

MUTUAL LEGAL ASSISTANCE AND EXTRADITION

*Phongsavanh Phommahaxay**

It is my great honour and pleasure to be here today. On behalf of the representatives of the Anti-Corruption Authority of Lao P.D.R, I would like to express my sincere appreciation to the Japanese Government, especially UNAFEI, for giving me an opportunity to take part in this important seminar in Tokyo, Japan, which is a very beautiful and modern city.

Distinguished Guests,

Ladies and Gentlemen,

The topic I am going to present today is: Mutual Legal Assistance and Extradition between Lao PDR and foreign countries.

I. INTRODUCTION

Lao PDR does not have a law on mutual legal assistance so far, but we have bilateral and multilateral agreements with other countries, such as the People's Republic of China, the Socialist Republic of Vietnam, the Democratic People's Republic of Korea and the ASEAN Mutual Legal Assistance Treaty (AMLAT), which was signed in 2004. We are now preparing to draft a law on mutual legal assistance in order to submit it to the national assembly for consideration and approval by the end of this year or in June next year. If this law is approved, it will be an important instrument for Lao PDR in general, particularly for organizations concerned with implementing mutual legal assistance with other countries in the region as well as globally.

The National Assembly has already approved a law on extradition, and the President of the Lao People's Democratic Republic just promulgated a law on extradition on 1 August 2012. This law provides not only principles, rules and remedies for extradition but also a central authority for coordination with other organizations concerned. The Central Authority for extradition is an Office of the Supreme Public Prosecutor, and the other organizations involved are the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Public Security and the Supreme People's Court.

II. MUTUAL LEGAL ASSISTANCE AND PRINCIPLES OF INTERNATIONAL COOPERATION IN CRIMINAL PROCEEDINGS

A. Mutual Legal Assistance

Although the Lao PDR does not have a law on mutual legal assistance, we have bilateral and multilateral agreements with foreign countries and the AMLAT. In addition, we also entered into the United Nations Convention against Corruption (UNCAC), which was signed

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on 9 December 2003 by the Government of the Lao PDR and ratified by the National Assembly on 27 September 2009.

B. Principles of International Cooperation in Criminal Proceedings

International Cooperation in criminal proceedings between the competent authority of the Lao PDR and the competent authorities of foreign countries shall comply with principles of respect for the independence, territorial sovereignty of the states, non-interference in the domestic affairs, equality and mutual benefit, and consistent with the constitution of Lao PDR and the fundamental principles of international law.

In the event that the Lao PDR has not yet signed or has not yet entered into international conventions relating to criminal proceedings, such cooperation shall be carried out on the basis of principles of mutual cooperation, but shall not be in conflict with the laws of the Lao PDR.

1. Treaty between the Lao PDR and the Democratic People's Republic of Korea on Mutual Legal Assistance in Civil and Criminal Matters.

(i) Legal Assistance

Citizens and juridical persons of a Contracting Party shall have the right, in the territory of the other Contracting Party, to legal assistance under the same conditions as applied to citizens and juridical persons of the latter:

Both Contracting Parties shall render legal assistance to each other in civil and criminal matters through the authority concerned that are authorized to handle civil and criminal matters such as courts and public prosecutors' offices.

(ii) Scope of Legal Assistance

Both Contracting Parties shall, in keeping with requirements of each Contracting Party's legislation, render legal assistance in civil and criminal matters as follows:

- performing proceedings such as query of criminals, witnesses, experts or victims;
- providing data and documents of the case;
- executing requests for searches, seizures and collection of evidence;
- recognition and execution of judgments and decisions of the courts;
- Investigating, arresting, detaining and executing.

(iii) Procedure in Legal Assistance

When requesting legal assistance in civil and criminal matters, courts and other competent authorities of both Contracting Parties shall contact each other through their own central authorities.

For the Lao People's Democratic Republic, the central authority shall be the Ministry of Justice, and communications regarding legal assistance of the Central Authority shall use their own mother language and shall be accompanied by an English translation.

(iv) Form and Content of Requests for Legal Assistance

1. Legal assistance shall always be requested in written form in the mother tongue of the requesting authority, and the request shall be followed by translation into the language of the requested country or in English;
2. Written requests for legal assistance shall contain the following:
 - Name of the requesting and the requested organs;
 - Title of the case for assistance and details of the request;
 - Name, birthday, sex, birth place, nationality, occupation, and permanent- or temporary-residence status of the people related to the case;
 - Title and address of juridical persons;
 - Name and address of the assigned person;
 - Title of documents to be delivered;
 - If a criminal case, the record of criminal facts and the relevant provision of the law concerning the legal responsibility.
3. Written requests for legal assistance shall have the signature of the chief person and the official seal of the requesting organs.
4. Written requests for legal assistance shall be submitted together with documents and data necessary to execute each request.

(v) Refusal to Execute Requests

In case the requested Contracting Party refuses to execute the request, it shall inform the other party of the reason and return all documents along with the written request.

The request may be refused under the following circumstances:

1. The execution of the request of the other Contracting Party infringes upon its sovereignty or security, political system, public order or because of some other failure to conform with domestic law;
2. The requested organ of a Contracting Party has no power to execute the request and it cannot transfer the request to any other competent organ.

III. EXTRADITION AND IMPLEMENTATION OF JUDICIAL ASSISTANCE

A. Extradition

Extradition issues arise when a person is accused of a crime, or when a foreign court judgment is entered against a criminal offender in that foreign country, but the accused offender has absconded to the territory of the Lao PDR. These issues also arise when a person is accused of a crime, or when judgment is entered in the Lao PDR, but the accused offender has absconded to the territory of a foreign country. Extradition is transferring an

accused person or offender to the requesting country in order to conduct criminal proceedings or for enforcement of a judgment.

B. Implementation of Judicial Assistance

In the provision of judicial assistance, the competent authority shall conduct criminal proceedings in the Lao PDR and shall comply with the agreements that the Lao PDR has signed with foreign countries or based on international conventions that the Lao PDR is a party to. Provision of judicial assistance may have the objective of extradition; the exchange of prisoners; seizure or sequestration of assets of accused persons or defendants themselves; enforcement of judgments; or cooperation in combating crime across borders.

1. The Treaty on Extradition between the Lao PDR and the People's Republic of China

The treaty between Lao PDR and China is comprised of 21 Articles. Desirous of promoting effective cooperation between the two countries in the suppression of crime on the basis of mutual respect for sovereignty and equality and mutual benefit, each party has undertaken, in accordance with the provisions of this treaty and at the request of the other party, to extradite to each other any person found in its territory and wanted by the other party for the purpose of conducting criminal proceedings against, or executing the sentence imposed on, that person.

(i) Request for Extradition and Documents Required.

- ❖ Requests for extradition shall be made in writing and shall include or be accompanied by the following:
 - a. the name of the requesting authority;
 - b. the name, age, sex, nationality, category and number of identification documents, occupation, characteristics of appearance, domicile and residence of the person sought and other information that may help to identify and search for the person;
 - c. a statement of the case including the time, place, conduct and outcome of the offence;
 - d. the text of the relevant provisions of the laws establishing criminal jurisdiction over the offence, creating the offence and prescribing penalties that can be imposed for the offence; and
 - e. the text of the relevant provisions of the laws concerning any time limit on the prosecution.
- ❖ In addition to the provisions of paragraph 1 above, the following documents are needed:
 - a. the request for extradition, which is aimed at conducting criminal proceedings against the person sought, shall also be accompanied by a copy of the warrant of arrest issued by the competent authority of the requesting party; or
 - b. the request for extradition, which is aimed at executing a sentence imposed on the person sought, shall also be accompanied by a copy of the effective court judgment or verdict and a description of the period of sentence which has already been executed;
 - c. the request for extradition and its supporting documents shall be signed or sealed and shall be accompanied by translation in the language of the requested party and in the English language.

(ii) Execution of Extradition

1. If extradition has been granted by the requested party, the parties shall reach an agreement on the time, place and other relevant matters relating to the execution of the extradition. Meanwhile, the requested party shall inform the requesting

party of the period of time for which the person to be extradited has been detained prior to the surrender;

2. If the requesting party has not taken custody of the person to be extradited within fifteen days after the date agreed on for the execution of the extradition, the requested party shall release that person immediately and may refuse requests by the requesting party for extradition of that person for the same offence, unless otherwise provided in the paragraph below;
3. If one party fails to surrender or take custody of the person to be extradited within the agreed period for reasons beyond its control, the other party shall be notified promptly. The parties shall once again reach an agreement on the relevant matters for execution of extradition.

2. Case Study for Extradition of Chinese Offenders

In 2011, Chinese police sent a request letter to the Lao police through diplomatic channels for detaining and extraditing Chinese offenders who had swindled Chinese citizen's money through electronic equipment and escaped to live in Lao PDR at the time. Upon receipt of the request, we promptly contacted the concerned authorities in China for further information. After getting further information from China, we conducted investigations and searched for the wanted persons. Finally, we arrested 68 offenders (including 29 female offenders). After arresting these persons, we contacted the Chinese Government to schedule a date and time to extradite. The offenders were extradited to China on 30 September 2011. In this extradition, both sides had emphasized further cooperation in criminal matters based on the bilateral agreement on Extradition between Lao PDR and China, which was signed in February 2002.

3. Case Study for Extradition of South Korean Offender

On 14 March 2009, the South Korean Police sent an official letter to the police of Lao PDR through diplomatic channels to detain Mr. Choung Nakguang, a South Korean businessman, in the case of swindling citizen's property. After consideration and according to Articles 117 through 119 on international cooperation of the Criminal Procedure Law of the Lao PDR, the Lao police detained Mr. Choung Nakguang on 15 September 2009. After coordination with South Korean police, the Lao PDR sent this offender to South Korea on 29 March 2010. In this transfer, even though there was no mutual agreement between Laos and South Korea, the two sides signed a memorandum of mutual assistance and cooperation.

IV. CONCLUSION

By recognizing the rights and duties of the countries with which the Lao PDR had signed bilateral and multilateral treaties, the rights and duties under the ASEAN Mutual Legal Assistance Treaty (AMLAT) as well as the International Convention against Corruption (UNCAC), we are now trying to enact a new law on Mutual Legal Assistance in Criminal Matters. We are also working on amending the law on Anti-Corruption and other legislation in order to comply with international obligations and international conventions to which the Lao PDR is a party.

MUTUAL LEGAL ASSISTANCE AND EXTRADITION

*Somphet Chanthavong**

I. INTRODUCTION

The extradition law has already been approved and the President of the Lao People's Democratic Republic just promulgated a law on extradition on 1 August 2012. This law provides not only principles, rules and remedies for extradition but also a central authority for coordination and other organizations concerned. This law consists of 8 chapters and 44 Articles. The Central Authority for extradition is the Office of the People's Supreme Prosecutor and other organizations such as: the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Public Security and the Supreme People's Court. In the past we used the criminal procedure law in chapter 11. Otherwise we have used bilateral and multilateral agreements with other countries. At present, however, we have new extradition laws, but the bilateral and multilateral agreements with other countries are still used.

II. INTERNATIONAL COOPERATION IN PROCEEDINGS

A. Principles of International Cooperation in Criminal Proceedings

International cooperation in criminal proceedings between the competent organization conducting criminal proceedings in Lao PDR and competent organs of foreign countries shall comply with principles of respect for the independence and territorial sovereignty of states, non-interference in domestic affairs, equality and mutual benefit, and shall be consistent with the constitution of Lao PDR and the fundamental principles of international law.

B. International Cooperation in Criminal Proceedings

International cooperation in criminal proceedings must be carried out in compliance with agreements that the Lao PDR has signed with foreign countries or international conventions that it has entered into and in accordance to the laws of the Lao PDR.

C. Implementation of Judicial Assistance

In the provision of judicial assistance, the competent organization conducting criminal proceedings in the Lao PDR shall comply with the agreements that the Lao PDR has signed with foreign countries or international conventions that the Lao PDR is a party to and shall comply with the law. Provision of judicial assistance may have the objective of extradition or exchange of prisoners; the seizure or sequestration of assets of the accused person or defendant; enforcement of judgments; or cooperation in combating cross-border crime.

D. Refusal to Provide Judicial Assistance

The competent organization conducting criminal proceedings in the Lao PDR may refuse to provide judicial assistance in the following cases:

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1. The request for judicial assistance is not in conformity with agreements that the Lao PDR has signed with foreign countries, international conventions to which the Lao PDR is a party, or the laws of the Lao PDR.
2. The provision of judicial assistance would affect the sovereignty, security or stability of the nation, or any important interest of the Lao PDR.

II. EXTRADITION BETWEEN LAO PDR AND FOREIGN COUNTRIES

A. Definition of Extradition

Extradition issues arise when a person is accused of a crime, or when a foreign court judgment is entered against a criminal offender in that foreign country, but the accused offender has absconded to the territory of the Lao PDR. These issues also arise when a person is accused of a crime, or when judgment is entered in the Lao PDR, but the accused offender has absconded to the territory a foreign country. Extradition is transferring an accused person or offender to the requesting country in order to conduct criminal proceedings or for enforcement of a judgment.

B. Treaty on Extradition Between The Lao People's Democratic Republic and The Kingdom of Thailand

This Treaty consists of 20 Articles. For example:

ARTICLE 13

Rule of Speciality

1. A person extradited under this Treaty shall not be detained, tried, or punished in the territory of the Requesting Party for any offence other than that for which extradition has been granted, and shall not be extradited by that Party to a third State, unless:
 - (a) That person has left the territory of the Requesting Party after extradition and has voluntarily returned to it;
 - (b) That person has not left the territory of the Requesting Party within thirty days after being free to do so; or
 - (c) The Requested Party has consented to detention, trial or punishment of the person for an offence other than that for which extradition was granted; or to extradition to a third State. For this purpose, the Requested Party may require the submission of any document or statement mentioned in Article 7, including any statement made by the extradited person with respect to the offence concerned.
2. These stipulations shall not apply to offences committed after extradition.

C. Treaty on Extradition Between The Lao People's Democratic Republic and The Kingdom of Cambodia

This Treaty consists of 24 Articles. For example:

ARTICLE 2

Extraditable Offences

1. For the purposes of this Treaty, extraditable offences are offences which are punishable under the laws of the Contracting Parties by the penalty of imprisonment or other form of detention for a period of more than one year or by any heavier penalty.
2. Where the request for extradition relates to a person sentenced by the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six months in this sentence remains to be served.
3. For the purposes of this article, in determining whether an offence is an offence against the laws of both Parties, it shall not matter whether the laws of the Contracting Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology.
4. When extradition has been granted with respect to an extraditable offence, it may also be granted in respect of any other offence specified in the extradition request that meets all other requirements for extradition except for periods of penalty or detention orders set forth in paragraphs 1 and 2 of this article.

ARTICLE 3

Grounds for Mandatory Refusal

Extradition shall not be granted under this Treaty in any of the following circumstances:

1. The Requested Party considers the offence for which the request for extradition is made by the Requesting Party as a political offence. Reference to a political offence shall not include the taking or attempted taking of the life or an attack on the person of a Head of State or a Head of Government or member of his or her family.
2. The Requested Party has well-founded reasons to suppose that the request for extradition made by the Requesting Party aims to institute criminal proceedings against or execute punishment upon the person sought on account of race, religion, nationality or political opinion of that person, or that the position of the person sought in judicial proceedings will be prejudiced for any of the reasons mentioned above.

3. The offence for which the request for extradition is made is exclusively an offence under military law of the Requesting party.
4. The prosecution or the execution of punishment for the offence for which extradition has been sought has become barred by reason prescribed under the law of either Contracting Party including a law relating to lapse of time.
5. The Requested Party has passed judgment upon the person sought in respect of the same offence, before the request for extradition is made.
6. If the judgment of the Requesting Party has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange his or her defence and he or she has not had or will not have the opportunity to have the case retried in his or her presence.

D. Treaty on Extradition Between The Lao People's Democratic Republic and The People's Republic of China

This Treaty consists of 21 Articles. For example:

ARTICLE 15

Surrender of Property

1. If the requesting Party so requests, the Requested Party shall, to the extent permitted by its national law, seize the proceeds and instrumentality of the offence and other property which may serve as evidence found in its territory, and shall surrender the property to the Requesting Party when extradition is granted.
2. When the extradition is granted, the property mentioned in paragraph 1 of this article may nevertheless be surrendered even if the extradition cannot be executed owing to the death, disappearance or escape of the person sought.
3. The Requested Party may, for conducting any other pending criminal proceedings, postpone the surrender of above-mentioned property until the conclusion of such proceedings, or temporarily surrender the property on condition that it is to be returned by the Requesting Party.
4. The surrender of such property should not prejudice any legitimate rights of the Requested Party or any third party to the property. Where these rights exist, the Requesting Party shall, at the request of the Requested Party, return the surrendered property without change to the Requested Party as soon as possible after the conclusion of the proceedings.

III. DEFINITION OF THE EXTRADITION AND A CASE STUDY OF EXTRADITION

A. Definition of Extradition

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B. A Case study of Extradition in the Case of Chinese Offenders

In 2011, Chinese police sent a request letter to the Lao police through diplomatic channels for detaining and extraditing Chinese offenders who had swindled Chinese citizen's money through electronic equipment and escaped to live in Lao PDR at the time. Upon receipt of the request, we promptly contacted the concerned authorities in China for further information. After getting further information from China, we conducted investigations and searched for the wanted persons. Finally, we arrested 68 offenders (including 29 female offenders). After arresting these persons, we contacted the Chinese Government to schedule a date and time to extradite. The offenders were extradited to China on 30 September 2011. In this extradition, both sides had emphasized further cooperation in criminal matters based on the bilateral agreement on Extradition between Lao PDR and China, which was signed in February 2002.