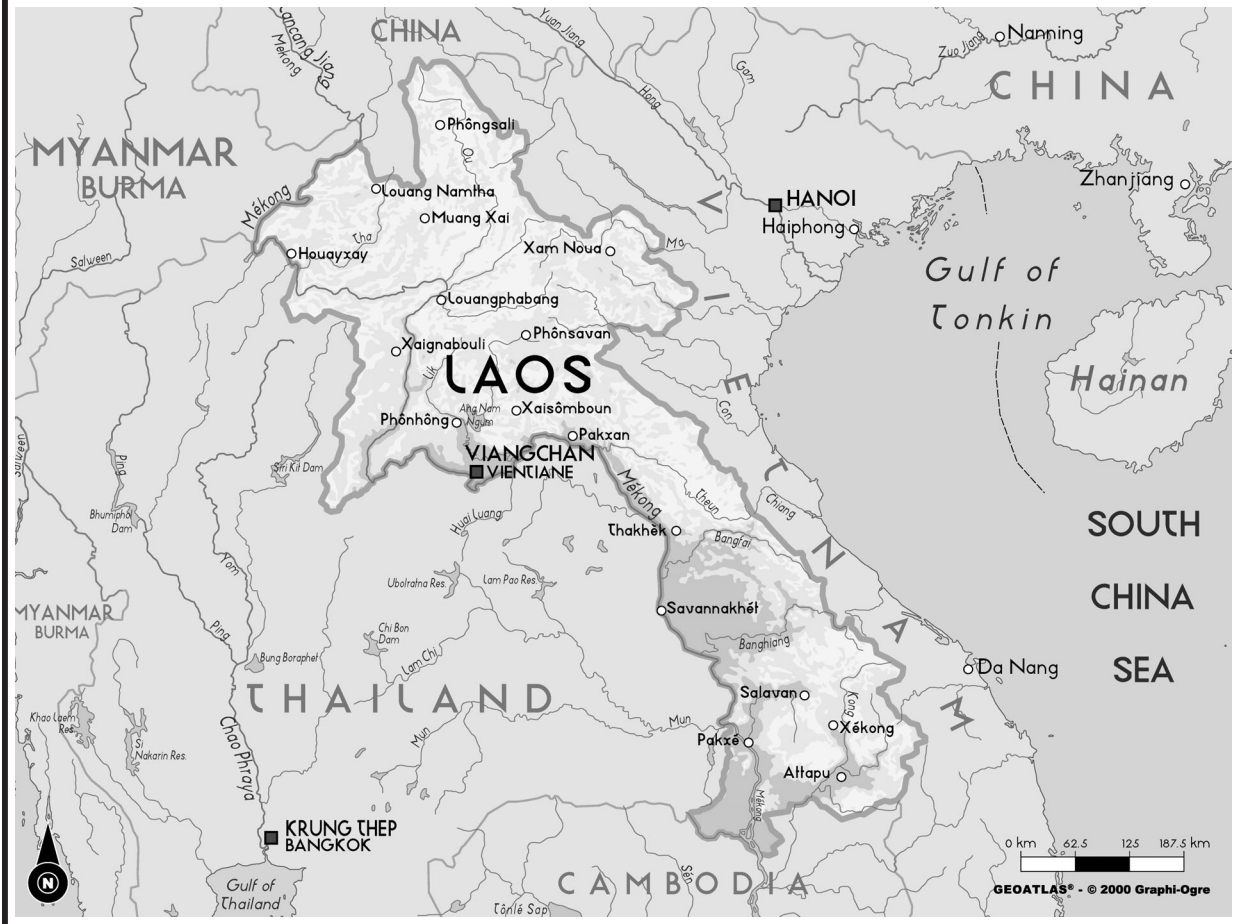
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Labour Law in Laos

Philip S Robertson Jr

From a labour perspective, the Lao People's Democratic Republic (LPDR) is a set of continuous contradictions. Perhaps this is not surprising, since Laos is full of disparities between appearance and reality. A country that is still nominally Marxist-Leninist, with an economy that is overwhelmingly agricultural and largely subsistence-based, it was nonetheless among the hardest hit (in terms of inflation and currency exchange rates) during the Asian financial crisis. There are not many other countries in Asia where one finds a trade union body with a constitutionally mandated role – the Lao Federation of Trade Unions (LFTU) – and top union officers with the equivalent of ministerial rank in the government. Why then does what appears to be a great deal of power and access to policy dialogue by the LFTU result in such poor and sporadic law enforcement? Is it the labour law that is deficient? What is the role of the LPDR Ministry of Labour and Social Welfare and is that where the problem lies? Does the LFTU adequately represent workers in trouble, seeking redress for violations of their rights under the labour code, or is it a tool of state power to keep workers quiescent?

These answers are hard to answer, since labour issues in Laos remain wrapped in a blanket of official secrecy and authoritarian rule, plagued by the Government's own weak baseline data collection of labour information and



lack of access to industrial workers. Moreover, while the LPDR is a member of ASEAN, it is met with a general level of disinterest by the international community. This lack of attention in turn contributes to a general lack of public materials on the labour situation.

But what is clear at this time is that Lao workers have little protection against exploitative employers. The labour law is full of contradictions and loopholes, and fails to guarantee a number of core international labour standards as defined by the International Labour Organisation (ILO). The LFTU is a state controlled labour federation in a one-party state where open dissent or protest is dealt with quickly and harshly by the authorities. The country is extremely poor, with poverty approaching the levels of sub-Saharan Africa, and ministries lack qualified personnel, resources, and political will to enforce the law. Education levels among workers are generally low, and cultural mores among lowland Lao emphasise non-confrontation, respect for hierarchy, and tradition. Wages are exceedingly low, and many urban workers are migrants from rural areas. This puts Lao workers at a high level of risk for sustained exploitation at the hands of overseas investors who may re-locate light, labour intensive industrial production to Laos if the country is granted a low tariff trading relationship with the USA.

For brevity's sake this paper will not attempt to address any pre-1975 labour laws or institutions. The Labour Law, promulgated in March 1994, is the sole labour law in the country. Composed of 62 articles in 15 chapters, the law severely limits labour rights in some in-

stances, while granting progressive rights in others.¹ The law replaced an earlier one promulgated in October 1990. All provisions of the 1990 code were repealed with the passage of the 1994 law.

Many observers note that there is a significant disparity between what is written in Lao law and what actually occurs, particularly in labour law, where the nexus of centralised government power, pervasive corruption, and worker ignorance result in a pattern of systemic non-enforcement of the law.

Moreover, the law itself consistently tries to balance between two roles – on one hand ostensibly protecting workers, while on the other hand ensuring labour peace and control of workers by the LFTU. This dual role of protector and monitor is difficult for the LFTU, which is the sole legal labour organisation. When these roles conflict, it is invariably the party's interest that wins over the concerns for workers. In this way, the LFTU can be seen first as a political organ of state control, and only a representative of workers when such work does not conflict with its primary role.

The situation in Laos closely resembles the situation in Vietnam and the People's Republic of China, where the Vietnam General Confederation of Labour and the All-China Federation of Trade Unions play similar roles as the LFTU.

Recent political history and economic background

The LPDR came into being with the assumption of power by the Lao People's Revolutionary Party (LPRP) on 2 December 1975, after almost fifteen years of civil war between Pathet Lao guerrillas (backed primarily by Vietnam) and a succession of USA-backed regimes. In the early years, the LPDR Government pursued two goals with vigour – consolidation of absolute power of the LPRP, and communist economic reorganisation. While the former succeeded, the latter clearly failed. A major ethnic Hmong insurgency was gradually but firmly starved and burned out by combined Lao-Vietnamese forces, thousands of former government and army officials were sent to remote re-education and forced labour camps (referred to as going to 'seminar') from which



Young woman spinning cotton (Credit: P. Delache. Copyright: ILO)

many did not return, and other political and social organisations that could inspire loyalty of the citizenry – such as the monarchy – were done away with. Economically, the Government pursued a policy of central economic planning, collectivisation of agriculture, nationalisation of most companies, and strict control of internal and external trade.

When it became clear that these economic policies were not bringing development, but causing stagnation and growing resentment in the countryside, in 1986 the LPDR switched towards a more market-oriented system under the New Economic Mechanism (NEM) policy. More joint ventures between state and private enterprises, lifting trade controls and many other private sector restrictions, and courting foreign investment followed.

Today, the Lao economy remains overwhelmingly agricultural and extremely poor, with approximately 85 percent of the population of 5.2 million involved in subsistence agriculture. The Asian Development Bank (ADB) estimates that 38.6 percent of the population is below a consumption-based poverty line, and points out significant disparities between rural areas in the far North (52.5 percent below poverty line) and South (38.4 percent) and the capital Vientiane (12.2 percent). Similarly, disparities in poverty levels between rural areas (41 percent) and urban areas (26 percent) are significant. Urban-rural economic disparities like this mirror the experience of Thailand and provide the spark for significant (though largely undocumented) migration of young people to Vientiane, other cities, and Thailand.² Only about three percent of the land in the country is arable, a further cause of movement to cities. The ADB found that urban centres are growing at a rate of 4.7 percent per year, and noted that ‘formal wage employment is virtually restricted to the urban areas’, meaning that labour law enforcement is primarily an urban issue.³ Unemployment affects approximately 4.5 percent of the economically active urban population, rising to an estimated 10.6 percent in the 20-24 year age group. This means that there is a growing surplus of young workers seeking urban-based wage employment, a highly favourable situation for employers.

The NEM resulted in a significant withdrawal of the Government from formal control of production. At this time, the ADB estimates that there were approximately

90 state-owned enterprises (SOE), down from over 800 before the NEM.⁴ The reduction in SOE employment has contributed to increased informalisation of the work force, with the private sector increasingly concentrated in small trading firms, many concerned with agricultural/food-processing activities. The ADB estimates 146,000 of these small firms exist, but it is unclear how they arrived at this figure.

The ADB estimates that approximately 70 percent of the work force has not completed primary school, and that only 30 percent of Lao women are literate. Work skills are also lacking.

Foreign direct investment (FDI) has been modest and not sustained. Between 1988 and 1996, the LPDR’s figures show that \$USA6 billion in foreign investment was approved, but to date only 30 percent of that was realised. A total of 41 percent of the foreign investment was from Thailand. When the financial crisis hit in 1997, striking Thai industry particularly hard, the impact in Laos was significant. FDI dropped quickly to \$142 million as Thai and other investors consolidated, pulling back from secondary investments. This shrinkage in FDI has continued. The ADB estimated FDI was only \$US30 million in 2001.

FDI is regulated by the Law on the Promotion and Management of Foreign Investment in the Lao People’s Democratic Republic which obligates foreign investors to operate in accordance with all laws (Article 10) and ‘upgrade the skills of their Lao employees, though such techniques as training within the Lao PDR or abroad’ (Article 11). There are no exemptions to application of labour law, yet there are no implementing regulations called for in the law that was passed in 1994.

In addition to logging, mining, service industry/tourism, and electrical generation (dams), Laos has some labour-intensive, light manufacturing enterprises – most prominently in garments. Baskets, handicrafts, and silk, are potentially competitive exports. However, lack of Normal Trading Relations (NTR) status with the USA results in high tariffs barriers.⁵ With NTR, Lao products would face an average 2.4 percent import tariff. Without this status, Lao exports receive an effective average 45.3 percent tariff. For specific categories such as men’s T-shirts, Lao goods have a 90 percent tariff, compared to 17.4 percent on shirts coming from other Asian countries that have NTR, either on a permanent or annually

renewable status.⁶ While LPDR does have a European garment quota, and its import tariffs benefit from a Generalized System of Preferences, the continuing lack of USA NTR forces garment factories to further force down costs. 50 to 55 medium-sized factories operate mostly in the Vientiane area, yet production does not yet even fill the EU allocated quota.⁷

Military controlled companies continue to play a role in the Lao economy. According to the ADB military run companies are involved in business activities in agriculture, forestry, trade, construction, light industry, and tourism. However, some of the largest of the military's 28 companies – including the Highland Development Co. – have recently been transferred to the control of the Ministry of Finance.⁸ These companies have traditionally supplemented the financial resources of the military, particularly the army, and allegedly helped enrich top-level military leaders. What is clear is that these companies are not transparent, exercise special influence, and are likely harder to hold accountable to labour laws.

Labour issues in the LPDR Constitution of 1991

NEM's increasing engagement with the private sector exposed the fact that few laws and regulations had been drawn up by the LPRP. Much of today's written law dates from the late 1980s and early 1990s, when the demands of external audiences for greater rule of law and transparency coincided with internal reform efforts sparked by increased economic freedom under the NEM. In the labour sector the new Constitution, adopted during the sixth session of the People's Supreme Assembly from 13 – 15 August 1991 set the tone for tension between worker rights and party control. In Article 7, the Constitution states: '...the Lao Federation of Trade Unions.... and other social organisations are the organs to unite and mobilise all strata of the multi-ethnic people for taking part in the tasks of national defence and construction; develop the rights to mastership of the people and protect the legitimate rights and interests of members of their respective organisations.'⁹

In a pattern, which also appears in the labour law, rights in one Constitutional article are restricted by other sections of the document. Without a mechanism (other

than the 99 member National Assembly, which remains a rubber stamp body controlled by the LPRP) to determine the constitutionality of laws, the Government is free to implement restrictive laws as it likes. For labour, a critical restriction comes in Article 31 of the Constitution, which states: 'Lao citizens have the right and freedom of speech, press and assembly; and have the right to set up associations and stage demonstrations *which are not contrary to the law.*' (emphasis added)

Furthermore, Article 34 of the Constitution provides: 'Lao citizens have the obligations to respect the Constitution and laws, *and to observe the labour discipline, the regulations in carrying out livelihood in society,* and the regulations and order of the country.' (emphasis added)

On the positive side, the Constitution does provide for a number of rights important to labour including non-discrimination on the basis of sex, social status, education, faith, and ethnicity (Article 22); sexual equality in all spheres (Article 24); right to rest, receive medical care (Article 26); and right to lodge complaints and petitions with authorities (Article 27).

The Constitution surprisingly omits the role of the LPRP. The LPRP and the LPDR government are supposed to be separate, with the party determining policy and planning while the government handles day-to-day implementation. In fact, this is not the case. Power remains highly centralised under the LPRP, which maintains a parallel structure that operates down through all the levels of Government: national, provincial, district, and village. At the top, the National Assembly, and the Cabinet of Ministers are firmly controlled by a nine member Politburo that in turn reports to a 59 member Central Committee. The army is an important factor in the LPRP, as seen by the fact that only two of the nine Politburo members lack military service. The LPRP Party Congress, the highest authority of the LPRP, holds a Congress every five years. The party has an estimated 65,000 members, including most senior civil servants.¹⁰

With the end of the Cold War, and an increasing role for the private sector in Laos, the official state ideology of Marxism-Leninism has severely diminished as a cohesive factor in the LPRP. The apparent substitute is a return to respecting traditional Lao cultural icons, and corruption for the cadres. As Lao scholar Grant Evans notes: 'the revolution has been a source of rapid upward social mobility for many of its cadres, and has given

them solid material interest in the regime's maintenance...What we see now in the LPDR is the undisguised use of political power to transfer resources from one elite clique to another.'¹¹

The ADB succinctly adds that it is: 'important to distinguish between formal political structure and informal networks through which much of the decision-making takes place. Nepotism and patronage are endemic within the party and bureaucratic system. The lack of transparency makes it extremely difficult for outside observers to fully understand the political decision-making structures.'¹²

Lao involvement with the ILO

The LPDR has ratified only four ILO conventions – Conventions Nos. 4 (Night Work), 6 (Night Work of Young Persons), 13 (White Lead, and 29 (Forced Labour). All were ratified on 23 January 1964. Only one of these conventions is considered an ILO 'core convention'. This is clearly the worst record of ILO ratifications of any ASEAN state – in comparison even Burma has ratified 21 conventions, including two core conventions, and Vietnam has ratified 15 conventions, including three core conventions.¹³ Laos is one of the few remaining countries that has not ratified ILO Convention No. 182, outlawing the worst forms of child labour. Moreover, the ILO's Committee of Experts strongly criticised Laos in 2001 for not submitting the reports they are required to submit on the few conventions they have actually ratified. The LPDR also has still not replied to the Committee of Experts' comments made seven years ago.

Clearly, ratifying ILO conventions is by no means the sole determinant of labour standards compliance – for instance, other countries in the region like Cambodia and Indonesia that have ratified all the core ILO conventions continue to flout those very same conventions. But Laos' record is particularly poor. The lack of independent worker or employer organisations also contributes to the apparent lack of attention by Government to its reporting responsibilities under the ILO monitoring and enforcement mechanisms.

However, this lack of interest about ILO monitoring does not extend to ILO training, which the Lao eagerly seek. The ILO's regional technical assistance component based in Bangkok, the East Asia Multidisciplinary

Advisory Team, conducts capacity building training programmes with the LFTU on a regular basis.

Analysis of the Labour Law of 1994

The LFTU claims that it played an important role in drawing up the labour law and other labour related policy. The organisation clearly values its role as the voice of workers, and touts its ability to represent workers interests in government circles. Yet the real extent of its influence appears quite limited.

The current labour law was passed on 14 March 1994.¹⁴ Almost all written law on labour topics is connected to, or derives authority from, this single law. For this reason, the law's provisions deserve deep analysis before turning to the critical area of systemic non-enforcement of the law.

A key weakness of the law is its failure to provide real freedom of association for workers. Article 3 provides that: 'Workers and employers shall have the right to organise and belong to any mass and social organisation *that has been formed lawfully.*' (emphasis added)

In practice the Government refuses to register any workers' organisation that is not affiliated to (i.e. controlled by) the LFTU. The same goes for employers' organisations, which must affiliate to the Lao National Chamber of Commerce and Industry. Employers and workers organisations are supposedly free to set their own rules and elect representatives, but the proper 'functions and activities' of the organisations are to be set by regulation. Article 5 unambiguously removes 'civil servants employed in state administrative and technical services, national defence, and public order' from coverage under the Act, which is particularly ironic considering that civil servants compose the overwhelming majority LFTU members.

Restrictions on association are not confined to labour relations – national women's and youth organisations are required to affiliate to the Lao Women's Union and the Lao Youth Union. NGOs are barred except in two documented cases. As Amnesty International observes in its 2002 report: 'Freedom of expression, association...continued to be severely restricted' in the country.¹⁵

The law drafters' true perception of labour unions as a Government-controlled organisation imposed on

workers in a top-down manner is revealed in Article 11, which states: ‘A trade union should be established in all labour units in accordance with specific regulations of the sectors concerned. Where there is no trade union, workers’ representation shall be established.’

Left conveniently unanswered are issues like ‘who sets the regulations?’ and ‘who does the establishing and selects the leaders when there is no trade union?’ Of course it is the Government and LFTU cadres. The control and representation duality of Lao trade unions is clear since on one hand their task is to ‘training and mobilisation of workers with regard to labour discipline’ and monitoring work performance according to production plans. Yet they are supposed to intervene in labour disputes, bargain with employers, and bring forward worker grievances. In most cases, the final arbiter of how this ambiguity is resolved will be LPRP priorities and policy, to which the LFTU must adhere.

Clear restrictions on freedom of association are complemented by barriers to freedom of assembly and inadequate guarantees of the right to collectively bargain. Trade unions are accorded the right under Article 40 to ‘negotiate with the employer in respect of salary or wage levels’, yet there is no provision which compels employers to bargain in any manner whatsoever. Rather, the law simply provides the LFTU with the right to negotiate – and leaves it to the union (or more likely, a group of workers at the factory level) to find its own way.

Recourse to strike is severely restricted by broad prohibitions in Article 59. Work stoppages are illegal if they result from a dispute over the implementation of the labour law, which are referred to as ‘disputes over rights’ in Article 55 of the law. These disputes are treated somewhat differently than ‘disputes over interests’ which Article 55 defines as arising from ‘claims to the employer for new benefits or rights’.

In both cases, dispute resolution at the first step is defined as an employee filing a grievance, and then meeting with the employer during which ‘the worker may require assistance from a trade union or a workers’ representative’ After this point, the handling of ‘disputes over rights’ and ‘disputes over interests’ proceeds slightly differently. In the case of the former, if there is no resolution and written settlement within 15 days, or the resolution is not implemented by the employer, the worker may appeal to the ‘labour authorities’ for concil-

iation. Should the labour authorities not be able to resolve the entire dispute, it can be submitted to the People’s Court for a final decision. But in the case of ‘disputes over interests’, under Article 58 if the labour authorities cannot bring about a resolution within 10 days, the matter is submitted to the Labour Dispute Arbitration Committee, which is ostensibly tripartite with provision for inclusion of ‘other concerned parties.’ The decision of this Committee is final.

Article 59 on the right to strike is written to clearly prevent a legal strike from ever taking place. No work stoppage is ever legal if it is a dispute over rights, if both sides agree to negotiate, or while the matter is before the People’s Court under Article 57, or before the Arbitration Committee under Article 58. Yet both procedures in Article 57 and 58 presumably result in a final, binding outcome, and the law provides (at least in theory) for speedy movement towards those binding procedures if negotiations are not proceeding.

Tough penalties discourage would-be strikers. The Penal Code prohibits involvement in an organisation that promotes protest marches, demonstrations, and other actions that might be construed to cause ‘turmoil or social instability’, and can penalise violators with one to five years imprisonment.¹⁶

In other areas, legal protection is similarly mixed with broad, sweeping loopholes that are easily abused in the lax law enforcement climate.

The LPDR retains the authority to set minimum wages by sector and/or geographical region, and provides guidance for overtime pay calculation. Yet the current minimum wage levels – 93,000 kip per month – is woefully inadequate to provide for a family. With the Lao kip trading at approximately 9,800 kip to the USA dollar in July 2002, this comes to US\$9.48 per month. A Thai worker earning the rural provinces minimum wage of 133 baht a day could expect to receive in *three days*.¹⁷ The Lao minimum wage is not a living wage. The LFTU claims that starting wages at most garment factories are US\$30 a month.

The working week is set at 48 hours, with one day off in seven, and 36 hours for workers in particularly dangerous professions.¹⁸ Employers are supposed to arrange a ‘reasonable production schedule’ that allows breaks of five to 10 minutes every two hours. Overtime can only be scheduled after prior consultation with the

labour union, and in any case, cannot be more than 30 hours per month, or more than three hours in a row – except in ‘unexpected event of a kind that would cause great damage to the labour unit’. Overtime rates are clearly defined in law. 30 days of paid sick leave are provided by Article 29 of the law, and workers receive fifteen days’ annual leave under Article 30.

For pregnant workers, three months of paid maternity leave is granted under Article 35, yet the law indicates that the money must either come from the employer or the social security fund – who pays is not made clear. The woman must take at least 42 of the paid maternity days after the birth of her child – yet there is no explanation for why this provision is so specific. Women are not supposed to work between 10 p.m. and 5 a.m. or in ‘heavy work dangerous to their health’, nor are employers supposed to give pregnant women work involving lifting or carrying loads, or standing for long periods of time during the pregnancy or six months after return to work. Women returning to work after birth can bring their children to the factory under Article 35, and have one hour per day for nursing. Given the level of protection afforded to pregnant workers, unscrupulous employers could fire pregnant employees, and there is no provision to outlaw firing pregnant workers – because the law only protects women workers who have given birth within the previous nine months (Article 17)!

In Article 49 a number of broad and basic occupational safety and health (OSH) provisions deal with provision of safety equipment, safe storage of hazardous materials, electrical safety, air quality, basic emergency equipment, and guarding dangerous machine areas. Yet Article 50 states that employers can refuse to hire workers who have an occupational disease. Yet another loophole exists in Article 52 – where employers or the social security fund are liable to pay for medical treatment for injured workers, giving a clear chance for an employer to get off the hook. But under Article 53 employers are required to pay full wages to injured workers for up to six months of the time that they are recuperating. Clearly competing forces and motivations were at work during the drafting of this and many other sections of the labour law.

The unresolved conflict in the LFTU’s role reappears in labour law articles dealing with termination of workers. On one hand, in Article 22, termination of a worker by an employer is not allowed unless ‘the opinion of the

labour administration has been requested’ and ‘the trade union or workers’ representatives in the labour unit have been notified’. Yet receiving a positive response from the labour authorities may not be difficult because of the extremely low hurdle for justified termination set under the law, and notification to the LFTU presumes the termination process is already well underway. The employer only needs to demonstrate that ‘the employer considers it necessary to reduce the number of workers in order to improve the organisation of work within the labour unit’ (Article 16) and give the worker 45 days’ notice of dismissal. Severance pay worth 10 percent of the final monthly salary for every month of service must be given to workers employed for less than three years, rising to 15 percent of salary per month of service for three years’ or more service.

Protection from firing is only available: to new mothers; workers who are sick and receiving medical treatment, or on approved annual leave; an employee who is involved in trade union representation ‘with the approval of the employer or outside working hours’ or who is running for union office; and finally a complainant against an employer who is co-operating with LPDR authorities (i.e. no retaliatory firings). Yet all these protections are conditional on workers being let go without cause. Firing with cause is broadly defined in Article 19 that includes broad and ill-defined language on offences such as ‘behaves dishonestly or deliberately causes serious damage’ and ‘violates labour regulations despite previous warnings’. But workers are able to seek damages in addition to severance pay if they can prove unfair termination, and severance pay is moderately increased in such cases.

Article 44 also provides for round-about punishment of workers without formal firing. On the face of it, this provision seems progressive since it provides that if there is a work stoppage caused by management, they must pay 50 percent of regular pay to the workers who cannot work. However, there is no further definition of whether shutdown can be selective, is on an employee-by-employee basis, or covers just parts of the production line.

Easily exploitable loopholes exist also in the requirement for written contracts. Article 12 of the law clearly provides: ‘An employment contract must be concluded in writing’. But Article 13, the law continues: ‘However,

in some cases an employment contract may be verbal, depending on employment conditions and the nature of the work, such as work on a temporary or daily basis, or employment involving only a small amount of work.’

Fundamental failures of labour law enforcement in the LPDR

The problems caused by the contradictions and loopholes in the labour law are compounded by the relatively low level of worker education, a general lack of labour law education programmes, and the almost systematic non-enforcement of labour law by the Ministry of Labour and Social Welfare (MOLSW). Since Laos also forbids the existence of independent labour and NGO monitors, the circle of non-enforcement closes fully, leaving aggrieved workers largely without avenues for justice except for those provided by the LFTU, which is significantly handicapped by its dual nature as both protector and controller of labour.

However Laos likely still has time to act to reform its labour relations system. Most observers believe that there will be at least another year or two before the country receives USA NTR. Most rural Lao suffer significant deprivation in a subsistence agriculture economy that the World Bank characterised as ‘low input, low output’, meaning that formal sector factory jobs, no matter how exploitative, are highly sought after by internal migrants to urban areas.¹⁹

According to the decree establishing the MOLSW, as provided to the UN Development Programme (UNDP), the Ministry appears to be primarily concerned with social welfare activities (orphanages, veterans’ centres, and old age centres); helping manage the civil service and overseeing civil servants’ and military veterans’ benefits; monitoring and responding to natural disasters; conducting vocational training; and maintaining ‘heroic monuments’ and ‘revolutionary cemeteries’. Labour regulation and inspection functions appear as only part of one of the 13 myriad objectives to be accomplished by the MOLSW. A Labour Department exists as one of the five departments in the Ministry, and this is the bureau primarily responsible for labour law enforcement.²⁰

The systematic failure of the Department of Labour is exposed in an internal report of the Department dated 7 May 1995.²¹ In what is an innovative bureaucratic

method of burying bad news, the report is transmitted to Mr. Bounpone Sayasen, Director of the Department of Labour by none other than Mr. Bounpone Sayasen – which is to say that he sent the report to himself! Fortunately, the Ministry itself sometimes leaks information. The report is a summary of a Swedish International Development Agency funded project to conduct labour law education seminars in each of 54 garment factories that were operating in Laos in early 1995.

Among the labour law violations cited in the report are a lack of written contracts; failure to pay minimum wage to a ‘majority of unskilled workers’; arbitrary dismissal of workers for missing work, even in cases of legitimate health problems; and regular violations of overtime laws, fines and threats of dismissal for refusing to do overtime, or financial penalties for refusing to work on Sunday. Women workers were often forced to do overtime through the night, sometimes sleeping at their sewing machines, in clear violation of Article 33 of the labour law. Factories that had work stoppages because of delays in orders regularly failed to comply with Article 44, which requires payment of 50 percent of regular salary on days where work stoppages occur because of the employer. Failure to pay workers for sick days, including days when they were sent home from work, and violations of maternity leave compensation requirements were often found. The report gives names of some of the factories violating the law, yet nothing was apparently done to enforce it.

Discussions at that time with individuals involved in the project, and persons working with UNICEF and international NGOs, indicated that there were other, even more serious abuses uncovered but not reported. These included employing children younger than 15 years of age, who one trainer estimated composed almost 30 percent of the work force in some factories. A UNICEF report stated: ‘Our interviews and observations indicated that there are many girls under 15...’ in the factories, a clear violation of Article 37 of the labour law which states: ‘Employment of a young worker under 15 years of age in all socio-economic sectors is prohibited.’²² Other abuses mentioned by observers of the training project, but not mentioned in the Department’s report, included beating of workers; sackings of women workers when they married, or became pregnant; and even cases of rape of workers.²³

The central point is that enforcement of the labour law, even when abuses are uncovered, is largely non-existent. The report shows that neither the Department of Labour nor the LFTU appears able to hold foreign garment factory owners accountable. In setting up these 54 seminars at the workplace, interlocutors said the Department and the LFTU reportedly had extreme difficulty in securing co-operation of factory management for the seminars to be held. Not until the Lao Chamber of Commerce stepped forward in support of the project was it able to proceed. Moreover, factory management representatives insisted on observing the seminars. Despite Article 11 requiring that a trade union shall be established in all labour units, only 21 of the 54 factories was found to have a LFTU union.

Clearly, the balance of power does not necessarily lie with the labour law regulators, or with LFTU. Why is this so? Many observers believe that the presence of ‘silent partners’ from ruling circles in garment factory management is a major reason. Connection between senior Government officials and profitable garment factories has historically occurred in industrial development in Thailand, Cambodia, and Burma, and there is no reason to believe that it is not occurring today in Laos.

Corruption remains pervasive in Laos, and many observers believe that connections between factory owners and senior LPRP cadres and civil servants erode any serious intent to uphold labour law. Of course, this is a very sensitive matter, and obtaining specific evidence will ultimately require on the ground investigation and workers willing to blow the whistle.

Beyond straight-forward corruption, the Government’s ability to implement the labour law is seriously hindered by interlocking factors including a bureaucratic organisational culture that emphasises administrative control (through requiring permission) and equates issuing formal decrees with problem-solving; low levels of pay for civil servants which encourage moonlighting and/or corruption; and inadequate training for officials about labour law and its enforcement.²⁴ The ADB found that the Lao civil service has approximately 82,300 employees, but that 89 percent of them are in provincial areas so that central ministries are chronically understaffed.

Encouragement to look the other way on labour abuses also comes from private sector and Government intent on securing additional foreign investment, and

from institutions like the World Bank, which stated in its 1994 Country Economic Memorandum to the LPDR: ‘...it is important to ensure that the administration of the provisions of the Labour Law does not constrain enterprise flexibility in hiring and managing workers. There is a need to balance the rights of workers with the need of employers for autonomy and flexibility.’ (emphasis as it appears in the original document).²⁵

Such policy advice from a major donor organisation is particularly disconcerting and highly inappropriate considering that it was offered the same year as the Labour Law went into effect. It should be remembered that the World Bank was one of the international organisations encouraging Laos to promulgate laws in a more official manner, to promote greater transparency, and to enforce them. Yet when the LPRP Government presents a law on labour, a pro-employer double standard suddenly appears.

The dual role dilemma of the LFTU - Government? Union? Both?

One would expect the LFTU to step into this gap of systematic non-enforcement of the law to protect workers, and ensure the law was followed. But the LFTU appears to be fundamentally compromised by its dual role as a labour union and a Government controlled front organisation for workers. On one hand, it maintains that it tries to protect workers by responding to their grievances. Yet on the other hand, the LFTU’s mandate given by the LPRP is to help maintain public order, and follow LPRP priorities of encouraging foreign investment.

The LFTU does not attempt to hide its status as part of the ruling party system. At a regional meeting on OSH issues held by the AMRC in November 2000, the LFTU representative said that the LFTU is ‘a mass organisation of the Lao People’s Democratic system’ with ‘the duty to monitor and promote the implementation of the policies of the party as well as the constitution and laws...’²⁶ The LFTU President publicly says it is ‘under the Party’s leadership’ and operates according to LPRP policy.²⁷ The President and two Vice-Presidents are accorded status equal to a government minister and vice-minister, respectively, and the LFTU Presidium and top officers of the union are paid by the Government.

Only one of the four LFTU departments specifically focuses on labour protection, and the organisation defines its main duties as education and training, safeguarding the rights and interests of workers, human resource development, joining party/state-led mobilisation rallies, financial management, and international relations.²⁸

According to LFTU representatives speaking to international forums and in discussions with international labour organisations, the LFTU's membership is between 77,000 and 80,000 workers.²⁹ Yet the LFTU President stated to the seventh LPRP Congress that the country has 41,000 workers with regular salary, social security, and welfare. Most observers believe that most LFTU members are civil servants (who ironically are not covered by the 1994 labour law) and state enterprise employees, with a smattering of representation in private sector factories. The LFTU maintains that dues collection takes place, supplementing government funding. The LFTU reports it has mutual assistance funds at the various levels, and that there are 17 such provincial funds, and four grass roots funds, with a total of 35,000 members and deposits worth 300 million kip. These funds provide assistance in the event of 'sickness, death, and difficulties', reflecting LFTU orientation to the less controversial field of social welfare.³⁰

The LFTU also receives support from foreign donors for project-specific activities (such as HIV/AIDS education for workers). According to an account from an international trade union body, the LFTU also has some businesses that generate income for it in addition to subsidies it receives from the Government.³¹ Internationally, the LFTU is affiliated to the World Federation of Trade Unions (WFTU), which is now one of the least influential of the global labour confederations, and participates in the ASEAN Trade Union Confederation (ATUC), a labour grouping headed by Malaysian Trade Union Congress President Zainal Rampak that meets infrequently and seeks to broach labour issues in ASEAN meetings.

While the LFTU appears to be consulted for policy input on labour issues by the Government – such as during the drafting of PM Decree 171 which definitively defined regulations overseeing the management and operations of the civil service, the LFTU's core constituency – the organisation's track record on resolving la-

bour on the factory floor is far less clear. At the seventh LPRP Congress from 12-14 March 2001, the LFTU President claimed that in 'past years' the LFTU had received 400 complaints, and successfully resolved 136 of them, accounting for monetary settlements of more than 100 million kip. Yet in information provided to the ILO, and posted on the ILO web-site, the LFTU claims to have 'advocated' in more than 3,000 cases against employers in 1994-96, with a recovery of 52 million kip.³²

During this period the author, at that time a graduate student at Johns Hopkins SAIS, met a senior LFTU official at the union headquarters in Vientiane.³³ Mr. Outhay Inthathirath, then Acting Chief of the International Relations Department, stated that the LFTU was empowered by law to enter any factory in the country. He characterised the LFTU as 'umpire' in Lao industrial relations, and said that the LFTU 'looks at both the employees and the employers and stands in between them so it can mediate when there are problems'. The fact that top LFTU leaders are paid by the Government, and much of the membership is composed of civil servants may help explain this point of view.

Mr. Outhay continued that the LFTU acts on written complaints received from workers, and that 'workers come in every day'. When a report is received, the LFTU says it will first interview the worker. It then calls in the employer for its side of the story, and if necessary, goes to the factory to check. Then the LFTU attempts to mediate the dispute. Only if that fails is the dispute forwarded to the Ministry of Labour. He claimed the LFTU achieves success in '90 percent of the cases' and that the average time to resolve a case is seven to 15 days. The only cases that go to court are the ones that the Ministry of Labour cannot resolve, and which the Government decides should be referred. Individual filing of cases is not permitted, Mr. Outhay claimed.

Unless a worker's complaint falls into a priority area for the Government, a worker seeking judicial redress could be waiting a while. Judicial reforms only started in 1989, when the Supreme People's Court was formally separated from the Government prosecutor's office. Arbitrary use of power, backed by the judiciary, is a common complaint in Laos. The USA State Department's annual human rights report bluntly writes: 'The judiciary is subject to executive influence, is corrupt, and does not ensure citizens' due process.'³⁴ The ADB is

subtler, noting that serious concerns remain about decrees being issued by Ministries but not being published, and selective application of law. It writes: ‘...the vast majority of new laws are not yet being enforced’. Furthermore, ‘...businesses will continue to be hampered by ambiguous rules, opaque enforcement procedures, and opportunities for administrative intervention and discretionary actions. Laws tend to be enforced in ways that benefit vested interests.’³⁵ If this is the case with corporate interests that have money to spread around to solve legal problems, what sort of chance does a poor worker have when taking on a well-heeled employer with possible connections to the LPRP?

As for the LFTU’s version of events, other sources from NGO and employer circles disputed key points of Mr. Outhay’s account. Claims were made that the LFTU must in fact seek written government permission to enter factories, which gives advance notice to factories of visits. LFTU representatives cannot move freely around the factory without the owner’s permission, and in reality the LFTU is largely powerless to protect workers who file complaints. A UNDP officer confirmed that there is little protection for whistle-blowers in factories, and added that he believed this is a big problem. The fact that the LFTU’s support for the Swedish project was not decisive in getting access to the factories is telling.

A comment on the LFTU’s difficulties in protecting workers can be seen clearly by reading between the lines of the Department of Labour report. The section on recommendations for further action notes: ‘7.5 The LFTU has to establish its representative in each working unit to act accordingly to its role aiming at its legitimate interest as embodied in laws. The LFTU’s representative existing in some factories have to fully play its (sic) role.’³⁶

A source from a foreign embassy in Vientiane who was following the labour situation closely at the time of the Department of Labour report stated that the workers who are leaving the job are the ones mostly likely to visit the LFTU – either as a parting blow aimed at an exploitative employer, or to ensure that a benefit is paid in full and on time. Both NGO and UN sources said that the dispute mediation system usually only works in the most grievous cases, where the actions of a particular individual are indefensible. This might account for Mr. Outhay’s repeated reference and obvious pride concerning two cases in which the LFTU intervened – one which

saw the successful deportation of a Korean supervisor who beat workers, and another case where an Indian national was thrown out of the country for unspecified labour abuses.

Mr. Outhay characterised typical cases handled by the LFTU as an employer cheating workers on pay for overtime, failing to pay for all the hours an employee worked or other related pay dispute, failing to provide the bonus promised to the worker, or transferring or dismissing workers shortly before they are supposed to receive benefits or bonus. Much of the discussion resolved payment of salaries or benefits, but not reinstatement of workers. The Lao governance system, with prevalent corruption throughout, implies that a worker would likely face a major struggle in seeking reinstatement in a case of unfair dismissal. Factors like the relative strength of factory owner ‘connections’ to LPRP officials would be more decisive than in more open industrial relations systems. Yet since so little has been documented on individual cases of labour dispute resolution (beyond somewhat dubious figures on numbers of cases and money recovered cited by LFTU), it is impossible to draw conclusions.

The LFTU operates primarily as a service, providing benefits through funds, health programmes, social security, and support to the Government in keeping track of the civil servants and state enterprise workers. In this way, it primarily remains involved in ‘safe areas’ where it can complement LPRP Government work. The LFTU faces significant challenges in representing private sector workers in garment and other light industrial concerns. For those workers, Government domination of the LFTU means as with the state-controlled SPSI in Indonesia under Soeharto, or nowadays in Vietnam and China, that exploitation continues as they are left to fend for themselves against unscrupulous employers.

In a country where corruption is endemic, implementation of law by the Ministry is at best extremely sporadic, and attitudes on day-to-day life tend toward the lackadaisical, the loopholes and the weaknesses of the labour law are just the beginning of the problem for workers. Reforms of the labour relations system need to start now, in advance of the wave of private sector investment seeking low-cost labour that may arrive in Laos once the USA grants NTR status for Laos. Without corrective action to build a system that really protects

Lao workers, the Asian-Pacific labour community can expect to hear much more about worker rights abuses in Laos in the near future.

Notes

1. Labour Law of Lao People's Democratic Republic, decree No. 24/PR of the President of the Republic, (21 April 1994, promulgating law no. 002/NA of 14 March 1994).
2. 'Country Assistance Plan (2001-2003): Lao People's Democratic Republic', (Asian Development Bank).
3. Lao People's Democratic Republic Urban Sector Strategy Study, (Asian Development Bank July 1998. p. 3).
4. 32 of these SOEs are forbidden by law to be privatised for national security reasons.
5. Previously known as Most Favoured Nation status.
6. Edward Gresser, Director, Project on Trade and Global Markets, Progressive Policy Institute at public forum 'Possibilities for Greater Co-operation in US-Lao Relations', (Washington DC, March 4, 2002), at www.ffrd.org
7. Conversation with USA diplomat in Vientiane, 10 July 2002. The diplomat in question stated that there were 61 garment factories on the company list maintained by the Embassy, but that he knew that at least six of those had closed operations and moved to neighbouring countries like China or Cambodia.
8. Supalak Ganjanakhundee, 'Lao's PLA: The Pauper's Army', *The Nation* (27 June 2002).
9. Constitution of the Lao People's Democratic Republic, at <http://www.laoembassy.com/news/constitution/constitution.htm>
10. 'Key Governance Issues in Cambodia, Lao PDR, Thailand and Viet Nam', (Asian Development Bank, April 2001).
11. Grant Evans, 'The Politics of Ritual and Remembrance: Laos Since 1975', (Silkworm Books, Chiang Mai, Thailand, 1998. p. 171).
12. 'Key Governance Issues in Cambodia, Lao PDR, Thailand and Viet Nam', (Asian Development Bank, April 2001. pp. 4-5).
13. The only country from ASEAN that could challenge for Laos in this area is Brunei, which to date has refused to join the ILO.
14. Lao People's Dem. Rep. General Provisions of Labour Law, at <http://natlex.ilo.org>
15. Amnesty International Report 2002, at www.amnesty.org
16. Annual Human Rights Report – 2001, (USA Department of State LPDR chapter).
17. In July 2002, the Thai bath was trading between 41 to 42 to US\$1.
18. Hazardous professions include mining in closed underground areas, or work at tall heights; exposure to gas, smoke, radiation, or disease; exposure to chemicals or explosives; work in 'abnormally' hot or cold environments; or work in constant contact with 'constantly vibrating' machinery.
19. 'Lao PDR Social Development Assessment and Strategy', (World Bank Report No. 13992-LA, 15 August, 1995).
20. 'Organisation of the Government of the Lao PDR', The Prime Minister's Office, Department of Public Administration and Civil Service, (UNDP Public Administration Reform Project, Lao/92/006 and 506).
21. 'Final Report of the 54 Seminars Organised Regarding Labour Law and Other Necessary Laws of the Lao PDR', (Department of Labour, Ministry of Labour and Social Welfare, LPDR, May 1995).
22. Duang Deuane Bounyavong, 'Report on the Survey and the Situation Regarding the Trafficking of Children in the Lao PDR', (UNICEF, 7 December 1995).
23. Philip S. Robertson Jr, unpublished consultant report, 'Report to the Asian-American Free Labour Institute (AAFLI) on Current Labour Conditions in the Lao People's Democratic Republic (LPDR)', (14 February 1996).
24. The ADB states that civil service wages account for approximately four percent of GDP, which is less than the average in region of 4.5 percent This is a macro-level indicator of what every Lao person already knows – that Lao civil servants are not paid a living wage, and therefore often resort to corruption.
25. 'LPDR Country Economic Memorandum', (World Bank 1994, p. 64).
26. Statement of Mr. Khamtanh Sophimmavong, Deputy Head of International Relations Division, Lao Federation of Trade Unions, presented at OSH workshop held by AMRC in Phnom Penh, Cambodia, (November 20-25, 2000).
27. Comrade Venethong Luangvily, President, Central Federation of Lao Trade Union, Speech by the Representative of the Party Committee of the Central Federation of Lao Trade Union to the Seventh Congress of the Lao People's Revolutionary Party on 'the Promotion of Employment and Protection of Interests of the Working People', (March 2001).
28. Communications by author with International Confederation of Free Trade Unions (ICFTU) following an ICFTU mission to Laos in March 2002.
29. The most specific number was provided by Mr. Khamtanh Sophimmavong, the Deputy Head of the International Relation Division, who stated that member-

ship was 77,057 (27,388 women) during remarks to the AMRC seminar in November 2000.

30. Venethong Luangvily, President, Central Federation of Lao Trade Union, speech March 2001.

31. ICFTU mission to Laos, March 2002.

32. ILO Regional Office for Asia and the Pacific, Lao PDR, ILO's 13th Asian Regional Meeting in Bangkok, 28-31 August 2001, at <http://www.ilo.org/public/english/region/asro/bangkok/arm/lao.htm>

33. Philip S Robertson Jr, unpublished consultant report, 'Report to the Asian-American Free Labour Institute (AAFLI) on Current Labour Conditions in the Lao People's Democratic Republic (LPDR)', interviews

with LFTU official Outhay and others, (14 February 1996).

34. 'Annual Human Rights Report – 2001', LPDR chapter, (USA Department of State).

35. 'Key Governance Issues in Cambodia, Lao PDR, Thailand and Viet Nam', (Asian Development Bank April 2001, p. 14).

36. 'Final Report of the 54 Seminars Organised Regarding Labour Law and Other Necessary Laws of the Lao PDR', (Department of Labour, Ministry of Labour and Social Welfare, LPDR, May 1995).