



# **A Critical Analysis of the Legal Framework for Human Trafficking in Laos PDR**

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## **I. Introduction**

Trafficking is a worldwide crime and no one really knows how many people are affected, but estimates in East Asia alone are between 250,000 and 400,000 people per year, approximately one-third of people trafficked.<sup>1</sup> Trafficking is “distinguished from illegal migration and people smuggling by the exploitation and abuse that is its end result,”<sup>2</sup> The act of illegal migration, however, is closely tied to trafficking because of the situation it may put individuals in once they cross borders. Trafficking is a crime against the individual because it endangers human security.<sup>3</sup> In order to address trafficking an independent anti-trafficking law in Laos PDR is a natural next step in the country’s modernization process, but working within the current legal framework, it is important to analyze what rights people have until that occurs. Laos has created a National Plan of Action against commercial and sexual exploitation of children that is being implemented between 2007 and 2011.<sup>4</sup> After attending the First World Congress against commercial and sexual exploitation against children (CSEC), along with 130 other nations in Sweden, and later at the Second World Congress in 2001, countries were urged to create a National Plan of action to deal with this issue.<sup>5</sup> This problem has especially increased in Laos because of socioeconomic development, particularly in trade, tourism and service sectors, where these problems are more likely to exist. Commercial and sexual exploitation are not the only forms of trafficking in Laos, but the National Plan is the most applicable plan created by the government to begin dealing with this problem, after creating the Anti-Trafficking law contained within the Penal Code in late 2005.<sup>6</sup>

The National Plan of Action states that the main causes of exploitation, “push factors,” within the country are lack of education, poverty, unemployment, low income, being lured, pornography from outside the country, family problems and laws and regulations which have neither been systematic nor the

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<sup>1</sup> United Nations Children's Fund [UNICEF] and Ministry of Labor and Social Welfare, *Broken Promises Shattered Dreams: A Profile of Child Trafficking in the Lao PDR*, 11, (2004) (Prepared by James Chamberlain, Panh Phomsombath, Viengmala Vangmua, Phimpheung Oudone, Thavone Vixaysak and Khonesavanh Chittanavanh). available at <http://www.unicef.org/media/files/BrokenPromisesFULLREPORT.pdf> (Last visited July 21, 2009).

<sup>2</sup> *Id.*

<sup>3</sup> Mohamed Mattar, *Comprehensive Legal Approaches to Combating Trafficking in Persons: An International and Comparative Perspective* 3, (The Projection Project of The Johns Hopkins University Paul H. Nitze School of Advanced International Studies) (2006).

<sup>4</sup> Committee on Commercial and Sexual Exploitation against Children, National Plan of Action Against Commercial and Sexual Exploitation against Children, 2, 2007-2011.

<sup>5</sup> *Id.*

<sup>6</sup> See Appendix 1

implementation strictly followed.<sup>7</sup> In addition to individual impact, this has affected Laos Government's ability to develop and hindered their ability to escape the label of "underdeveloped country." Basic rights are being ignored; laws are not being followed; society is becoming disorderly; there is a slowing of national development; power is exploited, and health is being sacrificed due to ignorance about disease.<sup>8</sup> The Government claims that it has fully addressed the issue of trafficking, because it has made commitments to international treaties and reevaluated legislation (penal code), but these efforts are merely initial efforts. Signing treaties or becoming parties through accession and including an anti-trafficking law within the penal code is progress, but the country needs an independent Anti-Trafficking law which combines the detail of the Law on Development and Protection of Women and the scope of the Anti-Human Trafficking Law in the Penal Code Article 134.<sup>9</sup> The Plan, however, is a well-intended start at organizing interested and applicable ministries, commissions, committees and unions within Laos, which can work together to achieve the ultimate goal of protecting people from exploitation.<sup>10</sup>

The goals of the National Plan, however, are broad and there has been little progress within the country toward the goals. Laws relating to the subjects of labor, women and children have not been amended during the National Plan's intended application period; therefore, the international treaties have not been implemented further into the law. An Anti-Trafficking Unit exists within the country under the Department of Immigration, and they are beginning to work more closely with NGOs and shelters. There is also a goal to disseminate information about laws to the citizens and to educate the police about them,<sup>11</sup> but there is no easily accessible manual or a central location to access the laws, except online, which is literally not manageable for the majority of the population because of the push factors that result in people being trafficked in the first place. The goal of this report is to do a brief analysis and survey of human trafficking within Laos through the most recent NGO reports on trafficking and labor migration, International treaties which Laos is a party to and Domestic law.

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<sup>7</sup> Committee on Commercial and Sexual Exploitation against Children, National Plan of Action Against Commercial and Sexual Exploitation against Children, 2, 2007-2011.

<sup>8</sup> *Id.* at 3

<sup>9</sup> See Appendix 1

<sup>10</sup> See National Plan of Action, *supra* Note 7, at 5-8

<sup>11</sup> *Id.* at 15

## **II. Historical Developments**

Laos is a mountainous, landlocked country of 5.76 million people and is bordered by China, Vietnam, Cambodia, Thailand and Burma.<sup>12</sup> Being situated in the Asia Pacific region, where it is estimated that more than half of the global trafficking victims are found, makes Laos vulnerable to exploitation.<sup>13</sup> All except one of the country's 18 provinces border another nation, therefore, the geographical position of the country creates favorable conditions for trade and tourism, but the economic disparity between Laos and its neighbors stimulates trans-national trafficking and increases vulnerability to exploitation.<sup>14</sup> The long border with Thailand, the main country where Laos people are trafficked, makes it difficult to police and easy to cross.<sup>15</sup>

Laos' Government structure has prevented further development of human trafficking legislation. Laos has a system of one party rule under the Lao People's Revolutionary Party (LPRP) since 1975.<sup>16</sup> The present Constitution, which was amended in 2003, states that the LPRP is responsible for setting broad policy guidelines, while the government manages the day-to-day administration, but in reality the government is subservient to the LPRP.<sup>17</sup> The LPRP was established in 1955 as the Laos People's Party and has remained opposed to political reform along multi-party lines; the top leaders determine succession issues and leadership transition is almost completely informal.<sup>18</sup> Laos' Prime Minister is Bouasone Bouphavanh and the President is General Choummaly Sayasone, since their inaugurations by the National Assembly in June 2006.<sup>19</sup> The National Assembly, whose role is to oversee the government and the judiciary and formulate legislation, meets twice a year and is elected for a five-year period. Policy formulation, however, is commonly compromised by political interests, lack of organizational capacity and widespread corruption, which all impede the government's ability to promulgate, and enforce laws that are passed by the Assembly.<sup>20</sup> The criminal justice system consists of a Supreme Court, three Appellate

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<sup>12</sup> The Economist Intelligence Unit [EIU], *Laos Country Report*, 3, (June 2009).

<sup>13</sup> World Vision Laos PDR, Mekong Delta Regional Trafficking Strategy Project, *Migration of Children and Youth from Savannakhet Province, Laos to Thailand: A Research Study*, 6, (2006) (Prepared by Serge Doussantousse & Bea Keovongchit).

<sup>14</sup> United Nations Children's Fund [UNICEF], *How I got here: Commercial Sexual Exploitation of Children in Lao PDR*, 8, (2001) (Prepared by UNICEF & Ministry of Labor and Social Welfare).

<sup>15</sup> See World Vision, *supra* Note 13, at 6

<sup>16</sup> The Economist Intelligence Unit [EIU], *Laos Country Report*, 4, (June 2009).

<sup>17</sup> *Id.* at 7

<sup>18</sup> *Id.* at 8

<sup>19</sup> *Id.* at 6

<sup>20</sup> *Id.* at 7

courts, a People's court in each province and 41 district courts.<sup>21</sup> Village chiefs have a certain amount of delegated authority with an official role in the justice system as an enforcer of laws, regulations and instructions issued by higher authorities.<sup>22</sup> All offenses committed by villagers have to go through village mediation before they enter the criminal justice system, which greatly affects how villagers are able to proceed.<sup>23</sup>

In International relations, Laos has a very strong economic relationship with China and Vietnam, its two main investors, but, its relations with Thailand are unreliable due to illegal migration; however, as Thailand needs more laborers, and Laos does not have new jobs to offer, the relationship has become more amicable.<sup>24</sup>

With a population increasing rapidly and 62% of the people below the age of 25, according to the UN Population Division's World Population Prospects (WPP), the government is trying to control population growth because 39% of the population is below the national poverty line.<sup>25</sup> Additionally, southern Laos is much poorer than central or even northern Laos. Even though the population is relatively small and density is low, the social and economic systems already struggle to raise the quality of services.<sup>26</sup> The Laos government recognizes at least 48 distinct ethnic groups.<sup>27</sup> There are ethnic tensions nationwide, especially since ethnic minorities tend to be poor and live in rural areas with little connection to utilities. In 2005 Laos had a labor force of 2.8 million people, only half of the population.<sup>28</sup> This is possibly because of the rapid increase of industry expansion around the country and the influx of workers crossing the Thailand border to work.<sup>29</sup> Without an increase in the working population, industry cannot continue to expand.

Poor quality of education and healthcare are major constraints in increasing development. Very little of the Laos National budget is devoted to education and there is a shortage of schools, lack of supplies and low enrollment and completion levels, especially among girls.<sup>30</sup> The right to education is guaranteed in

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<sup>21</sup> Aoife Flaherty, *Trafficking and Migration in Champhone District, Lao PDR*, 16, (February 2008) (Unpublished Case Study).

<sup>22</sup> Asia Regional Cooperation to Prevent People Trafficking (ARCPPT), *Gender, Human Trafficking, and the Criminal Justice System in Lao PDR*, 34, (2003) (Partially revised 2006).

<sup>23</sup> *Id.*

<sup>24</sup> See Economist, *supra* Note 16, at 10

<sup>25</sup> *Id.* at 12

<sup>26</sup> United Nations Children's Fund [UNICEF], *How I got here: Commercial Sexual Exploitation of Children in Lao PDR*, 8, (2001) (Prepared by UNICEF & Ministry of Labor and Social Welfare).

<sup>27</sup> The Economist Intelligence Unit [EIU], *Laos Country Report*, 12, (June 2009).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 13

the Constitution, and school is compulsory and free for five years.<sup>31</sup> Problems exist because of non-enrollment, over-age enrollment, repetition of grades, dropouts, and lack of appropriate access for girls and ethnic minorities.<sup>32</sup> Health standards are low compared to the southeast asian region, because the health care system has been inadequately maintained and is inaccessible to a large portion of the population.<sup>33</sup> There is an increasing risk of HIV/ AIDS infection, because there is very little education about what it is and how is it transmitted.<sup>34</sup> The government is attempting to devote more money to these areas, but it is likely that it will depend on foreign investment for any significant change.<sup>35</sup>

Laos' government, international relations, migration, population increase and difficult access to education and health services are all aspects of Laos's inability to fully deal with human trafficking. There is virtually no data on child trafficking; UNICEF published the last report in 2004.<sup>36</sup> Data is especially scarce for men and domestic workers.<sup>37</sup> The Ministry of Labor in Thailand estimates that at least 250,000 Lao workers were employed in Thailand in 2008 and at least 80,000 were unregistered.<sup>38</sup> It is unclear how many of these people were trafficked because many were trafficked after crossing the border.<sup>39</sup> As of August 2008, there were 53 ongoing investigations into human trafficking and there were five convictions in 2007 under the penal code; however, corruption without punishment remains a problem because government officials are susceptible to involvement, collusion and profiting from trafficking.<sup>40</sup> Only by evaluating what previous NGO case studies that have already occurred in Laos and what laws have been implemented, will it be possible to see what the next steps should be in combating this increasing trend.

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<sup>31</sup> Constitution of the Lao People's Democratic Republic (promulgated by the decree of the President of the Lao People's Democratic Republic, Aug. 14, 1991, effective Aug. 15, 1991, Amended May 28, 2003), Article 22.

<sup>31</sup> United Nations Children's Fund [UNICEF], *How I got here: Commercial Sexual Exploitation of Children in Lao PDR*, 8, (2001) (Prepared by UNICEF & Ministry of Labor and Social Welfare).

<sup>32</sup> *Id.*

<sup>33</sup> The Economist Intelligence Unit [EIU], *Laos Country Report*, 13, (June 2009).

<sup>34</sup> See UNICEF, *supra* Note 31, at 9

<sup>35</sup> See Economist, *supra* Note 33, at 13

<sup>36</sup> World Vision Laos PDR, Mekong Delta Regional Trafficking Strategy Project, *Migration of Children and Youth from Savannakhet Province, Laos to Thailand: A Research Study*, 6, (2006) (Prepared by Serge Doussantousse & Bea Keovongchit).

<sup>37</sup> Aoife Flaherty, *Trafficking and Migration in Champhone District, Lao PDR*, 23, (February 2008) (Unpublished Case Study).

<sup>38</sup> United States Department of State, 2008 Human Rights Report: Laos, February 25, 2009, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119045.htm> (last visited July 21, 2009).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

### **III. Studies conducted in Laos**

In 2001, the Ministry of Labor and Social Welfare and UNICEF conducted a survey, to fill a gap in available information, on the factors that lead to prostitution of women and children.<sup>41</sup> Economic necessity and the opportunity to work were major motivators for individuals to work in prostitution and in the country's movement toward modernization, there were few jobs available that pay as well.<sup>42</sup> The study targeted five provinces throughout Laos and found that of 133 service girls that were interviewed, 60% of them were below the age of 18.<sup>43</sup> The survey also noted that exploitation was countrywide and not only occurring in the cities.<sup>44</sup> Services available to at risk or exploited individuals were limited, with the few trained social workers and programs that do exist, having small geographic coverage.<sup>45</sup> This report identified a potential target group of people below the age of 18, of low economic status, not from a particular region and with limited options if they were exploited. It only referred to women and children who are sexual exploited, but these cases are a large portion of trafficking victims.

In 2003, the International Labour Organization (ILO) conducted a preliminary assessment on illegal migration and trafficking of women and children in Laos, throughout three provinces bordering Thailand.<sup>46</sup> Thailand has a strong demand for cheap labor, which provides employment for many illegal migrants, especially Laos migrants, because their culture and language are very similar.<sup>47</sup> A majority of migrants are teenagers and young adults, usually the strongest and most productive members of their community, who migrate to take advantage of the wealth and opportunity they believe Thailand offers.<sup>48</sup> Possible solutions to migration are increasing access to education and vocational training, because according to a 1999 UNDP report, 51% of all children were out of school or never attended school, and the children who left school were not equipped with life skills.<sup>49</sup> Additionally, increasing income-generating opportunities that move subsistence farming closer to small enterprise development would give the country a larger industrial

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<sup>41</sup> United Nations Children's Fund [UNICEF], *How I got here: Commercial Sexual Exploitation of Children in Lao PDR*, 3, (2001) (Prepared by UNICEF & Ministry of Labor and Social Welfare).

<sup>42</sup> *Id.* at 4

<sup>43</sup> *Id.* at 11

<sup>44</sup> *Id.* at 4

<sup>45</sup> *Id.* at 9

<sup>46</sup> Inthasone Phetsiriseng & Ministry of Labour and Social Welfare and Participatory Development Training Center Int'l Labour Org., *Lao PDR Preliminary Assessment of Illegal Labour Migration and Trafficking in Children and Women for Labour Exploitation for ILO Mekong sub-regional project to combat trafficking in children and women xi* (Int'l Labour Organization [ILO] and Int'l Programme on the Elimination of Child Labour [IPEC], Working Paper, January 2003).

<sup>47</sup> See Phetsiriseng, *supra* Note 31, at 4

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 45

base.<sup>50</sup> Exposure to consumerism and materialism conveyed through television and exposure to Thailand are adversely effecting young people's traditional views toward family and community.<sup>51</sup> A business of organized labor recruitment and trafficking networks has been created in rural Laos with modern technology and a continuous demand for cheap skilled and unskilled labor in Thailand.<sup>52</sup> Due to lack of information given to people before they migrate, the Laos people need to be educated about the risks involved in their decision in order protect themselves from exploitation.<sup>53</sup> This assessment gathered extensive of information on the serious problem of increasing migration from Laos, the reasons people are leaving and the information that needs to be imparted to keep people safe. Migration has the potential to expose people to trafficking, because once they cross international borders, they usually rely on the information of others to access new options.

World Vision's report in 2006 profiled migrants in remote and poorly-connected villages.<sup>54</sup> Migrants tend to be between the ages of 12 and 29 and from families who work in agriculture, with the largest number around the age of 15.<sup>55</sup> Girls tend to be victims of abuse and exploitation while working mainly as domestic laborers, while boys mainly work in construction or industrial work.<sup>56</sup> A problem with defining trafficking is that some organizations include voluntary labor migration in their case studies, although trafficking may be a precursor to exploitative labor.<sup>57</sup> Many Laos children working to earn an income from prostitution are uneducated, underprivileged and trying to help their families or themselves.<sup>58</sup> In 2004, Save the Children summarized the factors for migration, "villager's migrate for both positive and negative reasons. Poverty, the lack of economic opportunities, family problems and difficult farming conditions within their home villages, are major push factors. While earning a cash income, living in a more exciting environment, and gaining access to a higher standard of healthcare are significant pull factors."<sup>59</sup> When asked, people who had never migrated were knowledgeable about work and life in Thailand, suggesting that Laos should try and broaden opportunities for legal migration and strengthen social safety networks to

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> World Vision Laos PDR, Mekong Delta Regional Trafficking Strategy Project, *Migration of Children and Youth from Savannakhet Province, Laos to Thailand: A Research Study*, 4, (2006) (Prepared by Serge Doussantousse & Bea Keovongchit).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 6

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*



prevent trafficking.<sup>60</sup> The migration of people from Laos to Thailand does not appear to be decreasing. Most of the migration takes place illegally, and without legal measures taken for safety and the well-being of migrants.<sup>61</sup> Efforts should be taken to promote safety, including targeting the likely population for migration; giving attention to girls; encouraging formal education and vocational training; providing information about health, disease and legal working opportunities; and helping migrants make informed decisions.<sup>62</sup> By profiling migrants, this report is also profiling potential trafficking victims and areas within Laos' government which need to be strengthened and focused on in order to protect these individuals. Laws cannot address populations of people that are neither understood nor researched.

In the first national case study conducted in Laos on human trafficking, by UNICEF and the Ministry of Labor and Social Welfare, 17 provinces and 149 villages were covered, with incidences of trafficking (internal and cross border) in every province.<sup>63</sup> The study identifies trafficking routes, methods, actors involved and individuals whose complicity aids this business, because the Laos Government wants to protect children's rights.<sup>64</sup> This report supports many of the previous NGO studies in Laos regarding profiles of victims trafficked and the reasons that it occurs, but those reports do not analyze the punishment of the trafficker. There are few instances in which traffickers are punished for their crimes; it is usually the victim who is punished through abuse, exploitation and possible fines and imprisonment on both sides of the border.<sup>65</sup> Many Laos people are not aware of the Conventions that Laos Government has signed or what laws have been implemented within the country. The legal system is weak, and laws are not enforced properly due to lack of knowledge of citizens, officers and the limited capacity of legal officials.<sup>66</sup> Although traffickers are usually outsiders, they are organized and from the same region but not the same village as the victim, and insiders, which are people who know the victim.<sup>67</sup> Traffickers are well organized, usually with regular contacts in the host country and are sometimes aided by official complicity.<sup>68</sup> Trafficking often involves sexual exploitation and forced labor. The largest portion of the cross-border victims are involved in

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<sup>60</sup> *Id.* at 4

<sup>61</sup> *Id.* at 35

<sup>62</sup> *Id.*

<sup>63</sup> United Nations Children's Fund [UNICEF] and Ministry of Labor and Social Welfare, *Broken Promises Shattered Dreams: A Profile of Child Trafficking in the Lao PDR*, 8, (2004) (Prepared by James Chamberlain, Panh Phomsombath, Viengmala Vangmua, Phimpheng Oudone, Thavone Vixaysak and Khonesavanh Chittanavanh). available at <http://www.unicef.org/media/files/BrokenPromisesFULLREPORT.pdf> (Last visited July 21, 2009).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 10

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 22

<sup>68</sup> *Id.* at 24

labor migration, which is distinct from trafficking, because the victims are normally compensated, but do not experience abuse and normally know where they are going.<sup>69</sup> Internal trafficking is also widespread and is composed mainly of females, under the age of 18, and in garment factories and prostitution.<sup>70</sup> None of the recent reports in Laos have tried to identify the people who are traffickers. This is possibly because the criminal justice system makes it difficult to prosecute these individuals, but in actuality it places an enormous burden on the victim and the system, which is trying to stop the problem. It is important to prevent a problem but Laos is working from the viewpoint of only one side of the issue with very little control over stopping the trafficker.

Lastly, in April 2006 the Asia Regional Cooperation to Prevent People Trafficking (ARCPPT) conducted a study to improve the legal process in Laos with particular consideration given to victim protection.<sup>71</sup> They use the definition of trafficking from the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, which in turn is used to train the Anti-Trafficking Unit in Laos on prevention protection issues. It is not possible, based on the present statistics to gauge whether women are primarily trafficked or how many men are being trafficked, because many countries have no formal mechanisms to track victims or identify them, but it is possible to say that gender affects the purpose for which they are trafficked.<sup>72</sup> Low levels of understanding by officials can lead to criminal treatment of trafficking victims, and thus trafficking is never investigated.<sup>73</sup> It is not apparent what the effect of village mediation as the first step in the criminal justice system for villagers will be for trafficking cases. It is possible that there could be sympathy for members of the community who have been trafficked; however, there is also evidence that traffickers are sometimes wealthy influential members of the community, and it might be difficult to make a case against them.<sup>74</sup> This report provides a legal analysis of the criminal justice system in Laos and some of the potential barriers to identifying and protecting victims.

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<sup>69</sup> *Id.* at 38

<sup>70</sup> *Id.* at 36

<sup>71</sup> Asia Regional Cooperation to Prevent People Trafficking (ARCPPT), *Gender, Human Trafficking, and the Criminal Justice System in Lao PDR*, v, (2003) (Partially revised 2006).

<sup>72</sup> *Id.* at 3

<sup>73</sup> *Id.* at 5

<sup>74</sup> See ACRPPT, *supra* Note 94, at 34

#### **IV. International Treaties and Agreements**

Laos PDR has been a member of the United Nations since December 14, 1955. It has belonged to the regional body of ASEAN since July 1997,<sup>75</sup> the International Labor Organization (ILO) since 1964, and has been in the application process to join the World Trade Organization (WTO) since 1996. It is not a member of the International Criminal Court (ICC), nor does it submit itself to the jurisdiction of the International Court of Justice according to its reservation at the signing of the Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others in April 14, 1978.<sup>76</sup> Laos is a party to many International Treaties, which refer to aspects of human trafficking through ratification and accession. These treaties are organized by Laos Government's ratification or accession date, which possibly demonstrates how the nation has progressed in regards to this issue.

Laos acceded to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery on September 9, 1957.<sup>77</sup> This Convention is important to the discussion of trafficking because victims of trafficking can be viewed as slaves to their employers. "Slavery means the status or condition of a person over whom any or all of the power attaching to the right of ownership are exercised," if a person is trapped by various means, without a means to escape, their employer essentially owns them.<sup>78</sup> Article 1(c) refers to the act of marriage where the woman is viewed as property and can be traded. In Laos there has been evidence of trafficking people to Vietnam and China for marriage.<sup>79</sup> Article 3 punishes the act of transporting people from one country to another and emphasizes the importance of countries communicating and exchanging information to combat slave trading.<sup>80</sup>

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) was acceded to by Laos on February 22, 1974.<sup>81</sup> Racial Discrimination, according to this treaty includes "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, or human rights and fundamental freedoms in the political, economic, social, cultural or any

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<sup>75</sup> The Economist Intelligence Unit [EIU], *Laos Country Report*, 9, (June 2009).

<sup>76</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others Reservation, July 25, 1951, (Accession Apr. 14, 1978), 96 U.N.T.S 271.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at Article 7

<sup>79</sup> *Id.* at Article 1(c)

<sup>80</sup> *Id.* at Article 3

<sup>81</sup> International Convention on the Elimination of All Forms of Racial Discrimination (CERD), New York, Mar. 7, 1966, (Accession, Feb. 22, 1974), 660 U.N.T.S. 195.

other field of public life.”<sup>82</sup> Many minorities within Laos are the most heavily trafficked victims to the surrounding countries, possibly because of a lack of access to protection by the government. This treaty states that all people have the right to equal protection, especially if studies have found that they have the potential to be exploited more. There is also reference to a right to freedom of movement within the country and across borders, the right to security against bodily harm and the right to education.<sup>83</sup> The lack of education is not solely responsible for trafficking but it is a causal factor.

The Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others was ratified on April 14, 1978 with a reservation.<sup>84</sup> The reservation was that Laos does not allow the International Court of Justice to have jurisdiction over it.<sup>85</sup> The Convention defines how to punish a trafficker, as someone who “procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; or exploits the prostitution of another person, even with the consent of that person.”<sup>86</sup> States agree to help prevent trafficking by monitoring employment services, watching borders, and taking declarations from prostitutes within the country, asking how they arrived there as aliens.<sup>87</sup> This Convention has a limited focus on prostitution and a state’s responsibility in preventing the exploitation of individuals brought into prostitution, and if they have been found within the state, how to repatriate them safely and what social services need to be provided.

Laos ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) on Aug. 18, 1981.<sup>88</sup> Among international human rights treaties, the Convention focuses on females’ human rights and equality concerns.<sup>89</sup> In addition to other Conventions, a shortcoming of CEDAW was that it failed to define trafficking in persons and mainly focused on the punishment of traffickers.<sup>90</sup> Article 6 states, “Parties shall take all appropriate measures, including legislation, to suppress all forms of

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<sup>82</sup> *Id.* at Article 1

<sup>83</sup> *Id.* at Article 5

<sup>84</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, July 25, 1951, (Accession Apr. 14, 1978), 96 U.N.T.S 271.

<sup>85</sup> *Id.* at Reservation

<sup>86</sup> *Id.* at Article 1

<sup>87</sup> *Id.* at 18

<sup>88</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Jul. 17, 1980 (Signed), Aug. 14, 1981 (Ratified), 1249 U.N.T.S. 13.

<sup>89</sup> *Id.* at Introduction

<sup>90</sup> United Nations Office on Drugs and Crime [UNODC], *Trafficking in Persons: Global Patterns*, 50, (April 2006) (Prepared by Kristina Kangaspunta, Anti-Human Trafficking Unit (AHTU) of UNODC and Global Programme against Trafficking in Human Beings (GPAT) ).

traffic in women and exploitation of prostitution of women.”<sup>91</sup> Since forced marriage is a form of trafficking taking place in Laos, Articles 9, 11 and 16 clarify the role of women in marriage. Article 9 states that the government shall “ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband,” which will make her a separate person and not property.<sup>92</sup> These articles relate to trafficking because trafficked women will most likely have very little say in the type of work they are in, and their pay is not equal. Article 11(c) gives women the right to a free choice of profession and employment and 11(d) gives the right to equal remuneration.<sup>93</sup> Article 16 states that women have the right to enter freely into marriage and the right to freely choose a spouse and enter into marriage only with their free and full consent, which will likely not occur if they are trafficked into foreign marriages.<sup>94</sup> After the Convention was ratified, the Laos Women’s Union was assigned with the task of monitoring the implementation of the treaty.<sup>95</sup>

Laos acceded to the Convention on the Rights of the Child (CRC) on May 8, 1991.<sup>96</sup> A child is defined as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”<sup>97</sup> The CRC prohibits child prostitution by stating, “parties shall undertake to protect the child from all forms of sexual exploitation and sexual abuse,”<sup>98</sup> and “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”<sup>99</sup> Additionally, every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.<sup>100</sup> The National Commission on Mothers and Children (NCMC) is responsible for monitoring the implementation of the treaty within Laos.<sup>101</sup> This treaty is very clear in its

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<sup>91</sup> See CEDAW, *supra* Note 87, at Article 6

<sup>92</sup> *Id.* at Article 9

<sup>93</sup> *Id.* at Article 11

<sup>94</sup> *Id.* at Article 16

<sup>95</sup> Asia Regional Cooperation to Prevent People Trafficking (ARCPPT), *Gender, Human Trafficking, and the Criminal Justice System in Lao PDR*, 30, (2003) (Partially revised 2006).

<sup>96</sup> Convention on the Rights of the Child (CRC), May 8, 1991 (Accession), 1577 U.N.T.S. 3.

<sup>97</sup> *Id.* at Article 1

<sup>98</sup> *Id.* at Article 34

<sup>99</sup> *Id.* at Article 35

<sup>100</sup> *Id.* at Article 37(d)

<sup>101</sup> See ARCPPT, *supra* Note 94, at 30

focus on protecting children, and the Laos government has made an effort to implement this treaty into their **Child Law** with the help of NCMC.

The International Covenant on Civil and Political Rights (ICCPR) was signed by Laos on December 7, 2000.<sup>102</sup> No one shall be “held in slavery” or “held in servitude or “be required to perform forced or compulsory labour.”<sup>103</sup> If a person has been exploited, he should “be held equal before the courts and tribunals. In the determination of any charge against him.”<sup>104</sup> The ICCPR is not one of the Covenants often cited by authorities when trying to influence the law, but it is another example of a treaty that the Laos Government has signed showing its commitment to trafficking issues.

Laos is now a signatory to the UN Convention on Transnational Organized Crime and the accompanying protocols as of September 26, 2003,<sup>105</sup> it was signed with a declaration stating that Laos does not regard this document as the legal basis for cooperation on extradition with other parties to the convention and a reservation not giving jurisdiction to the International Court of Justice.<sup>106</sup> Laos has many MoU’s with surrounding countries on extradition, so there is not presently a concern that they are not trying to work on this issue.<sup>107</sup> An offense is transnational if “it is committed in more than one state; it is committed in one state but part of its preparation was in another state; it is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state; or it is committed in one state but has substantial effect in another state.”<sup>108</sup> This convention focuses on periphery aspects of trafficking, how to punish the laundering of the proceeds of crime<sup>109</sup>, combating money laundering<sup>110</sup>, adopting legislation to criminalize corruption,<sup>111</sup> the liability of legal persons,<sup>112</sup> and the prosecution, adjudication and sanction of those who commit offenses.<sup>113</sup> Articles 18 through 29 of the Convention describe how states need to coordinate their legal and investigation efforts to protect witnesses and to

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<sup>102</sup> International Covenant on Civil and Political Rights (ICCPR), Dec. 7, 2000, 999 U.N.T.S. 171, U.N. Doc. A/6316 (1966) [hereinafter ICCPR].

<sup>103</sup> *Id.* at Article 8

<sup>104</sup> *Id.* at Article 14

<sup>105</sup> United Nations Convention Against Transnational Organized Crime, Sept. 26, 2003 (Accession), 2225 U.N.T.S. 209.

<sup>106</sup> *Id.* at Declaration and Reservation

<sup>107</sup> *Id.* at Article 16

<sup>108</sup> See UN Convention Against TOC, *supra* Note 104, at Article 6

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at Article 7

<sup>111</sup> *Id.* at Article 8

<sup>112</sup> *Id.* at Article 9

<sup>113</sup> *Id.* at Article 10, 11

properly prosecute crimes listed.<sup>114</sup> Legally persons 18 and under who migrate for labor purposes, whether consensual or not, are considered trafficked.<sup>115</sup> After the signing of this Convention, Laos also acceded to the Protocol connected to it, which specifically deals with trafficking.

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which was acceded to on September 26, 2003 with a reservation and supplements the UN Convention on Transnational Organized Crime.<sup>116</sup> It defines Trafficking in persons as,

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abductions, or fraud, of deception, of the abuse of power or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>117</sup>

Consent is irrelevant if any of the means contained in the trafficking definition have been used.<sup>118</sup> This protocol is the first global legally binding instrument with an agreed upon definition on trafficking in persons.<sup>119</sup> The forms of trafficking in persons are exploitation of the prostitution of others, other forms of sexual exploitation, forced labor or services, slavery, practices similar to slavery, servitude and removal of organs.<sup>120</sup> According to this definition, there are three elements that must be present in order for a situation to be considered trafficking: some form of action by the traffickers, means to traffic the person through force, coercion, abuse of position, and for the purpose of exploitation.<sup>121</sup> For children the means does not matter, because children are seen as incapable of making decisions for themselves.<sup>122</sup> The Protocol's scope includes the "prevention, investigation and prosecution of offenses established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal

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<sup>114</sup> *Id.* at Articles 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

<sup>115</sup> United Nations Children's Fund [UNICEF] and Ministry of Labor and Social Welfare, *Broken Promises Shattered Dreams: A Profile of Child Trafficking in the Lao PDR*, 57, (2004) (Prepared by James Chamberlain, Panh Phomsombath, Viengmala Vangmua, Phimpheng Oudone, Thavone Vixaysak and Khonesavanh Chittanavanh). available at <http://www.unicef.org/media/files/BrokenPromisesFULLREPORT.pdf> (Last visited July 21, 2009).

<sup>116</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Crime, U.N. Doc. A/55/383 (Sept. 26, 2003 (Accession)).

<sup>117</sup> *Id.* at Article 3(a)

<sup>118</sup> *Id.* at Article 3(b)

<sup>119</sup> See Aoife Flaherty, *supra* Note 37, at 12

<sup>120</sup> Mohamed Mattar, *Comprehensive Legal Approaches to Combating Trafficking in Persons: An International and Comparative Perspective* 14, (The Projection Project of The Johns Hopkins University Paul H. Nitze School of Advanced International Studies) (2006).

<sup>121</sup> *Id.* at 13

<sup>122</sup> *Id.*

group, as well as to the protection of victims of such offences.”<sup>123</sup> Article 5 states that offences in this Protocol are participating as an accomplice, organizing or directing another person to commit an offense contained in the above definition.<sup>124</sup> The entire Protocol constructs a comprehensive way for the signatory state to deal with trafficking; it will be discussed within the Laos domestic law section how well it is contained in actual law. Most of this language is seen directly in the Anti-Trafficking article contained in the Penal Code; the Laos law is somewhat different and will be analyzed further in the domestic law section.<sup>125</sup> Lao Anti-People Trafficking Unit (LAPTU) was formed in 2003 as part of the Department of Immigration and is comprised of police officers, a prosecutor, a representative of the Lao Womens’ Union and Lao youth union. The Unit has received substantial training and conducts investigations in human trafficking related to complaints.<sup>126</sup> However, there needs to be more training, however, in order to identify victims of trafficking because they are not receiving the assistance they need and the identification process is being left in the hands of the Thai police.<sup>127</sup>

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography was acceded to on September 20, 2006.<sup>128</sup> Parties shall “prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.”<sup>129</sup> Additionally, states need to make sure that their criminal and penal laws contains the definition and the proper punishment for the sale of children, child prostitution and child pornography.<sup>130</sup> The preamble and Article 10 encourage state parties to strengthen international cooperation through agreements to combat child sex tourism.<sup>131</sup> Currently, NGOs in Laos are working together on a Child Sex Tourism Campaign for the Southeast Asia Games taking place in December 2009.

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<sup>123</sup> See Protocol, *supra* Note 115, at Article 4

<sup>124</sup> *Id.* at Article 5

<sup>125</sup> See Appendix 1, *infra*

<sup>126</sup> See Aoife Flaherty, *supra* Note 37, at 22

<sup>127</sup> *Id.* at 64

<sup>128</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 263, U.N. GAOR, 54<sup>th</sup> Sess., U.N. Doc. A/RES/54/263 (Sept. 20, 2006 (Accession)).

<sup>129</sup> *Id.* at Article 1

<sup>130</sup> *Id.* at Article 2, 3

Article 2 (a): Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any consideration; (b) Child Prostitution means the use of a child in sexual activities for remuneration or any other form of consideration

<sup>131</sup> *Id.* at Article 10



International Covenant on Social, Economic and Cultural Rights (ICESCR) was ratified on February 13, 2007.<sup>132</sup> The ICESCR recognizes that “marriage must be entered into with the free consent of intending spouses” and “states should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.”<sup>133</sup> This reaffirms Laos’ commitment to a free consenting marriage which had been referred to in previous agreements.

Laos PDR is a party to many International Labour Organization (ILO) Conventions relating to labor standards and ASEAN treaties which are regional documents trying to encourage a united approach to trafficking issues rather than independently.<sup>134</sup> ILO’s Convention 182 on the Worst Forms of Child Labor, defines the term worst forms of child labor as “the use, procuring or offering of a child for prostitution-prohibition of forced labor.”<sup>135</sup> ILO’s Forced Labor Convention, forced labor is “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>136</sup> The legal channels for labor migration are costly and time consuming, this leads to migrants traveling illegally and their undocumented status leaves them vulnerable to exploitative work situations and trafficking.<sup>137</sup> A way for the government to address trafficking and cross border movement is to impose fines and unfortunately, due to officials’ lack of knowledge, many trafficking victims are charged fines, detained, imprisoned, even with no clear policy.<sup>138</sup> In very few instances are traffickers prosecuted, so victims are punished and the criminals (traffickers) are not held accountable.<sup>139</sup> ILO conventions and ASEAN treaties are influential because it demonstrates how the region is trying to approach the problem, but the United Nations treaties are referred to more often when Plans are being written and new laws are being implemented.

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<sup>132</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), Dec. 7, 2000 (Signed), Feb. 13, 2007 (Ratified), 993 U.N.T.S. 3.

<sup>133</sup> *Id.* at Article 10

<sup>134</sup> See Appendix 2, *infra*

<sup>135</sup> Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor Article 3(a), June 13, 2003, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>

<sup>136</sup> Convention concerning Forced or Compulsory Labor C29 Article 2, Jan. 23, 1964 (Ratified), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>.

<sup>137</sup> See Aoife Flaherty, *supra* Note 37, at 10

<sup>138</sup> See ACRPPT, *supra* Note 94, at 54

<sup>139</sup> *Id.* at 54

## **V. Laos Law**

Laos' Constitution Articles 22, 27 and 29 are the main laws, which deal with trafficking issues. In regards to education, "The State attends to developing education and implements compulsory primary education in order to build good citizens with revolutionary competence, knowledge and abilities."<sup>140</sup> For labour, "The State and society attend to developing skilled labour, upgrading labour discipline, promoting vocational skills and occupations and protecting the legitimate rights and benefits of workers."<sup>141</sup> Lastly for women and children, "The State, society and families attend to implementing development policies and supporting the progress of women and to protecting the legitimate rights and benefits of women and children."<sup>142</sup> All three of these articles are recently added in the amended 2003 Constitution and are very progressive, which can be seen in the specific laws related to each of these issues.

The Law on Development and Protection of Women<sup>143</sup> defines trafficking for women and children. It also elaborates on the rights of victims, the duty of society and obligation of the government to disseminate information, how to deal with criminal proceedings, assistance to victims, punishment for the convicted, criminal sanctions and civil remedies.<sup>144</sup> The Women's law does not include men and needs to be combined with the Penal Code Article in order to fully aid all victims of trafficking.

The Penal Code Article 134 is the Anti-Trafficking law in Laos and as opposed to the Law on the Development and Protection of Women, it uses the word person rather than solely women and children.<sup>145</sup> Article 75 prohibits fleeing the law, Article 100 outlaws trading in humans and Article 133 declares no forcing people into prostitution.<sup>146</sup> These articles implement different aspects of the Protocol to Prevent, Suppress and Punish trafficking and use exact language from the Protocol. The main area in which they are different is when you are dealing with Forced labor as opposed to migration.

The MoU with Thailand on employment outlines a policy of saving money for a deportation fund for illegal migrants, but unfortunately the implementation of this MoU is time consuming and unfortunately not

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<sup>140</sup> Constitution of the Lao People's Democratic Republic (promulgated by the decree of the President of the Lao People's Democratic Republic, Aug. 14, 1991, effective Aug. 15, 1991, Amended May 28, 2003), Article 22, translated in [http://www.na.gov.la/index.php?option=com\\_content&task=view&id=26&Itemid=50](http://www.na.gov.la/index.php?option=com_content&task=view&id=26&Itemid=50) (Last visited July 23, 2009).

<sup>141</sup> *Id.* at Article 27

<sup>142</sup> *Id.* at Article 29

<sup>143</sup> See Appendix 1

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Lao Penal Law (promulgated by the decree of the President of the Lao People's Democratic Republic, Dec. 23, 1989, effective Jan. 9, 1990, Amended Apr. 25, 2001, Amended Nov. 9, 2005), Article 75, 100, 133.

manageable to monitor.<sup>147</sup> The MoU with Thailand on trafficking, bilateral development, shows how they intend to combat trafficking and insure the rights of the victims. Each country is required to assign a government agency to be responsible for monitoring and coordinating this effort.<sup>148</sup> The COMMIT MoU provides a commitment between the six Mekong countries to work together. The MoU signed as part of the Coordinated Mekong Ministerial Initiative against Trafficking process (COMMIT) has provided a strong framework for cooperation between all six countries of the Greater Mekong Subregion, which contains Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam).<sup>149</sup>

## **VI. Recommendations**

There is some very important information missing from these studies, which could provide the focus for future research. Men need to be included in future studies conducted on trafficking because although they are the minority of those trafficked, they still constitute a significant number. To include them in the laws, it is important to know what sectors and issues are specific to them, especially since women and children have been the previously focused-on group for lawmakers. In future studies there needs to be a very clear line when analyzing the connection between illegal migration and trafficking; studies can use one as the catalyst for the other, but they should not be interwoven, because it confuses the issue and diminishes the understanding of both. With regard to push and pull factors of migration, researchers should hesitate to make sweeping generalizations about whole populations of people when they do not have the statistical data to support their claims. The largest and most recent study conducted in Laos, the UNICEF “Broken Promises Shattered Dreams” report, reached all the provinces but still emphasized that the number of victims in their report was an estimate. This is an important first step in researching Laos, because so few studies have expanded their scope outside a few provinces, but understandably these studies require funding and a large amount of support from a very bureaucratic government.

There are several laws related to the issue of trafficking that Laos has passed and International Conventions that the country has signed; however, there is low-level awareness of these laws and conventions. The people within government who are responsible for their enforcement are unclear about their meaning and the evidence needed to enforce them, which leads to minimal and inconsistent

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<sup>147</sup> Memorandum of Understanding Between The Government of the Lao People’s Democratic Republic and The Government of the Kingdom of Thailand on Labor Cooperation, Laos-Thail., Oct. 18, 2002.

<sup>148</sup> Memorandum of Understanding Between The Government of the Lao People’s Democratic Republic and The Government of the Kingdom of Thailand on Cooperation to Combat Trafficking in Persons, Especially Women and Children, Laos-Thail., July 13, 2005.

<sup>149</sup> See ACRPPT, *supra* Note 94, at 31

enforcement. Training of personnel from the village level is needed to prosecuting traffickers. While the Government considers trafficking to be a serious problem, and NGOs working in the country are trying to solve the problem, lack of resources, coordination and public awareness are affecting any possible beneficial results.<sup>150</sup> Comprehensive laws are part of the solution to trafficking in Lao, they lay the foundations by providing standards that assign accountability and enable citizens to demand better enforcement of laws to protect them.<sup>151</sup> There is a tendency in Lao to overlook the problem of trafficking with men and boys, to treat it as somehow less important; for example the IOM provides funding only for women and children and many NGOs only focus on women and children too.<sup>152</sup>

The Lao government cannot force the countries surrounding its borders to enforce their laws, but it would definitely improve the situation if Thailand would enforce their own anti-trafficking and labor laws.

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<sup>150</sup> *Id.* at 32

<sup>151</sup> *Id.* at 36

<sup>152</sup> *Id.*

## APPENDIX 1: Laos Law

### **Penal Law**

#### **Article 134. (New) Human Trafficking**

Human trafficking means the recruitment, moving, transfer, harbouring, or receipt of any person within or across national borders **by means of** deception, threats, use of force, debt bondage or any other means **and using such person** in forced labour, prostitution, pornography, or anything that is against the fine traditions of the nation, or removing various body organs [of such person], or for other unlawful purposes.

Any of the above-mentioned acts committed against children under 18 years of age shall be considered as human trafficking even though there is no deception, threat, use of force, or debt bondage.

Any person engaging in human trafficking shall be punished by five years to fifteen years of imprisonment and shall be fined from 10,000,000 Kip to 100,000,000 Kip.

Where human trafficking is performed as a regular profession or in an organised group, where the victims are children, where there are two or more victims, where any victim is a close relative of the offender, or where any victim suffers serious injury or becomes an invalid or insane, the offender committing human trafficking shall be punished by fifteen to twenty years of imprisonment and shall be fined from more than 100,000,000 Kip to 500,000,000 Kip and his property shall be confiscated as provided in Article 34 of this law.

When the offence causes the victim to be a lifetime invalid, to be infected with HIV, or to die, the offender in human trafficking shall be punished by life imprisonment and shall be fined from more than 500,000,000 Kip to 1,000,000,000 Kip and his property shall be confiscated as provided in Article 34 of this law.

For trafficking in women and children, provisions of the Law on the Development and Protection of Women may be used.

Any attempt to commit such an offence shall also be punished.

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## **Law on the Development and Protection of Women**

### **Part IV**

### **The Protection of Women and Children against Trafficking and Domestic Violence**

#### **Chapter 1**

#### **Combating Trafficking in Women and Children**

#### **Article 24. Trafficking in Women and Children**

Trafficking in women means the recruitment, hiding, moving, transportation, transfer, harbouring, [or] receipt of women, within or across national borders, by means of deception, the giving or receiving of bribes, threats, the use of force, [the use of] other forms of coercion, abduction, debt bondage or by other means[,] for forced labour, [for] prostitution, [for] publishing pornography and what is in contradiction to fine national culture, [for] the removal of various body parts, or for other unlawful purposes. If these acts are committed against children under 18 years old, then even though there is no deception, threat, force, or debt bondage, trafficking shall be regarded to have occurred.

Any individual who co-operates with the offender [who commits] an offence mentioned above[,] whether by incitement, providing assets or vehicles to the offender, the provision of shelter, or the concealment or removal of traces of an infraction, shall be considered as an accomplice in trafficking in women and children.

Trafficking in women and children is an offence.

#### **Article 25. Rights of Victims**

A victim means a person who has suffered from trafficking in women and children. Victims have the following rights:

1. To ask for assistance from any individual who is nearby;
2. To notify police officers;
3. To testify and present evidence relating to the case, to concerned officers;
4. To request for compensation, to be rehabilitated and to be reintegrated into the society;
5. To receive protection and care to ensure personal safety;
6. Not to be prosecuted and detained on any charge of trafficking in women and children, prostitution, [or] illegal immigration;
7. Not to be photographed, [and] not to have any video recorded or broadcast, where such would affect personal honour;
8. To receive suitable assistance in the form of shelter, food, clothes, medical services, vocational training, repatriation and others;
9. To have other rights according to laws and regulations.

#### **Article 26. Duties of Society**

Individuals or organisations that discover victims of trafficking in women and children or receive data or information concerning such trafficking shall report to the village administration, the police or other

concerned authorities, and shall, at the same time, give assistance to victims.

Party and State organisations, the Lao Front for National Construction, mass organisations, social organisations and families shall disseminate information and educate so that the whole society becomes aware of the acts and impact of trafficking in women and children in order that women and children stay vigilant and not fall victim to such trafficking and be active in combating and preventing [such trafficking].

To combat and prevent trafficking in women and children, the government establishes a national committee for prevention of trafficking in humans.

#### **Article 27. Criminal Procedures Relating to Offenders**

After having been notified about any trafficking in women and children, the police officers shall, in accordance with the Law on Criminal Procedure, investigate the case immediately, take the testimony of victims or of those reporting to the police, including witnesses, and, at the same time, maintain confidentiality and safety of those people. If there is enough evidence, the police shall send the case to prosecutors who will then send the case to the court to consider and decide whether to punish the offender and to award compensation for the damage suffered by the victims, including [compensation for] moral rehabilitation and loss of income.

#### **Article 28. Assistance by Officers to Victims**

During the process, police officers must cooperate with concerned counterparts such as doctors, social workers and other parties in order to give necessary and urgent assistance, to provide medical treatment and counselling services to the victims and to send them to safe shelter.

In the case where the victims are children, there shall be special treatment to restore [their] physical and mental health and to provide assistance to [meet] the specific needs of the children, in order to ensure that those children have guardians to help them to return to their family and society. In the case of victims abroad who are Lao citizens, the concerned Lao embassy or consulate shall give necessary and urgent assistance to the victims, especially safety and social welfare, and shall co-operate with concerned officials of that country in order to prosecute offenders, and the victims shall be repatriated thereafter.

In the case of victims in the Lao PDR who are citizens of foreign countries, in addition to implementing the third paragraph mentioned above, Lao officials shall cooperate with the embassy or consulate of the victim's country in the Lao PDR through the Ministry of Foreign Affairs in order to repatriate the victims.

#### **Article 49. Penal Measures against Trafficking in Women and Children**

Any person committing the offence of trafficking in women and children shall be punished by five to fifteen years of imprisonment and shall be fined from 10,000,000 Kip to 100,000,000 Kip, and shall be subject to confiscation of property as provided under Article 32 of the Penal Law.

In cases where offenders organise themselves, the victims are children, the victims are more than two persons, the victims are close relatives of the offenders, [or] the victims suffer severe injury [or] mental insanity, the offender in trafficking in women and children shall be punished by fifteen to twenty years of

imprisonment and shall be fined from 100,000,000 Kip to 500,000,000 Kip[,] and shall be subject to confiscation of property as provided under Article 32 of the Penal Law.

In cases where offenders cause the victim lifetime incapacity, or [cause the victim to be] infected with HIV/AIDS, or cause death, the offender in trafficking in women and children shall be punished with life imprisonment and shall be fined from 500,000,000 Kip to 1,000,000,000 Kip[,] and shall be subject to confiscation of property as provided under Article 32 of the Penal Law, or shall be subject to capital punishment.

Preparation and attempts shall be subject to punishment.

Any person who has been an accomplice in the trafficking of women and children, as stipulated in paragraph 3 of Article 24 of this law, shall be punished by four to ten years of imprisonment and shall be fined from 5,000,000 Kip to 50,000,000 Kip[,] and shall be subject to confiscation of property as provided under Article 32 of the Penal Law.

#### **Article 50. Measures against Domestic Violence Against Women and Children**

Any individual committing domestic violence against women and children, as provided in Articles 30, 31 and 32 of this law, shall be re-educated and receive an [official] warning<sup>37</sup>.

In a case where the domestic violence constitutes an offence, the offender shall be punished according to the Penal Law.

#### **Article 51. Criminal Measures against Those who Do Not Assist Victims**

Any person who does not assist the victims of trafficking in women and children or of domestic violence in severe cases[,] where he or she is capable of giving such assistance[,] is punishable in accordance with Article 86 of the Penal Law.



## APPENDIX 2: Treaties relating to Human Trafficking to which Laos PDR is a Party

### **UN Treaties (Order of ratification)**

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 9, 1957 NEED OFFICIAL TREATY SOURCE (Ratified)

International Convention on the Elimination of All Forms of Racial Discrimination (CERD), New York, Mar. 7, 1966, (Accession, Feb. 22, 1974), 660 U.N.T.S. 195.

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, July 25, 1951, (Accession Apr. 14, 1978), 96 U.N.T.S. 271.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Jul. 17, 1980 (Signed), Aug. 14, 1981 (Ratified), 1249 U.N.T.S. 13.

Convention on the Rights of the Child (CRC), May 8, 1991 (Accession), 1577 U.N.T.S. 3.

International Covenant on Civil and Political Rights (ICCPR), Dec. 7, 2000, 999 U.N.T.S. 171, U.N. Doc. A/6316 (1966) [hereinafter ICCPR].

United Nations Convention Against Transnational Organized Crime, Sept. 26, 2003 (Accession), 2225 U.N.T.S. 209.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Crime, U.N. Doc. A/55/383 (Sept. 26, 2003 (Accession)).

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 263, U.N. GAOR, 54<sup>th</sup> Sess., U.N. Doc. A/RES/54/263 (Sept. 20, 2006 (Accession)).

International Covenant on Economic, Social and Cultural Rights (ICESCR), Dec. 7, 2000 (Signed), Feb. 13, 2007 (Ratified), 993 U.N.T.S. 3.

### **Other International Treaties**

ASEAN Declaration on Transnational Crime, Dec. 20, 1997, <http://www.aseansec.org/5985.htm> .

Manila Declaration on the Prevention and Control of Transnational Crime, Mar. 25, 1998, <http://www.aseansec.org/5634.htm>.

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