

# COMPREHENSIVE ANALYSIS ON LAO EXTRADITION LAW AND RECOMMENDATIONS TO ENHANCE ITS EFFECTIVENESS

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## I. INTRODUCTION

Transnational crime is the defining issue of the 21st century for all of those involved in the enforcement of laws and prosecution of crime for sentencing the crime according to the laws. Transnational crime is a major threat to the rule of law and good governance of countries around the world. Criminal networks have proliferated, and the threat of crime has never been greater. Crime, particularly terrorism, has ceased to be largely local in origin and effect and has instead established itself on a national and international scale at the present time. If responses by law enforcers are limited, unimaginative or disjointed, things may be expected to certainly go from bad to worse. International cooperation mechanisms are required as never before to assist those concerned with upholding the law, and to enable them to enforce the law and to strike decisively and timely at the crime committed to repatriate the fugitive and to fully recover the stolen assets.

Corruption is a transnational crime that is presently widespread and has caused damages to the property of States across the world at different levels. Corruption has a negative effect on the development of the country. This is a great challenge and has an impact in different areas; it causes damages to the country, hampers social-economic development and affects directly the stability and development of the State apparatus as well as State power. Therefore, fighting corruption is necessary and requires determination and persistence from political leadership by effectively cooperating with all parts, with both international and national stakeholders, to have success in fighting corruption and fully recover the assets.

Lao PDR is experiencing corruption committed within the State apparatus, and it is a challenge to the leadership of the Lao government which has caused significant damage to the property of the State and the citizens. Corruption is committed by implementing the duties of the civil servants improperly and misusing their positions. Corruption occurs in the field of investment, education, forestry, land and so on, which causes damage to State, collectives and citizens' property, has caused loss to the State budget and affects the trust of the people in the rule of law at a certain level. Therefore, the Lao government is paying more attention and attaching the importance to the State governance by positioning and having a policy in fighting and preventing corruption and making a future and long-term strategy and creating agencies such as the State Inspection Agency, State Auditing Agency, Anti-Corruption Agency and the Organization of the People's Prosecutor and other organizations at the central and local levels which have a role in inspecting and fighting corruption at the central and local level across the country. Lao PDR has created a resolution, adopted the laws and legal acts under the laws such as the adoption of the resolution of the executive committee of the party central committee No. 02/ECPC, dated

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31 May 2015 on the strengthening of the monitoring, inspecting, preventing and fighting of corruption in the new era, amendment of the law on anti-corruption in 2012, adoption of the law on extradition in 2012, the anti-money-laundering and financing of terrorism law in 2014, the strategy on fighting corruption until 2020 in 2012, the decree on declaration of assets and income for officials, an order on more thrifty and cost-effective practices in 2015 and 14 prohibitions for civil servants and officials in 2013, and the decree on State vehicles in 2021 to be effective instruments for preventing and fighting corruption. Lao PDR has ratified the United Nations Convention against corruption and the United Nations Convention against Transnational Organized Crime, signed bilateral treaties on extradition, mutual legal assistance with the Socialist Republic of Viet Nam, the People's Republic of China, the Kingdom of Cambodia, the Kingdom of Thailand, the Federal Republic of Russia, North Korea and the ASEAN treaty on mutual legal assistance in criminal matters in 2004. At the same time, it is strengthening the role of the State Inspection Authority, the State Audit Offices, the Offices of the People's Prosecutor and the supervision of the National Assembly; attaching importance to the supervision and prevention by seriously encouraging all organizations to take part; improving and promoting the regional and international cooperation in fighting corruption by having the policy, mechanism, exchanging information and practical measures, actively contributing to effectively implement the UN Convention on Anti-Corruption and Transnational Crime.

From an international perspective, the increasing number of international crimes has necessitated relevant countries like Lao PDR to cooperate with one another by means of 1) treaties, 2) execution of adjudication by foreign nations, 3) extradition and 4) the mutual legal assistance in criminal matters. Among these, the system of extradition is the return of convicted criminals who escaped during the investigation of the international crime to the requesting countries. Established by international treaties, the system of extradition is the most common measure taken in the world today.

This thesis focuses on the current extradition system which was created to enhance international cooperation for investigation and prosecution in response to the increasing number of international crimes. Furthermore, it examines the general principles of Lao Extradition Law and its relevant international treaties that are effective today. Lastly, their problems and feasible recommendations are discussed.

## II. GENERAL PRINCIPLES OF EXTRADITION LAW<sup>1</sup>

Currently, there are no explicit provisions in any international customary laws that mandate the extradition of criminals. Thus, it is inevitable that each country concludes international treaties with one another even though extradition can also be achieved by other means such as deferring to foreign laws or adopting its own domestic law. The general principles of international extradition law are as follows:

### A. Definition of Extraditable Offences

The types of criminal offences in which convicted criminals are subject to extradition are limited to felonies that are considered more serious than certain standards. These

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<sup>1</sup> The principles of extradition are double (dual) criminality, the rule of specialty, the non-extradition of nationals, risk of persecution in the requesting State, the political offence exception, risk of unfair trial in the requesting State, double jeopardy (*ne bis in idem*) and the non-discrimination clause.

standards either list crimes subject to extradition or limits to certain crimes that are recognized by all relevant countries under a treaty based on the principle of reciprocity. Because the standard of listing crimes has a shortcoming of excluding crimes that are newly recognized by norms of the international community, there is a tendency that many countries employ both.

#### **B. Sufficiency of Evidence**

The most crucial factor in the process of requesting extradition is whether or not there is sufficient evidence for prosecution. Because the determination of sufficient evidence is made by the appropriate government agency of the requested country, it occasionally leads to disputes between nations.

#### **C. Principle of Specificity**

To protect the human rights of criminals, this principle limits the convictions of the criminals, when they are prosecuted in the tribunal of such country, to the offences as specified in the original extradition request form.

#### **D. Avoidance of Cruel and Inhuman Punishment**

There is a tendency in an increasing number of countries that have incorporated provisions specifying that the requested country may refuse to extradite in case the extradited criminals are expected to be subject to cruel and inhuman treatment, including capital punishment and torture. Art. 11 of the European Union Extradition Convention is an example.

#### **E. Definition of Extraditable Persons**

There is a spirit in the legal system determining whether or not domestic citizens should be included in the definition of extraditable persons. While European countries have generally applied the strict principle of refusing to extradite their citizens, the United States has not maintained such principle. But many European countries have now become more flexible taking a departure from the application of the strict principle, which is necessary to achieve and maintain a balance with the approach by the United States.

### **III. THE CURRENT EXTRADITION SYSTEM IN LAO PDR**

#### **A. The International Extradition Treaty**

In order to effectively cope with increasing international crime, Lao PDR has strengthened cooperation with foreign countries. Since the 1998 treaty with the Socialist Republic of Viet Nam, Lao PDR has concluded six bilateral extradition treaties with other nations.

<b>Sequence</b>	<b>Contracting Countries</b>	<b>Signed on</b>	<b>Signed At</b>	<b>Effectiveness</b>
1	Viet Nam	6 July 1998	Hanoi	
2	China	4 February 2002	Beijing	
3	Thailand	5 March 1999	Bangkok	
4	Cambodia	21 October 1999	Vientiane	
5	North Korea	20 June 2008	Vientiane	
6	Russia	28 May 2015	Saint Petersburg	

## **B. The Current Extradition System of Lao PDR**

The extradition system has not yet been fully rooted in Lao PDR. It is still in the initial stage. There are requests for extradition of criminals since the adoption of the extradition law in 2012 is only 6 requests,<sup>2</sup> and there is a request from Cambodia. We have sent 3 requests to Thailand, a request to Canada and a request to Germany, but these requests failed because of the lack of a bilateral treaty. It is true that our legal system has not been a useful measure to cope with international crime. There are many reasons why, including administrative procedure, lack of expert personnel, etc. Many problems are involved in the system; however, they have to be reviewed in order to make the system itself more effective.

**Tables of Extradition Requests from 2012-2021**

<b>Countries</b>	<b>2012-18</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>Total</b>
Germany	0	1	0	0	<b>1</b>
Canada	0	0	1	0	<b>1</b>
Thailand	0	0	1	3	<b>4</b>
Grand Total	0	1	2	3	<b>6</b>

## **IV. PROCEDURES CONSIDERING FOREIGN REQUESTS**

The procedure considering foreign requests involves the diplomatic channel, the Office of the People's Prosecutor, the Office of the People's Prosecutor of Vientiane Capital, the People's Court of Vientiane Capital, the Office of the Central Regional People's Prosecutor, the Central Regional People's Court and the Ministry of Public Security. After the final court decision is made, the Office of the Supreme People's Prosecutor has to deliver the extraditable person to the requesting State.

### **A. Consideration of the Ministry of Foreign Affairs**

The consideration of the Ministry of Foreign Affairs takes place after the request has been received through the diplomatic channel by submitting the request to the Lao embassy or consulate in the foreign countries or the embassy, or the consulate of the requesting state submits the request to the Ministry of Foreign Affairs of Lao PDR

In the management of extradition, the Ministry of Foreign Affairs has the following rights and duties:

1. study and give comments on policies, legal documents and regulations relating to extradition according to the scope of its responsibilities;
2. coordinate with the requesting State or the requested State for extradition;
3. receive and check the request for extradition from the requesting State and then submits the request to the Office of Supreme People's Prosecutor;
4. check, send the request and other necessary documents for extradition to the requested State;
5. handover of the extradited person, including property in collaboration with competent authorities of the Lao PDR;
6. coordinate and follow up with proceedings of extradition of the person sought with the requesting State as well as notify the results of the proceeding to related organizations;

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<sup>2</sup> Statistics of the Office of the Supreme People's Prosecutor of Lao PDR as of 2021.

7. notify the result of the extradition proceeding to the requesting State;
8. participate in negotiations, consultations and provide comments on bilateral or multilateral treaties according to the assignment from the Government;
9. cooperate with foreign countries on extradition according to the scope of its responsibilities;
10. make reports on extradition to higher authorities;
11. perform other rights and duties according to the laws.<sup>3</sup>

After the request is received, the Ministry of Foreign Affairs examines whether the request and supporting documents are complete and consistent with the treaties and the laws of Lao PDR and sends it, then, to the Office of the Supreme People's Prosecutor of Lao PDR as the Central Authority for consideration.

#### **B. The Consideration of the Office of the Supreme People's Prosecutor of Lao PDR**

After receiving the request and the supporting documents, the Office of the Supreme People's Prosecutor of Lao PDR shall consider the request quickly and if it sees the request is legally and comprehensively complete, it will assign the Office of the People's Prosecutor of Vientiane Capital to issue an Order of Arrest and send the Arrest Warrant to the Office of the Ministry of Public Security for arresting the extraditable person.

In the management of extradition, the Office of the Supreme People's Prosecutor has the following rights and duties:

1. study and give comments on policies, legal documents and regulations relating to extradition according to the scope of its responsibilities;
2. act as the Central Authority for extradition;
3. supervise, lead and inspect the Vientiane People's Prosecutor Office and the Central Region People's Prosecutor Office in issuing an arrest warrant, provisional arrest order, release, collect evidence, confiscate property relating to the criminal offence of the person sought according to the request for extradition, summarize the case and prosecute to the court, declaration and proposal to refuse to lower People's Prosecutor Offices;
4. notify the Ministry of Foreign Affairs on the decision or judgment on extradition;
5. collect information and statistics on extradition in order to notify the relevant organizations;
6. participate in negotiation, consultations on bilateral or multilateral treaties;
7. hand over the extradited person, including property in collaboration with competent authorities of the Lao PDR;
8. cooperate with foreign countries on extradition according to the scope of its responsibilities;
9. make reports on extradition to higher authorities;
10. perform other rights and duties as assigned by the Government or according to the laws.<sup>4</sup>

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<sup>3</sup> Art. 33 of the Law on Extradition.

<sup>4</sup> Art. 35 of the Law on Extradition.

## **C. The Arrest, the Prosecution and the Final Decision of the Court**

### **1. Arrest, Prosecution and Court Judgment of the First Instance**

When the person sought is arrested, the Vientiane People's Prosecutor Office shall send a summary of the case within thirty days from the date of arrest to the Vientiane People's Court to consider in the first instance within thirty days from the date of receiving the summary.

The Court Conference to consider the extradition case shall be participated in by the Court Committee, the Head People's Prosecutor, the police, the person sought, the person's lawyer, an interpreter, representatives from the embassy or consulate of the requesting State and other competent authorities of the Lao PDR.

The court has the following responsibilities in consideration of extradition:

1. To check whether the person prosecuted and brought before the court is the person sought according to the request or not;
2. To check whether the offence as described in the request of extradition is the extraditable offence according to the law or not;
3. To check whether the offence does not fall under the condition where the extradition is refused according to Articles 8, 10 and 11 of the law on extradition or not.

In case the court considers that there are grounds for extradition, the court will decide on extradition, and when the court decision is final, extradition shall be processed within thirty days from the date of reading the court decision.

In case the court decides that there are no grounds for extradition according to this law or there is not sufficient information to confirm that the person prosecuted and brought before the court is the person sought, the court will decide not to extradite the person.<sup>5</sup>

## **D. Proposal to Refuse and Appeal Request for the Court Decision**

The Vientiane People's Prosecutor Office has the right to propose to refuse the judgment of a court that decides not to extradite, but it shall consider whether to refuse within thirty days from the date of the reading the court's decision. If the proposal to refuse is not made within that period of time, the arrested person shall be released immediately.

If the Vientiane People's Prosecutor Office proposes to refuse the court decision, it shall recommend that the Central Region People's Prosecutor Office submit the proposal to refuse the court judgment within thirty days after the reading the court's decision. The person sought has the right to appeal the court's decision on extradition. The appeal shall be submitted to the Central Region People's Court within thirty days from the date of reading the decision. The Central Region People's Court shall consider the proposal to refuse or appeal the request within fifteen days from the date of receiving the proposal to refuse or appeal request.

The Central Region People's Court monitors the judgment of the Vientiane People's Court on the compliance with Penal Law, the Law on Criminal Procedures and this law, including the reasons for the decision to extradite.

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<sup>5</sup> Art. 19 of the Law on Extradition.

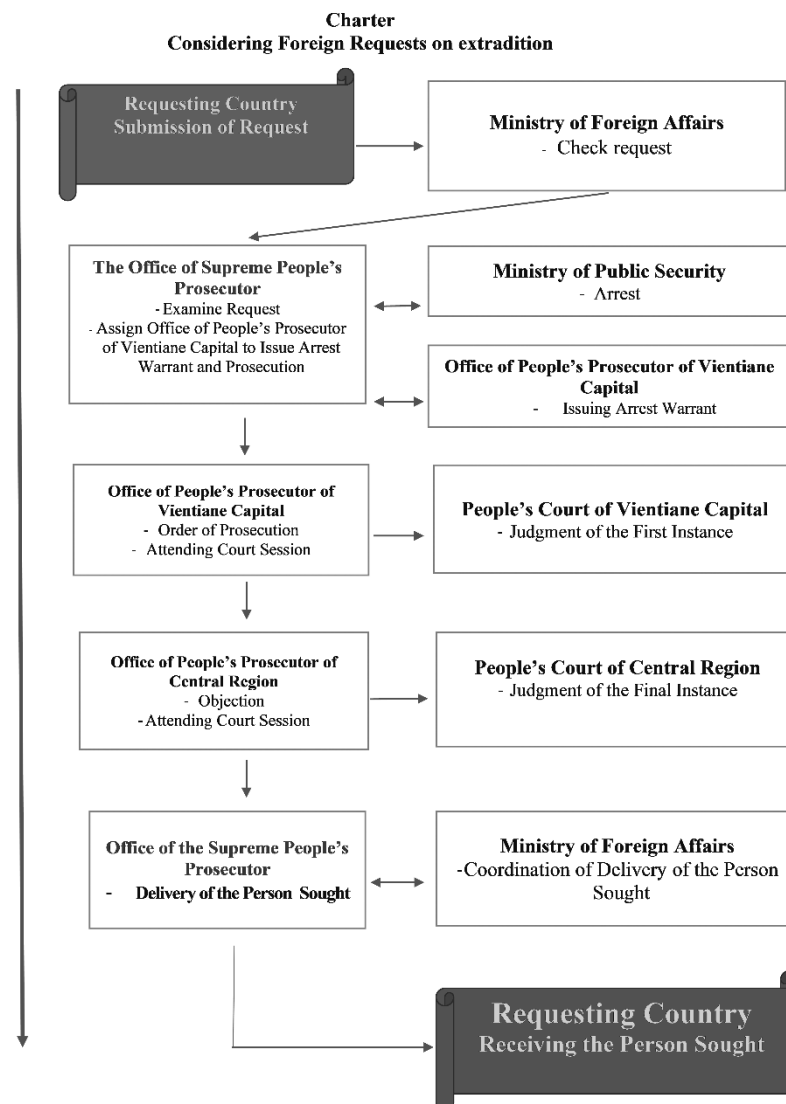
The types of the judgment of the Central Region People’s Court are as follows:

1. Confirmation of judgment of the Vientiane People’s Court;
2. Alteration of the judgment of the Vientiane People’s Court and decision to extradite or not to extradite.

In case the Central Region People's Court decides not to extradite the person sought, that person shall be released immediately. The decision of the Central Region People’s Court is final.<sup>6</sup>

## V. DELIVERY OF THE PERSON SOUGHT TO THE REQUESTING COUNTRY

If extradition has been granted by a final court decision, the Ministry of Foreign Affairs shall coordinate with the competent authorities of the Lao PDR to prepare and proceed with the extradition of the person sought within thirty days or within the period as provided in the treaties on extradition from the date of the reading the decision or judgment.



<sup>6</sup> Art. 21 of the Law on Extradition.

## VI. PROBLEMS AND RECOMMENDATIONS

### **A. Regulation on the Return of Unlawful Property Shall be Established**

Although the Extradition Law contains provisions governing seizure and surrender of property, it does not provide a basis for the surrender of the properties that are unlawfully acquired by extraditable criminals. Today, there have been international treaties with respect to the enforcement actions against, and prevention of, money-laundering – which is the processing of the criminal proceeds to disguise their illegal origin. In the case of money-laundering, these international measures denote that profits are to be forfeited. Thus, it is appropriate to establish the relevant regulations that govern the surrender of such illicit property acquired by extraditable criminals in order to alleviate the substantially growing number of international crimes.

### **B. Further Efforts to Expand International Extradition Cooperation**

#### **1. More International Extradition Treaties with Other Nations are Necessary**

It is possible for extradition to occur even when there is no international treaty concluded between nations. But, practically speaking, the requested country is likely to deny extradition based on the lack of an international extradition treaty. Therefore, in order to promote the effectiveness of the extradition system, the conclusion of more bilateral treaties among nations is desirable. It is very important that provisions of the treaties should be described clearly with the full understanding of each other to facilitate its effective enforcement. Currently, many nations who have concluded extradition treaties face the problem of ambiguity in their interpretation and failure to enforce them effectively. The International Criminal Court, which was established in 1998, would also be useful to ensure the enforcement of carefully drafted bilateral treaties among nations.

#### **2. The Necessity of Geographical Alliances**

In addition to the conclusion of additional bilateral treaties, Lao PDR shall take steps to build alliances with other countries in the region or ASEAN members States to enhance the effectiveness of and advance its extradition system. Despite the existing mutual trust relations with others, Asian countries are not satisfactorily ready to avoid possible conflicts of interest that may arise in the process. The European Union has made many efforts to develop regional cooperation among member countries: the EU extradition convention and the Convention on Mutual Legal Assistance in Criminal Matters.

### **C. Simplification of the Extradition Process**

Along with the conclusion of additional treaties with other nations, it is also essential to simplify the extradition process. Because the extradition process is made only through diplomatic channels, there is a substantial delay in the process of finalization in the requested State. This reduces the efficiency of the overall process. Thus, every effort shall be carefully made to simplify the extradition process. A single agency that oversees the extradition process is recommended for the integration of administration.

### **D. Other Cooperation in Criminal Matters**

International treaties on extradition do not explain everything. To improve the practicality and effectiveness of our extradition system, it is crucial to find ways to strengthen the level of mutual cooperation among nations in dealing with criminal investigations and the arrest of extraditable criminals. Hence, within the boundaries that the extradition process does not invade the jurisdiction of the requesting State, it is recommended to institute a mechanism that will promote collaboration between



investigation authorities of both nations – the requesting and the requested State – in arresting extraditable criminals.

#### **E. Strengthening of Capacity of the Central Authority for Extradition and Relevant Authorities**

In order to strengthen the extradition system in Lao PDR, it is recommended to set up and implement activities related to extradition through the organization of training, education on international law and extradition, set up the database and collection of statistics and a website on extradition, publication of laws and treaties related to international legal cooperation, the establishment of the internal and international mechanisms to consult and share information on extradition and so on.

### **VII. CONCLUSION**

With rapid globalization and technological development in society, international crime has grown day by day in terms of both its number and quality. These crimes also tend to be multinational with a high level of complexity. The Rome Statute of the ICC has been effective since 1 July 2002. This statute is a very important step towards international efforts to fight against transnational crimes. Moreover, the existing extradition treaties between Lao PDR and other countries, the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters and the UN Convention against Transnational Organized Crime and other treaties are the bases for international cooperation. Now, it is time for every country to move forward to strengthen its own efforts on this matter. We shall share the common awareness that no crime of immorality can subsist with any political or cultural reasons. It has now become almost impossible for any country to cope with these criminal activities by itself – all the more reason for the need of the growth of international cooperation.