

THE CONSTITUTION OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC

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On 14 August 1991 the Supreme People's Assembly (SPA) of the Lao People's Democratic Republic (LPDR) unanimously endorsed the first Constitution to be promulgated since the formation of the LPDR on 2 December 1975. For the intervening fifteen years, while Laos was without any constitutionally grounded system of laws, all legislative and executive powers had effectively been exercised by the ruling Lao People's Revolutionary Party (LPRP). This paper briefly examines the background to the new Constitution. It then goes on to discuss the document itself in comparison to earlier drafts and to the constitutions of neighbouring socialist states, namely the People's Republic of Kampuchea (PRK) and the Socialist Republic of Vietnam (SRV).

1. Background to the Lao Constitution

On 13 April 1975, the National Assembly elected in accordance with the Constitution of the Kingdom of Laos was dissolved by decree of King Savang Vatthana in preparation for national elections to be held in July for a new Assembly. This was in conformity with agreements signed between the two sides in Laos's long drawn-out civil war setting in place a third coalition government.¹ Those elections were never held. Instead the LPRP progressively tightened its grip on political power, and held its own "elections" at the local level for village and district officials ac-

1. The first two were formed in 1957 and in 1962. Both subsequently collapsed. For an outline of modern Lao history leading up to and including formation of the LPDR, see Martin Stuart-Fox, *Laos: Politics, Economics and Society*, London/Boulder 1986.

ceptable to the Party. In November 1975, under the close supervision of the LPRP-controlled Lao Patriotic Front, 264 delegates were chosen to represent local administration at the district and provincial level, member organizations of the Front, and the Front itself. These met as the National Congress of People's Representatives, an extra-constitutional body which accepted the forced abdication of the king and proclaimed the Lao People's Democratic Republic. Before it dissolved, never to meet again, the Congress appointed a 46-member Supreme People's Assembly (SPA). It was this entirely unrepresentative body comprising mostly minor Party functionaries, a few "patriotic neutralists" and even some personalities associated with the former regime which nominally constituted the supreme legislative authority in the LPDR until national elections for a new 79-member SPA were held on 26 March 1989.

Over the intervening years, membership of the original assembly was reduced by about a quarter through death, imprisonment, or because members fled the country. What standing the SPA had it owed to its President, former Prince Souphanouvong, titular leader of the Pathet Lao throughout its "thirty-year struggle" against the Royal Lao government, and to its four vice-presidents representing the four major ethnic divisions present in the Lao population. However, the SPA never performed more than a rubber-stamp role endorsing Party decisions. It met twice a year, listened without comment or question to reports read to it by government or Party leaders, and ratified without revision the laws presented to it. Thus a shell of constitutionality was preserved which was almost entirely lacking in substance.

The SPA was charged by the National Congress of People's Representatives both with acting as the supreme legislative body in the state and with drawing up a Constitution. The SPA duly nominated a Constitution Drafting Committee under the chairmanship of Souphanouvong including three vice-presidents and eight other SPA members. Three persons not members of the SPA were also named to the committee. From these were drawn a five-member Standing Committee from which nothing was heard for eight years. Then in 1984 two Constitution Drafting Sub-Committees were appointed, one to go over the work already done, the other to "study and grasp the social situation".² A Constitution was promised "without delay", possibly in

2. *Ibid.*, 69.

time for the tenth anniversary of the LPDR in December 1985.

Progress remained slow, however, although East German legal advisors were reported to be assisting the committees with their work. In the event, the Party decided that the unrepresentative, nominated first Supreme People's Assembly was not a proper body to promulgate a new Constitution. New electoral laws were drawn up, and a series of elections at district and provincial levels culminated in March 1989 in national elections for a new SPA which would double as a Constituent Assembly.³ Thereafter progress quickened. A new 17-member Constitution Drafting Committee was appointed not by the SPA, but by the LPRP Politburo, chaired by the SPA's new president, Nouhak Phoumsavanh, the powerful second ranking member of the Politburo. The Committee included six SPA members with six more drawn from the LPRP Central Committee. It had in fact been the Party, not the SPA, that had decided it was time Laos had a Constitution.⁴

The reason for this new urgency had to do with both internal developments and external pressures. For more than a decade, the leadership of the LPRP had had no qualms about exercising the monopoly of political power enjoyed by the Party. Opponents to the arbitrary exercise of power – in confining civil servants and army officers of the former regime to long terms of forced political re-education, or in forcing cooperativization of agriculture and nationalization of industry – were few and without influence. Foreign pressure had slight effect as the regime enjoyed strong support from both Vietnam and the Soviet Union. By 1989, however, major changes were under way. Cooperativization of agriculture had proved a disaster. State industries were losing money. The government had responded by encouraging a mixed market economy backed by a “new management mechanism” stressing profit as the criterion of efficiency for state enterprises. At the same time the Vietnamese economy was in tatters, communism was collapsing in Eastern Europe, and the Soviet Union was no longer willing to provide massive financial assistance. Laos was forced to look west, particularly to Thailand, for an alternative development model based on a combination of aid and foreign investment. But foreign investors wanted legal

3. As pointed out by Nouhak Phoumsavanh in his “Presentation of the Draft Constitution of the Lao People's Democratic Republic” to the Supreme People's Assembly, roneoed non-official translation, 1.

4. Interview with Chaleun Yiapaoheu, Radio Vientiane, 19 June 1990. *Foreign Broadcast Information Service*, 4 July 1990.

protection. Hastily, the Lao began drafting laws on everything from ownership and inheritance to insurance, labour and the arbitration of disputes. However, these laws still lacked a constitutional foundation. Moreover, overseas Lao were reluctant to return without clear constitutional guarantees that their persons and property were inviolable. Thus by 1989, the future prosperity of the country clearly demanded enactment of a Constitution.

By the end of the year a Draft Constitution was at last taking shape. Various ministries, state committees, mass organizations and provincial authorities were asked for their views. On 4 April 1990, a first formal draft was presented to the Politburo, and approved for general discussion. The draft was published in the official Party journal *Pasason* (The People) on 4 June 1990. It was then, however, that the whole carefully controlled process began to run into trouble. Events in Eastern Europe had been followed with interest in Laos, thanks to the easy reception of Thai television from across the Mekong. While 1989 was "a nightmare year for socialism" in the view of the Party, for some younger bureaucrats and intellectuals the evolution of multiparty political systems in Eastern Europe held out hope for a similar development in Laos. People began meeting informally to discuss political affairs. Public discussion of the Constitution provided them with a perfect opportunity to criticise the Party's monopoly of power and press for a multiparty system.

The first article of the Draft Constitution defined the LPDR as "a people's democratic state under the leadership of the Lao People's Revolutionary Party". This became the target of criticism, for by enshrining the leading role of the Party and giving it constitutional force, the article effectively precluded multiparty democracy. In a flamboyant gesture, one member of the group circulated his letter of resignation from the Party in which he criticised the LPDR as a "communist monarchy" and declared that only a multiparty system could ensure democracy, freedom and prosperity.⁵ Other pointed criticisms came from a former vice-minister of planning and a senior official in the Ministry of Justice. Despite warnings that the right of assembly guaranteed in Article 26 of the Draft Constitution did not permit either demonstrations in favour of a multiparty system, or meetings of an association with the political commitment to bring them about, the criticism con-

5. Martin Stuart-Fox, "Laos at the Crossroads", *Indochina Issues* No.92, March 1991.

tinued. By October 1990, the government had lost patience. The three leading figures in the movement were arrested, as much as anything as a warning to others that no challenge to the political monopoly of the Party would be tolerated.

Nevertheless, the process of consultation and discussion over the Draft Constitution continued, if in a more subdued and controlled way, for it was still hoped to have a final document available by December 1990 in time for the celebration marking the fifteenth anniversary of the LPDR. This was not to be. The anniversary came and went and not until the end of March 1991 was a second draft drawn up by the committee which purported to incorporate criticisms of the first draft. The first draft had been published only in Lao with each foreign embassy and organization making its own translation.⁶ For the second draft what amounted to an official unofficial translation was produced by Dr Bounmy Pabphavong of the Supreme People's Assembly.⁷ This version contained 82 Articles compared with 73 in the earlier draft. It was submitted to the Politburo for discussion by members of the Central Committee of the Party elected at the Fifth Party Congress in March 1991. As a result of these deliberations, a third draft was drawn up containing 80 Articles.⁸ It was this third draft that is discussed, modified very slightly, and unanimously endorsed by the Supreme People's Assembly which is now the Constitution of the LPDR.

In presenting the third and final version of the Draft Constitution to the SPA, its president Nouhak Phoumsavanh listed a number of reasons why the Constitution was being promulgated at that time. Laos, he suggested, had reached a stage of development – “the present stage of the country’s revolution” – where, in the words of the Preamble to the Constitution “the social life [of the country] requires that the state must have a Constitution”. Laos, Nouhak told SPA members, could now “afford” to have a Constitution, which, he said, had several purposes: “to help the people acknowledge unanimously the characteristics

6. A good translation is available in Amnesty International, “Lao People’s Democratic Republic: The Draft Constitution and Human Rights” ASR 26/03/90, Dec. 1990, Appendix 1. This draft will be referred to as I.
7. Roneoed copies of this translation were made available to diplomatic missions and other organizations in Vientiane. This draft will be referred to as II.
8. Roneoed copies of a translation of this draft were made available to foreign delegates attending the SPA session of 13-15 August 1991. This draft will be referred to as III. A second non-official translation was subsequently produced by the National Assembly of the LPDR entitled “The Constitution of the Lao People’s Democratic Republic”. This draft is referred to by article number without any draft prefix.

of our State" and "what strata of people are master of the country" (*sic*),⁹ to help everybody understand state institutions and policies, "to define the relationship between the state and individual citizens", and to reveal to the outside world "the content and features of the people's democratic regime".¹⁰

2. The Drafting Process and the Lao Constitution

Comparison of the three successive drafts of the Constitution reveals some interesting developments in the drafting process. The division into ten chapters has remained constant. Chapters deal with the political regime, the socio-economic system, fundamental rights and obligations of the citizen, the Supreme People's Assembly (renamed the National Assembly in the last draft), the State President, the Council of Ministers, local administration, the judicial system, and national symbols. The last chapter stipulates the procedure to be followed in amending the Constitution. What has changed is the relative weight given to each chapter and the balance of powers between different constitutional components.

In the third draft, the controversial first Article of the first and second drafts referred to above was omitted. Thus what was formerly the second Article designating the LPDR as an independent, sovereign and unified country becomes the first in the new Constitution. However, the leadership role of the LPRP has been re-introduced in Article 3 in which it is described as constituting the "leading nucleus" of the political system. Moreover, political bodies such as the National Assembly, together with "all other state organizations" are to be established and function "in accordance with the [Marxist] principle of democratic centralism" (Art.5). Thus it is clear that Laos is to remain a "People's Democratic State" (Art.2) – in the Marxist sense of applying democratic centralism as directed by the LPRP in performing its leading role.

In the drafting of Article 6, however, it is interesting to see how Marxist principles have been modified to reflect present realities. The

9. The reference here is to Article 2 which specifies that all powers are exercised "of the people, by the people and for the interests of the multi-ethnic people of all strata in society with the workers, farmers and intellectuals as key components".

10. Nouhak Phoumsavanh, *op.cit.* note 3, 3-5.

article as it now stands commits the state to protect the “freedom and democratic rights of the people which cannot be violated by anyone”. But this clause was only added in the second draft. In the first draft the popular right that the state was committed to protect was the right of what is usually translated as “mastery”,¹¹ a term referring to the collective right of the Lao people to control the collectivised means of production and by extension to become masters of their own national destiny.¹² For this Marxist concept was substituted the notion, essentially bourgeois in a Marxist perspective, of democratic rights and freedom (II, Art.7). However, the article goes on to enjoin “[s]tate organizations and functionaries” to “popularise and propagate all policies, regulations and laws” [of the state] and to implement these with the assistance of the people as the means of guaranteeing “the legitimate rights and interests of the people”, which effectively commits the state to propagate the Party line.

Why was this substitution made? Hardly to satisfy opponents of Marxist orthodoxy within the LPRP. Perhaps as a sop to the expectations of Western democracies or in response to recommendations by foreign legal experts.¹³ In any case, the article as it stands provides an example of what one Lao commentator has called the “coded” nature of what the Constitution reveals about political processes in the country.¹⁴ This is because while it apparently defends liberal individual rights, it does so in the context of current political practice in the LPDR where the Party still sees its role as exercising a dictatorship on behalf of the proletariat and peasantry (the multi-ethnic Lao people) in order to lead them to a state of “collective mastery”. Thus, a substantial gap exists between actual Lao Marxist practice and what would be understood by a Western constitutional lawyer reading an English translation of this article of the Constitution.

To develop “the rights to mastership [mastery] of the people” is specifically referred to in Article 7 as a responsibility of mass organizations guided, of course, by the Party – the Lao Front for National Construc-

11. As in III, Art.3. I, Art.7 translates the term as “ownership”. Another alternative sometimes used is “mastership” (Art.7).

12. A point stressed by Nouhak Phoumsavanh, *op.cit.* note 3, 44.

13. Under a program funded by a United Nations Development Program grant, French and American legal experts have assisted the Lao government in drawing up commercial and industrial legislation to meet international standards.

14. Somphavan Inthavong, “Reflections on the First Lao Constitution”, dated 29 April 1991, roneoed copy.

tion, the Lao People's Revolutionary Youth Union, the Lao Women's Union, and added after the first draft, the Lao Federation of Trade Union (*sic*), together with "other social organizations". They are also "to unite and mobilise the multi-ethnic people of all strata for taking part in the cause of national defence and construction", the two great national tasks defined by the Party. Mass organizations thus do not exist in their own right to further the interests of their members, but rather as vehicles for the policies of the Party.

Article 8 on the policies to be pursued towards and the rights of ethnic groups is both sensitive and significant. The state is committed to implementing a policy of unity and equality among all ethnic groups, while "acts of creating division and discrimination among ethnic groups are prohibited". Ethnic minorities are also guaranteed a constitutional right "to protect, preserve and promote the fine customs and cultures of their own tribes and of the nation". Throughout the Constitution is careful to refer to the "multi-ethnic" Lao people in order to cater to the sensitivity of minority groups to ethnic Lao domination, though nowhere does it designate separate or special bodies to administer or represent them.

Significant changes have been included in the final draft of three of the four remaining articles in chapter one covering religion, defence and foreign policy. Article 9 on the role of the state with respect to Buddhism and other religions has been significantly strengthened. While the state "respects and protects all lawful activities" of all religions, as in previous drafts, in the final draft it additionally "mobilises and encourages the Buddhist monks and novices as well as the priests of other religions to participate in the activities which are beneficial to the nation and people". Far from providing additional guarantees for the free exercise of religious belief and practice, however, this clause would permit a potentially intrusive role for the state in determining which religious activities counted as "beneficial".

Article 11 commits the state and people together to implement determined policy on national defence and security. More specifically, it calls upon defence and security forces to "enhance their loyalty to the nation and people", and enjoins them to "carry out the duty to protect the gains of the revolution" as well as "the lives, property and labour of the people". This would appear to give the army the constitutional right to oppose any moves to abolish Marxism in Laos, moves which in a Marxist perspective could only be seen as setting back the cause of the

revolution. To this article in the final draft has been added a new clause noting that it is also the duty of the defence and security forces to "contribute to the tasks of national development", thus providing the military with an additional socio-economic, and by extension perhaps even a political, role similar to that exercised under the concept of "dual function" by the Indonesian military.¹⁵

Article 12 defines the foreign policy to be pursued by the LPDR. In earlier drafts this was defined as the pursuit of "peace, independence, friendship, and non-alignment", but in the final draft "non-alignment" has been replaced by "cooperation". The article also commits the LPDR to the five principles of peaceful coexistence which are explicitly cited.

The changes introduced into chapter two on the socio-economic system reflect a similar tension to that evident in chapter one; that is, between a continuing commitment to socialist economic policy and the desire to establish an acceptably liberal framework for domestic and foreign economic investment. Thus, the economic system of the LPDR is defined as "multi-sectoral" and the objective of economic development as being to transform "the natural economy into a goods [market] economy" (Art.13), yet the state is also committed to protect and develop state and collective as well as individual ownership [of the means of production] (Art.14). This tension becomes even more evident when earlier drafts are examined. A section to be found in the first and second drafts which was omitted in the final one specified a role for the state in "developing productive forces" through state involvement in agriculture, forestry, industry, transport and communications and trade (II, Art.14). Assurances are given that the state will protect "the private ownership of domestic capitalists and foreigners who have invested in the Lao People's Democratic Republic" (III, Art.14), while reference to the role of the state in orchestrating relations between different sectors of the economy has been omitted. The role of the state has thus been reduced in the final document in order to reassure private investors.

The draftees of the Constitution have also had problems with the ownership of land. The first two drafts stated categorically that: "Land ownership belongs to the national community, which is represented by

15. See Ulf Sundhaussen, *The Road to Power: Indonesian Military Politics 1945-1967*, Kuala Lumpur/New York 1982.

the state" (II, Art.16). The state then guaranteed rights to use it or to inherit or transfer it for legal use. In the final draft, this clause has been modified to read: "As for the land which is under the ownership of the national community, the state guarantees the rights to using, transferring and inheriting in accordance with the law" (Art.15). State ownership has been watered down by omitting any reference to the state "representing" the national community, even though this latter term must still be interpreted in a collective sense: that is, it denotes more than the sum of individuals who own land.

In the area of economic management, the tension between Marxist and liberal economic principles is again evident. In the first draft, it was stated that: "The state has a policy of managing the economy" through "linking planning with the markets" by "implementing the principle of democratic centralism, increasing the efficiency of the socio-economic sector, and harmoniously combining the state and collective interests with individual interests" (I, Art.17), which clearly left a considerable role for the state in intervening in the economy. The second draft modified this role considerably. The article was re-drafted to read: "In managing the economy, the extensive application of goods-money relations is used in accordance with the mechanism created by the market and proportioned by the state" (II, Art.17). In the final draft, economic management by the state is reduced to a process of "adjustment", while the ambiguous final clause of draft two was dropped. This article now reads:

The economic management is carried out in line with the mechanism of market economy with the adjustment by the state, implementing the principle of promoting the centralised, unified management of the central branches in combination with the division of managerial responsibility for localities (Art.16).

However, this awkward form of words neither resolves the problem of the role of the state, nor reconciles the contradiction between state direction of the economy and market mechanisms.

Articles 19 and 20 in all three drafts refer to the state's role in education and health. Here too, some interesting changes were introduced during the redrafting process. Thus in the second draft, provision is specifically made allowing establishment of private schools "which function under the curricula of the state" (II, Art.19). Similarly provision

is made in the same draft authorizing “private individuals to operate medical services in accordance with state regulations” (II, Art.20). Just as significantly, the final draft drops the ideological reference present in drafts one and two to the policy of “taking education one step ahead and linking it with the building of the new man [and woman]” (II, Art.19). The reference here is to the theory of the “three revolutions” as adopted by the LPRP from Vietnamese Marxist theory. These are the revolution in relations of production through socialization of the means of production, now virtually abandoned in Laos; the scientific and technological revolution, still a central goal in economic development policy; and the ideological and cultural revolution aimed at producing new Lao socialist men and women committed to the socialist cause.¹⁷ By teaching the new generation the value of socialism before the economic conditions for its realization actually exist, the ideological and cultural revolution would theoretically be a step ahead of the other two, a notion borrowed not from Marxist economism but from Maoist voluntarism. In the final draft of the Constitution, reference to the ideological goal of taking a step ahead in creating new Lao men and women has been replaced by the bland educational goal of assuring that “the new generation” will be “good citizens” (Art.19).

Chapter three of the Constitution covers the fundamental rights and obligations of the citizen. It was the section that apparently underwent the greatest change between drafts one and two – apparently, because while the number of articles increased from ten to seventeen, the actual various rights covered did not increase proportionally as at least four new articles were formed by dividing single articles in the first draft. Of the remaining three new articles, one simply defines citizens of Laos as those who hold Lao nationality (Art.21) while the other two provide for the right to education and culture (Art.25) and to freedom of settlement and freedom of movement (Art.27). The final draft contains eighteen articles in this chapter, the additional article again coming from dividing an article in the second draft. Of these eighteen, twelve list rights of individuals, three commit the state to protect the rights of Lao citizens

16. That part of Article 14 in drafts one and two referring to the role of the state in promoting economic relations with foreign states forms a separate article in the final constitution (Art.18).
17. For a study of these see Amphay Doré, “The Three Revolutions in Laos” in *Contemporary Laos: Studies in the Politics and Society of the Lao People's Democratic Republic*, (Martin Stuart-Fox, ed.), St Lucia/London 1982, 101-115.

abroad, to protect aliens in Laos, and to provide for right of asylum. Only three list obligations – to obey the laws of the land, pay taxes, and defend the country.

Legal and political rights guaranteed by the Lao Constitution include equality before the law (Art.22), equal political, economic, cultural and social rights (Art.24), the right to vote (Art.23), and the right to lodge complaints and petitions (Art.28). Civil rights include freedom of speech, press and assembly (Art.31), of religious belief (Art.30), and of creative and literary activity (Art.32). Lao citizens have the right to work and health care (Art.26), to education (Art.25), and to study what they like (Art.32). They enjoy freedom of settlement and movement (Art.27), and their bodies and houses are inviolable (Art.29). In several articles, rights have the added proviso that their exercise should not be contrary to the law. Thus, Lao citizens have a constitutional right to set up associations and stage demonstrations “which are not contrary to the law” (Art.31), but as Chaleun Yiapaoheu, a standing member of the Constitutional Drafting Committee, made clear in a series of talks on the constitution broadcast over Radio Vientiane in June 1990, since “protests against the Party, state, and the new regime” were “illegal”, any associations or demonstrations calling for a multiparty system in Laos would not be permitted.¹⁸ Thus, the gap between rights as interpreted within the Western liberal tradition and as given practical effect in the LPDR remains wide.

It was this gap that was the focus of a lengthy submission by Amnesty International to the Lao government criticising the first draft of the Constitution and recommending stronger provisions on human rights.¹⁹ Amnesty called for inclusion of the right to life, and prohibition of arbitrary arrest, incommunicado detention and all kinds of torture. It also recommended that freedom of religious belief should include freedom to practise and teach those beliefs, and that for the provision that freedoms and rights should not be contrary to the laws of the LPDR should be substituted without restriction other than those “necessary in a democratic society”.²⁰ None of these suggestions has been incorporated in the Lao Constitution.

Chapter four defines the structure, rights and duties of the National

18. Chaleun Yiapaoheu, *op.cit.* note 4.

19. Amnesty International, *op.cit.* note 6.

20. *Ibid.*, recommendation XIII, 19.

Assembly and its standing committee. In earlier drafts this body was called the Supreme People's Assembly, and the change in name is significant for the link it re-establishes with the former regime. Only the most minor changes in wording occurred between drafts one and two of this chapter. In the final draft, however, significant changes were introduced, the primary thrust of which is to strengthen the powers of the State President by curtailing the extensive powers previously given to the Assembly's Standing Committee. The President now has additional powers both to propose draft laws to the National Assembly, and to request the Assembly to reconsider laws it has adopted. Moreover, the Standing Committee has lost a number of powers which conflicted with those of the State President. These include the right to issue decrees, to appoint or remove members of the Supreme Court and ambassadors of the LPDR to foreign countries, to ratify or abolish treaties with foreign countries, to determine senior military promotions, to grant pardons, confer medals, order military conscription, and even to grant or revoke Lao citizenship and declare war if the National Assembly was in recess. Of these all but the final two are now powers of the State President as set out in chapter five (Art.55) of the Constitution. The power to grant or revoke Lao citizenship is no longer mentioned in the Constitution, while matters of war and peace must be referred to a full sitting of the National Assembly (Art.40, point 11).

Overall, the eighteen rights and duties of the Standing Committee in the first and second drafts have been reduced to five in the final draft. These are to prepare the agenda for the Assembly and summon it into session, to interpret and explain provisions of the Constitution and laws (not in the LPDR a right and duty of the Supreme Court), to supervise the functioning of the executive and the judiciary, and "to exercise other rights and execute other duties as defined by law" (Art.48). The Assembly's powers have been increased by giving it the right to pass a vote of no-confidence in the government providing the Standing Committee or one-quarter of all members raises the question (Art.61). The President may request the Assembly to reconsider its vote, but in the event of a second vote the government would be forced to resign. A second new article in the final draft stipulates that "questions related to the destiny of the nation and the vital interests of the people" must be submitted to the National Assembly or its Standing Committee (Art.47), a clause which strengthens the role of both to some extent. Even with these additions, the balance of powers has shifted in the final

Constitution. The powers of the Standing Committee, and thus of its President, have been curtailed, which has the effect of indirectly reinforcing the powers of the plenary National Assembly, while the powers of the State President have been directly augmented.

Chapter five adds to the powers of the State President in three more significant ways. It gives him or her the right to preside over meetings of the government "when necessary" (Art.53, point 7); to be "the Head of the people's armed forces" (Art.53, point 6); and to "appoint, transfer or remove the governors of provinces and the mayors of municipalities" – on the recommendation of the prime minister (Art.53, point 4). It is not clear who, other than the State President, would decide when it would be "necessary" to preside over meetings of the government. Since the State President has the right to appoint or remove the prime minister, presumably the President could in exceptional circumstances act as his or her own prime minister. Command of the armed forces is clearly an essential power of the President if the military is to remain under civilian control, and one wonders how it came to be omitted in earlier drafts. The right to name and remove provincial governors is more important in the Lao context than it might at first appear, given the degree of decentralization of political power that exists in the LPDR, and the propensity for provincial leaders to establish regional power bases.

A significant addition to the second draft was provision for a Vice-President to assist the President and act on his behalf (II, Art.50). How the Vice-President was to be elected was left unclear, however. In the final draft, a separate article is devoted to the Vice-President. It is not obligatory to fill the office, but in cases where a Vice-President is elected it is by a bare majority of National Assembly members present (Art.55).

Chapter six defines the structure, rights and duties of the government, so called in the final draft in preference to the Council of Ministers. The fourteen powers of earlier drafts have been reduced to nine in the final Constitution (Art.59), without, however, significantly diminishing those powers. The principal changes have been to the language which has been tightened up to permit combination of previously separate points. The only powers no longer specifically mentioned refer to establishment of boundaries of districts and responsibility for protecting the interests of citizens and ensuring fulfilment of their obligations.²¹

21. Note in II, Art.53, points 11 and 6.

The most substantial structural changes that have occurred in the course of the drafting process have been to chapter seven dealing with local government. The six articles in the first draft were expanded to eight in the second, only to be reduced to just three in the final draft. The difference between drafts one and two is that whereas in draft one local administrative committees were defined as “the standing organs of the local people’s councils” (I, Art.54), in the second draft the “standing committees of the local people’s councils” are so-called and local administrative committees are defined as “the executive and administrative bodies of the state authority at the localities” (II, Art.63) – virtually the same definition given for local people’s councils.²²

The confusion in draft two was resolved in the final draft through the radical elimination of all reference to either local people’s councils or local administrative committees. Instead of representative councils or committees, mention is made only of provincial governors, mayors of municipalities and chiefs of districts and villages (Art.62). These have certain rights and duties, such as to implement laws and regulations determined at higher levels, administer services at the same level, and ensure that activities at lower levels are consistent with the relevant laws and regulations (Art.63). Presumably, the legal establishment of councils or committees at various levels will be a matter for the National Assembly. However, elimination of all reference to representative local government in the final draft would appear to weaken democratic institutions at the regional and local level by depriving them of any constitutional basis or guarantees. Since only governors, mayors and district and village chiefs receive mention, these could constitutionally administer their regions and localities without any assistance from popularly elected bodies.

Chapter eight of the Constitution concerns the judiciary, divided into: A. The People’s Courts and B. The Public Prosecution Institutes. Here again, whereas no significant changes were made in draft two compared with the first draft, the final Constitution did introduce important changes, in the course of which the number of articles was reduced by one in each sub-chapter. In earlier drafts, judges and people’s assessors of people’s courts were elected by the people’s councils at the same level. Omission of any reference to people’s councils in chapter seven on local administration makes this provision inappropriate in the final draft, and

22. Defined as “the organs of state authority in localities” (II, Art.58).

Article 67 now stipulates that judges of people's courts *at all levels* (emphasis added) are to be appointed and removed by the Standing Committee of the National Assembly. Moreover, all reference to people's assessors has been omitted. Given that a new Institute of Law and Administration has recently been established, these changes should have the effect of placing the administration of law in the LPDR in the hands of a professional judiciary, rather than as in the past leaving it largely in the hands of untrained Party functionaries. Courts are to be impartial and open and defendants have the right to legal representation. No mention is made of jurors. Changes to the sub-chapter on the Public Prosecution Institute have been in structure rather than content, four articles being reduced to three having to do with the appointment and duties of prosecutors.

The only changes in the three drafts of the five articles comprising chapter nine on the national alphabet, language, emblem, flag, anthem and capital city are small but symbolically significant. Draft two inserted the term "democracy" in the inscription on the national emblem already containing the words peace, independence, unity and prosperity.²³ The final draft substituted the outline of the sixteenth-century monument known as the That Luang for the communist hammer and sickle gold star at the apex of the emblem (Art.76).

3. Some Indochinese Comparisons

It is when the Lao Constitution is compared with those of the Socialist Republic of Vietnam (SRV) and the People's Republic of Kampuchea (PRK), both published ten years earlier, that it becomes evident just how much the former has been influenced by recent events sweeping the communist world. Both the earlier constitutions are highly ideological documents, from their preambles on, in a way that the Lao Constitution, for all that it is the constitution of a communist state, avoids. The Vietnamese Constitution states flatly that the SRV is "a state of proletarian dictatorship" (Art.2) and that the Communist Party of Vietnam is "the only force leading the state and society, and the main factor determining all successes of the Vietnamese revolution" (Art.4). The Cambodian

23. The term "democracy" was already included in the national goals listed in the preambles to both drafts one and two.

Constitution says that the Kampuchean People's Revolutionary Party (KPRP) "is a force that takes direct leadership of the entire revolutionary task of the PRK" (Art.4). Beside such declarations, the statement that the LPRP forms the "leading nucleus" of the political system seems mild in comparison.

Yet there are similarities, most evidently in the structure of the three constitutions and in the political institutions all three endorse. All three constitutions begin by defining the political regime, followed by the socio-economic system (for the LPDR and the PRK: the Vietnamese Constitution has separate chapters for the economic system and for culture and education. It also includes a short chapter on defence, which the other two mention only as an obligation of all citizens). Only then are the rights and obligations of citizens covered. Then in all three come political institutions: the National Assembly, the Council of State and the Council of Ministers for the SRV and the PRK, but the State President in place of the State Council for the LPDR. Chapters on local government, the judicial system, national symbols, and methods of amendment complete all three constitutions.

In the economic, social and cultural spheres both the SRV and PRK are far more evidently committed to socialism than is Laos. The SRV is said to be "advancing directly" to socialism "bypassing the stage of capitalist development" (Art.15), while the PRK is "gradually advancing towards socialism" (Art.1). In both, the economy is under state direction and all economic resources belong to the state. By contrast, in Laos the state protects the right of individual ownership of economic resources, even including "private ownership of domestic capitalists and foreigners" (Art.14).²⁴

In the social, cultural and educational spheres, the SRV Constitution states categorically that "Marxism-Leninism is the ideological system guiding the development of Vietnamese society" (Art.38) and education and culture are to be directed by the state to that end. The PRK does not go quite as far, but education remains a state monopoly (Art.22). Not so in Laos, however, where provision is made for both private education and private health care.

In the area of citizens' rights and obligations, the Vietnamese Constitution is again highly ideological, the Cambodian Constitution less so. In the SRV, "the rights and obligations of citizens reflect the system of

24. Cf. Articles 25 and 26 of the Constitution of the SRV.

collective mastery of the working people" (Art.54). This is nowhere so baldly stated in the Cambodian Constitution, let alone the Lao. The twenty-nine articles of the Vietnamese Constitution in this chapter go into much greater detail than do the fifteen in the Cambodian Constitution and the eighteen in the Lao, even to the point of guaranteeing the rights of authors and inventors (Art.72). Torture is specifically prohibited in the Vietnamese Constitution, but not in the other two. The usual individual freedoms are listed – of speech, the press, association, assembly, etc. – but with the proviso that these are exercised "in accordance with the interests of socialism and of the people" (SRV Art.65) or that they are not abused (PRK Art.37), both notions so vague as to leave it open for the ruling party to interpret as it sees fit.

The National Assemblies of all three countries are essentially similar in structure and function, though in Vietnam the Assembly elects two bodies, the National Defence Council and the Council of Nationalities, that do not exist in either Laos or Cambodia. This is not surprising in the case of Cambodia, but in Laos ethnic minorities make up a very much larger proportion of the total population than they do in Vietnam, and yet virtually no special provisions are made for them in the Constitution. This is generally in line with long-standing Pathet Lao policy which has consistently refused to set up autonomous minority areas and instead preferred to work for the integration of all ethnic groups into the political and social life of the country.

One significant difference between Laos and both Vietnam and Cambodia lies in the separation the former has effected between the President of the National Assembly and its Standing Committee and the State President. In both Vietnam and Cambodia, the Council of State is the Standing Committee of the National Assembly and its Chairman is the Chief of State. The Constitution of Vietnam states concisely that the Council of State is "the collective presidency" of the SRV (Art.98). In Laos a new and powerful presidency has been created so that instead of having a collective presidency drawn from the National Assembly (which effectively leaves political power in the hands of the Secretary-General of the ruling party), in Laos power is shared between the State President and the President of a potentially powerful National Assembly, with the State Vice-President and Prime Minister making up a possible collective leadership of four. In Laos today the State President is Kaysone Phomivhane, who is concurrently President of the Lao People's Revolutionary Party, the President of the National Assembly is

Nouhak Phoumsavanh, and the Prime Minister is Khamtay Siphandone, respectively ranked first, second and third in the LPRP Politburo. No Vice-President has yet been appointed.

Few differences are evident in the structure and function of the governments of the three states, but both the Vietnamese and Cambodian Constitutions provide far more guidance for the establishment of local government than does the Lao. In the legal systems of both Vietnam and Cambodia, provision is made for the appointment of people's assessors. The Cambodian Constitution makes no provision for a Public Prosecutor-General which the Vietnamese and Lao Constitutions do.

It is evident from the above analysis and comparison that the Lao Constitution, while it obviously owes much to those of its Indochinese socialist neighbours and the former Soviet Union,²⁵ is a unique document reflecting specifically Lao needs and conditions which apply, in the words of the Preamble, "at this new period" in the history of the state. While the document betrays in its drafting a continuing tension between committed communists reluctant to countenance a radical dismantling of socialism in Laos and those more eager to move in the direction of change, it does represent a creative attempt to make allowance for both tendencies. In so doing it has eschewed overtly ideological language, and too inflexible a political structure. Amendment of the constitution is possible as occasion demands, and as events in Eastern Europe and the Soviet Union have shown, even single party chambers can vote for the introduction of multiparty systems. In the meantime Laos has at long last a constitution to serve as the basis for the legal framework it is now in the process of constructing for its long-suffering citizens.

25. The State Presidency which may be filled concurrently by the Party Secretary-General, or President of the Party, has been modelled on the Soviet Union.

