



Institute for Legal Support and Technical Assistance

National Conference 2020

Combating Transnational Organised Crime with a focus on Money
Laundering and Mutual Legal Assistance, and Evidence in Criminal Proceedings

February 11th – 13th 2020
National Convention Centre, Vientiane Capital

Organised by



Office of the Supreme People's Prosecutor (OSPP)



Institute for Legal Support and Technical Assistance (ILSTA)

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สำนักงานอัยการสูงสุด
Office of The Attorney General



สำนักงานป้องกันและปราบปรามการฟอกเงิน
Anti-Money Laundering Office (AMLO)



KAUPHOLD & REVERLAUD



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Foreword



Transnational organised crime threatens the security, stability and socio-economic development of countries within the region and throughout the world. Money laundering, illegal drug trafficking and trafficking in persons seriously damage the lives, properties and development potential of our people and society. This requires us to have strong preventative and combating measures in place as well as effective cooperation mechanisms between national agencies and with other countries.

Recognising the importance of cooperation in combating organised crime, the Government of Lao PDR has established the National Steering Committee on Human Trafficking (NSC) and the National Coordination Committee for Anti-Money Laundering and Counter-Financing of Terrorism and other sectors with legal authority in solving criminal matters in accordance with the justice

process e.g. the Anti-Money Laundering Intelligence Office of Lao PDR (AMLIO), the Office of the Supreme People's Prosecutor (OSPP), the People's Supreme Court (PSC), Ministry of Public Security (MOPS) and Ministry of Justice (MOJ), aiming at effectively addressing these crimes. Representatives from all mentioned organisations participate in the national conference each year. In 2020, Lao PDR has been actively preparing for the comprehensive assessment of the implementation of anti-money laundering and counter-financing of terrorism in Lao PDR (Mutual Evaluation on AML/CFT of Lao PDR 2020 - 2021)

The Office of the Supreme People's Prosecutor, with support from the Institute for Legal Support and Technical Assistance (ILSTA) of Luxembourg, organised the National Conference on "Combating Organised Crime with a focus on Money Laundering, Mutual Legal Assistance, and Evidence in Criminal Proceedings" from 11 – 13 February 2020, at the National Convention Center in Vientiane Capital with more than 170 participants from relevant organisations in attendance.

This Conference is a significant milestone in building capacities for officials, especially the Office of the Supreme People's Prosecutor, the People's Supreme Court, Ministry of Justice, Ministry of Public Security and other relevant authorities to share their lessons learned, creating an effective cooperation mechanism including building knowledge and understanding in implementation of laws and preparation for the Mutual Evaluation on AML/CFT of Lao PDR.

This National Conference will be followed by three regional workshops in the north, central and south reaching officials from relevant provincial organisations and will enable key agencies to further disseminate the Penal Code and Law on Criminal Procedure, and to exchange knowledge and share best practices and lessons learned with national and international partners. I believe that this conference helps in strengthening capacities of the relevant officials, and also improves coordination mechanism in order to contribute to more effectively to combating transnational organised crime.

I would like to take this opportunity to thank the Government of Luxembourg for its valuable support. I would also like to thank ILSTA for its significant cooperation in organising this conference and the following regional workshops and for printing this Conference Report.

H.E. Mr Khamsane Souvong
Prosecutor General
Office of the Supreme People's Prosecutor of Lao PDR

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Key Notes

Mr Chanthy Polivanh

Director General of the Criminal Case Inspection Department,
Office of the Supreme People's Prosecutor



Mr Chanthy welcomed all participants to the 2020 conference. Transnational organised crime threatens the lives and properties of people as well as the political and socio-economic development of countries within the region and around the world. In this era of globalisation, organised crime is not limited to any specific country but exists in every country. Criminal groups have taken advantage of the growth in commerce, investment and sharing of information to not only affect the lives of people but to interfere in the operations of transnational companies and government organizations worldwide.

To combat transnational organised crime, with a particular focus on money laundering, the Government of Lao PDR has adopted the Law on Anti Money Laundering and Combating Financing of Terrorism No.50/NA dated 21 July 2014; the Penal Code No. 26/NA dated 17 May 2017, the Law on Criminal Procedures No. 37/NA dated 14 November 2017 and Orders and Guidelines related to AML and prosecution of the offenders. At the end of 2019 the GOL has issued the Decision on the Establishment of the Task Force for AML/CFT, responsible for preparations for the mutual evaluation by the Asia Pacific Group in Laos during 2019-2021.

H. E. Mr Sam Schreiner

Charge d'Affaires a.i., Embassy of Luxembourg to Lao PDR



Mr Schreiner noted that the launching of the Lao Penal Code represented a major milestone in the development of the rule of law in the country, which is a goal supported by Luxembourg. He acknowledged that this can be a challenging process in developing countries, such as Lao PDR, and thanked ILSTA for sharing its expertise in this regard. In particular, Mr Schreiner noted that as the population and economy both experience sustained growth, Lao PDR will face challenges in combating organised crime and require significant resources and skills to do so. This conference is an important forum for providing the knowledge and best practices in combating organised crime, money laundering and other such crimes. Mr Schreiner expressed his pleasure that Luxembourg is able to assist in meeting this shared objective.

Mr Richard Philippart

President, Institute for Legal Support and Technical Assistance



Mr Philippart welcomed conference participants to the 2020 National Conference, now in its 4th edition. The Conference addresses organised crime activities such as money laundering, human trafficking, illicit drugs, and timber and wildlife trafficking; combating these crimes is crucial for sustainable development.

Developing countries are particularly vulnerable to organised crime which undermines state structures, puts human security at risk and challenges national development achievements. Mutual legal assistance is crucial to strengthen cooperation between countries to fight transnational organised crime groups. Increased information sharing, cross-sector intelligence exchange, securing evidence, seizing and confiscating criminal proceeds is an effective method of hindering and stopping illicit activities. Law enforcement agencies must be up to date with modern investigation techniques, as criminal groups evolve and adapt their methods to evade detection.

In 2019 ILSTA had countrywide workshops with more than 2,000 beneficiaries, enhancing coordination with all key agencies. As a follow on from this national conference there will be three regional conferences in the north, centre and south to reinforce the themes and lessons learned from this national conference, ensuring that ILSTA will reach all actors at local and national level. Mr Philippart thanked all those in attendance from the different ministries and organisations in Laos, the international representatives and speakers, and the Ministry of Finance from Luxembourg and Lux Aid and Development for their support.



Mr Erlend Falch

Programme Manager, United Nations Office on Drugs and Crime

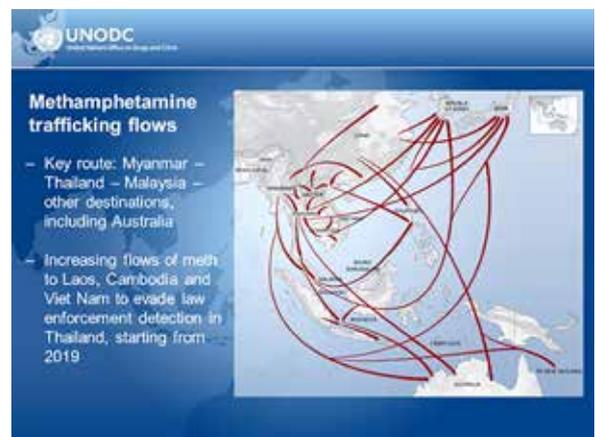
“Transnational organised crime in Southeast Asia: Evolution, Growth and Impact”



Mr Falch presented the key findings of UNODC’s 2019 Transnational Organised Crime Assessment (TOCTA) for Southeast Asia, which addresses the main organised crime typologies: drugs, people, environment, and goods; and also looks at the enabling factors which facilitate the growth and evolution of organised crime in the region. There have been two major trends in transnational drug crimes. Firstly, the heroin trade in the region has decreased in terms of production, trafficking and consumption, while the methamphetamine trade has soared with a 300% increase in the past twelve years. The primary driving factor for the rapid increase in the methamphetamine market in Southeast Asia was the crackdown on clandestine methamphetamine laboratories in China, which has forced organised crime groups in China to relocate to northern and eastern Myanmar. From Myanmar trafficking flows are increasingly moving through Laos in transit to other markets in the region.

70% of human trafficking victims in Thailand are sexually exploited, while 70% of those victims are underage. Lao PDR is a source country for sex trafficking victims in Thailand, as is Myanmar, Cambodia and Vietnam. Lao PDR is also a source country for sex trafficking victims in China. Regarding the smuggling of migrants, crime groups are exploiting differences in economic development and demand for cheap labour resulting in a USD 200 million trade in the region. Again, Lao PDR, Cambodia and Myanmar are source countries for the smuggling of migrants.

Environmental crimes such as the trafficking of wildlife and timber reveal the increasing global reach of organised crime networks, with prohibited items like ivory and rhino horn being smuggled into the region from countries in Africa. Local wildlife such as pangolins, monkeys and snakes are also commonly trafficked beyond the Southeast Asian region. Measures like the ban of ivory domestic markets in China may have significant spillover effects on neighbouring countries and there are indications that the availability of ivory products has increased in countries like Cambodia and Lao PDR.



Mr Falch recognised that ASEAN’s cross-border trade pacts need to be matched with investment in public security. Similarly, the region’s Special Economic Zones need to be regulated to avoid being exploited by organised crime networks. These measures could be facilitated by using existing cooperation mechanisms among ASEAN countries.



Mr John Connolly and Mr Keith Farquharson

Institute for Legal Support and Technical Assistance

“Crime Types and Organised Crime”



The speakers presented an overview of crime types cross-referenced to the Lao Penal Code 2017. Mr Connolly stressed the importance of data and the necessity of having a pro-active approach from law enforcement agencies (LEAs), known as “intelligence-led policing”. To combat organised crime, LEAs must understand how criminal markets, criminals and organised criminal groups (OCGs) are structured and how they operate.

Looking first at violent crime, Mr Connolly noted that crimes of violence often accompany other crimes, such as immigration offences, threats, extortion, corruption, tax evasion and money laundering, as OCGs use violence to achieve their primary goal – illicit enrichment. Cases of human trafficking for instance, often involve a number of violent crimes such as assault, abduction, murder, rape or torture.

Examples of property crime including burglary, arson, theft and vandalism were presented and referenced to articles 231-236 in the Lao Penal Code. Chapter 8 of the Lao Penal Code covers drug crimes and explicitly criminalises the cultivation, production, possession, distribution and transportation of drugs. It was noted however that the financing of the production and distribution of drugs is not explicitly criminalised.

Mr Farquharson presented types of environmental crime looking at illegal wildlife trafficking, logging, and hazardous waste dumping and distribution. Environmental crimes are covered by articles 326 -353 of the Penal Code. In addition, in relation to the trade in illegal wildlife, the Prime Minister issued Order number 5 in May 2018 which prohibits the hunting of wild animals and the trade in animal parts. In March 2019, the Ministry of Agriculture issued a Decision giving guidance on the operation of zoos and wildlife farms.



Cybercrime was defined as a crime where a computer/tablet/ smart phone is either the object and/or tool of the crime. Articles 164 – 174 criminalise offences such as hacking, phishing, identity theft and financial crimes. White-collar crimes tend to be committed by people who do not fit the traditional image of a criminal; typically, they are educated and well-dressed; their crimes are not dependent on violence or threats but can result in huge disruption and financial losses to society. Included in this is corruption, corporate fraud and insider trading. The presentation concluded with a brief look at money laundering, hiding the connection between the crime and the proceeds of crime and its use as a tool for organised crime.

Mr Mariyan Sabev

Center for the Study of Democracy, Bulgaria

“The Economy of Organised Crime”



Mr Sabev put into context the unprecedented impact and reach of organised crime in the world today. Organised crime exacts a multi-billion-dollar cost on legitimate businesses, distorts markets and causes widespread ill-effects to individuals, governments and societies as a whole. Due to the transnational nature of organised crime, it requires a comprehensive approach to prosecution, looking also at the enabling factors which facilitate the growth of transnational organised crime.

Understanding of the typologies of criminal organisations is key in interventions. The most commonly observed types of organisations are those with a hierarchical structure, having a strong leader and a defined chain of command. Other criminal organisations have adopted network structures, allowing for more flexibility and adaptiveness to changes in the environment. Mafia-type organisations, often described as ‘power syndicates’ rather than profit-driven networks, are also widely observed in different regions of the world.

Organised Crime Groups (OCGs) operate in various segments of the economy, commonly referred to as markets. While it is relatively easy to define purely illegal markets and activities, it is important to note that the line between legal, grey and illegal markets is not always clear cut. Every illegal market has its supply chain and structure for satisfying demand, embedded players, and is associated with specific risks and societal damages.

Mr Sabev identified a number of illegal markets in Southeast Asia operated by both local and international OCGs. Examples of such markets are migrant smuggling and human trafficking for the purposes of labour and sex exploitation, drug trafficking, illegal waste trafficking and trade in wildlife products. He noted that these markets are often enabled through corruption on multiple levels of government.

In terms of apprehending OCGs, Mr Sabev highlighted the efficacy of identifying money laundering activities through which OCGs try to hide the origins of their wealth. The rapid growth of the internet and mobile communications has led to changing models of criminal activity. Often these are old crime types now committed in cyberspace. Innovative communication technologies generally represent a cost-effective way to initiate, facilitate or even sustain most illegal operations. In conclusion Mr Sabev noted that while technological innovations are enablers of transnational OCGs, they also present law enforcement with an avenue for detection and prosecution.



Mr Souphasith Lorvanxay

Deputy Director General of the Criminal Case Inspection Department

Office of the Supreme People's Prosecutor

"Evidence in Criminal Proceedings"



Mr Souphasith presented on evidence in criminal case proceedings with a focus on sources of different types of evidence. He stated that the purpose of using evidence in court is to establish proof of the truth in a case; to certify if the criminal offence had complete elements; and to establish if there were grounds which could lead to an increase or reduction of criminal penalties. Photos were displayed to illustrate the three types of evidence: material evidence, documentary evidence and testimonial evidence.

Mr Souphasith explained that each type of evidence can be found and gathered from different sources. Material evidence may be gathered from searches of persons, buildings, vehicles etc.; investigation of a crime scene, dead body or traces; and from identification of body parts, animals and other objects. Documentary evidence is any evidence that is, or can be, introduced at a trial in the form of documents, as distinguished from oral testimony and may be found from a search of persons, buildings and

vehicles. Documentary evidence can also be gathered from sources like communication devices and printed material. Testimonial evidence is collected from statements provided by the people involved in the case proceedings; comments of the experts; statements from the victims, witnesses, persons who had seen and/or been exposed to the incident; and also, from interviews with witnesses during an investigation of the crime scene.



Mr Souphasith concluded by briefly explaining the roles of the three organisations with the rights and duties in conducting searches, checks and evaluating evidence, namely the police and other investigative agencies, the Office of the Supreme People's Prosecutor, and the People's Supreme Court.

Mr Chris Batt

United Nations Office on Drugs and Crime

“Money Laundering Investigation, Circumstantial and Indirect Evidence”



Mr Batt considered the important question of evidence in building a money laundering case. Criminals remove, conceal, convert, disguise and transfer the illicit profits of their crimes to avoid the attention of the authorities. **Article 130** of the Lao Penal Code 2017, which is compliant with international standards, defines money laundering as “the transformation, utilization, displacement, exchange, acquisition, possession or the transfer of true ownership of funds or other property of a natural person, legal person or organization that knows or suspects that the property is derived from a predicate offence, with the aim of concealing or disguising their characteristics, origin or location.”

The difficulty for law enforcement agencies is in proving that a suspected money launderer “knows or suspects” that the property is derived from a predicate offence. The other difficulty for the authorities is in deciding when to launch a parallel investigation into money laundering. Does there have to be an ongoing investigation into the predicate offence, a prosecution or a conviction? Mr Batt stated that this was an issue that law enforcement agencies were facing in Cambodia and Vietnam, particularly in light of a number of recent bulk cash-smuggling cases in those jurisdictions. Laos too would need to test its own legislation in this regard.

Mr Batt distinguished between two kinds of evidence: direct evidence, such as an admission, surveillance and/or recordings of conversations; and indirect, inferred or circumstantial evidence, that relies on an inference to connect it to a conclusion of fact. A number of real case studies were presented to illustrate this, looking at bulk cash-smuggling, the use of monetary instruments such as cheques and promissory notes, and the practice of smurfing, where a group of money launderers pay cash amounts into bank accounts just under the automatic reporting requirement.

Recommendation 32 of the Financial Action Task Force (FATF) outlines the steps countries must take to combat cash smuggling at borders and Mr Batt presented some of the primary signs of a cash courier that border officials should look out for, such as bulky clothing or a passport showing frequent travel with short stays. Mr Batt concluded by showing how building a financial profile of a suspect can reveal if they are “living beyond their means” i.e. their lifestyle is more lavish than their legitimate income suggests. This indirect evidence can lead to a money laundering conviction if the suspect cannot account for the assets they own, based on their legitimate income.



Mr Tom Hansen

Institute for Legal Support and Technical Assistance

“Investigating Money Laundering”



Mr Tom Hansen shared his experience in case planning in financial investigations. He looked at the practical considerations that the various ministries and organisations have to bear in mind. How do you work effectively on complex investigations? It requires skills not used in other types of criminal investigations, with the emphasis on cooperation. There are many different agencies involved, including reporting entities and the general public. There is a need to work closely with the banking sector and a need for specialists. Many cases also have a transnational element, which means cooperating internationally through mutual legal assistance and through informal networks. It is important to respond promptly to requests in order to secure evidence or criminal assets before the criminals have a chance to move or hide them.

Turning intelligence into evidence is vital in securing convictions for money laundering. To effectively combat organised crime groups, agencies should carry out financial investigations in parallel with the investigation into the predicate offence. A financial profile of a suspect can clearly show that the person may be a criminal by highlighting the gap between their legitimate income and assets and the cost of their lavish lifestyle.

Parallel investigations require planning and identifying the challenges, such as how to analyse the evidence from hundreds of documents, how to preserve evidence, and how to identify and seize suspects’ assets and manage and maintain those assets after seizure. If there are multiple properties, multiple banks and accounts used, multiple businesses, we have to search them all. In conclusion, Mr Hansen stressed the need to build up a specialist team consisting of experts from law enforcement, the judiciary, finance, accountants, cyber experts and international law experts and to start by investigating less complex cases in order to build up knowledge and experience within the team.



Mrs Phengsy Phengmuong

Director General of the Anti-Money Laundering Intelligence Office

“The Situation of the Money Laundering Crime in Lao PDR and the role of the FIU”



Mrs Phengsy outlined the role of AMLIO in Laos and the work of the various committees on AML/CFT in preparation for the second Mutual Evaluation by the Asia Pacific Group, which will take place in 2020-21.

Laos' first National Risk Assessment (NRA) was completed in 2018, and covered three main areas, 1) Money Laundering Threats and Risks; 2) Preventative Measures on Money Laundering; and 3) Assessment of sectors at risk of money laundering. The NRA identified 8 at-risk sectors out of all 17 assessed sectors, namely banks,

casinos, high-value goods shops, the stock exchange, insurance companies, money exchange, money transferring agencies, and real estate businesses. She also presented the National Action Plan that covers 6 aspects including policies and strategies on combating money laundering and countering financing of terrorism; legislation; effectiveness of case proceedings; efficiency of management and inspection; efficiency of knowing the customers, reporting of suspicious transactions and analysis; and domestic and international cooperation.

In preparation for the FATF Mutual Evaluation, which will commence in Laos in 2020, Mrs Phengsy reported that the Government of Laos has issued the Decision No. 90/PM dated on 16/10/2019 on Establishing the Task Force Committee responsible for AML/CFT Mutual Evaluation No. 2 (2020-2021) in Lao PDR. Under the Decision, 4 sectoral committees have been set-up in order to lead the implementation of activities: Sector 1 – Dissemination, consists of 15 committee members and is chaired by the Deputy Governor of the Bank of the Lao PDR; Sector 2 - Legislation and Mechanism, consists of 19 committee members and is chaired by the Minister of Justice; Sector 3 – Management, consists of 49 committee members and is chaired by the Governor of the Bank of the Lao PDR; and Sector 4 – Case Proceedings, is chaired by the President of the People's Supreme Court and consists of 47 committee members.

Mrs Phengsy shared the action plan to fulfil the process of AML/CFT Mutual Evaluation. Lao PDR completed the preparation of documents related to legislation and effectiveness in September 2019; will submit a report on legislation in March 2020; submit a report on effectiveness in June 2020; organize the first meeting in August 2020; conduct an actual inspection in November 2020; organize the third face-to-face workshop between March and April 2021; and defend in the annual conference in July 2021.



Ms Sirirut Rattanamongkolsak

Senior Investigation Officer

Anti-Money Laundering Office of the Kingdom of Thailand

“The Role and Powers of the AMLO of the Kingdom of Thailand”



Ms Sirirut Rattanamongkolsak introduced the Anti-Money Laundering Office (AMLO) of the Kingdom of Thailand. Unlike AMLIO in Laos, AMLO has the power to act as a law enforcement agency. The Secretary-General of AMLO answers directly to the Prime Minister and has the power to investigate, make arrests and seize assets in cases of money laundering where there is sufficient evidence.

Over the past four years, AMLO has seized assets valued at USD 1.1 billion. These include land, premises, bank accounts, gemstones, cash and vehicles. Among the

more unusual assets seized were crocodiles, which represented a challenge as they have to be fed. A portion of the money seized goes into funding the AMLO office with the rest going to the victims of crimes.

AMLO has four core functions: 1) the role of the Financial Intelligence Unit 2) supervision of the reporting entities 3) law enforcement and 4) asset management. Ms Sirirut explained the analysis of the databases they use in investigations to build financial intelligence reports. Cooperation between different agencies within Thailand is a key aspect of AMLO’s work. AMLO has direct access to a large number of databases, including tax records, census records, cash cross-border declaration reports, narcotics records and business registration. AMLO cooperates closely with law enforcement agencies and FIUs in other jurisdictions and conducts joint investigations.

Cooperation with counterparts

Close cooperation between LEAs agencies and FIU both within and between jurisdictions, Joint investigations



AMLO provides for a civil forfeiture for property connected with the commission of an offence, a process which is conducted in a civil court. Thailand currently identifies 28 types of predicate offence, the most common in money laundering cases being corruption and public fraud. Offences committed outside Thailand are also considered predicate offences in Thailand. Once cases are closed the Asset Management department of AMLO auctions off seized assets ranging from luxury cars to gold jewellery and amulets worth millions of Baht each year.

Mr Jumpon Phansumrit

Deputy Director General of the International Affairs Department,
Office of the Attorney General of the Kingdom of Thailand
“Mutual Legal Assistance”



Mr Jumpon outlined mechanisms for international cooperation in criminal matters, including mutual legal assistance (MLA), extradition, and transfer of prisoners. Mutual legal assistance can be based on bilateral treaties, multilateral treaties and international conventions, as well as the principle of reciprocity for non-treaty basis. Lao PDR has bilateral treaties with three countries, namely Vietnam, China, and North Korea. Lao PDR is also a party to the 2004 ASEAN Treaty on Mutual Legal Assistance in Criminal Matters, which covers the ten ASEAN member states. In addition, Lao PDR is a party to a number of international treaties which include MLA provisions. The United Nations Convention Against Transnational Organised Crime (UNTOC) provides for the widest measure of MLA in investigations, prosecutions, and judicial proceedings under Article 18. The United Nations Convention Against Corruption (UNCAC) and the UN Drug

Control Conventions also provide for MLA between state parties. Domestic legislation is another basis for MLA, in Thailand there is the Act on Mutual Legal Assistance in Criminal Matters 1992.

Mr Jumpon gave some examples of types of assistance provided under MLA, such as taking testimonies and statements of involved persons at investigation and court levels; providing relevant documents, records and evidence (e.g. bank records, business documents); examining of objects, sites and location of persons; transfer of the persons in custody for testimonial purposes to another country; and providing cooperation in searches, seizures, freezes and forfeiture of properties and assets. Mr Jumpon stressed the important role of the Central Authority of each country, which acts as the focal point for MLA requests and considered the qualities that ideal staff of the Central Authority would possess, e.g. knowledge of international criminal law, language and diplomacy skills, as well as flexibility and creativity. Among the ASEAN countries, the Central Authority is generally either the office of the prosecutor or the ministry of justice.

Mr Jumpon concluded with some observations on MLA, noting that MLA requests should be executed promptly and the parties should immediately communicate when facing points of disagreements. This can be done via both formal and informal MLA networks e.g. the South East Asia Justice Network (SEAJust), and the ASEAN.

General Contents of Request

(ເນື້ອໃນຄໍາຮ້ອງຊອບທົ່ວໄປ) (in English only, Translation (if needed))

- **Authority for Request** (ການກົດຫມາຍ):
Domestic Law (ກົດຫມາຍພາຍໃນ), Treaty (ສັນນິທັນຍາ)
- **Nature of Request** (ລັກສະນະຂອງຄໍາຮ້ອງຊອບ)
 - **Requesting Authority** (ໜ້ອຍການຜູ້ຮ້ອງຊອບ):
Police, DSI, Anti-Corruption, Prosecutor, Court
 - **Purpose of Request** (ຈຸດປະສາງ):
investigation relating to... (ກ່ຽວກັບການສອບສວນ), wish to serve documents... (ສົ່ງເອກະສານ)
- **Summary of Facts** (ສະຫຼຸບຊັອບເທດຈິງ)
- **Relevant Laws** (ກົດຫມາຍທີ່ກ່ຽວຂ້ອງ)



Mr Jeff Braun

Kaufhold & Reveillaud, Attorneys at Law, Luxembourg

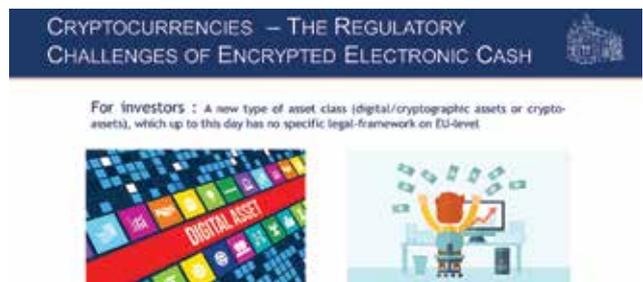
“Cryptocurrencies – the regulatory challenges of encrypted electronic cash”



Mr Braun’s presentation covered the origin, design, and both the legal and illegal use of cryptocurrencies in the world today. Cryptocurrencies like Bitcoin are created and controlled by users. Through its uncrackable cryptography and decentralised organisation, Bitcoin fundamentally limits the power of governments and banks, and empowers individuals to transfer money around the world anonymously and quickly. Bitcoins can thus be seen as purely digital encrypted banknotes.

The first cryptocurrencies emerged in 2008 during the global financial crisis. Using encryption and new blockchain technology they are generally known as “distributed ledger technologies”. Blockchain is a powerful and disruptive technology that comes with a systemic challenge for the monetary system, finance and government in general; especially to investigative bodies facing organised crime and terrorist organisations that are adopting cryptocurrencies to fund their activities.

Mr Braun noted that while cryptocurrencies like Bitcoin were not established with criminal intent, they have been widely used as means of payment by criminals and in the context of organised crime. “Smart” criminals have always been early adopters to the most powerful technologies in order to lower frictions in their activities. It is said that during the great depression in the USA, the first customers of commercialised automobiles were bank robbers. Through this new technological innovation, the bank robbers could flee more efficiently the police, who back then were still riding horses. Similarly, in the modern era, websites on the darknet, such as Silk Road and AlphaBay Market, have combined anonymous browser Tor technologies with Bitcoin to facilitate censored and anonymous illegal transactions. After complex transnational investigations, both these sites have been shut down. Such shut downs require complex, multi-disciplinary and well-coordinated investigations on an international level.



Besides facilitating darknet activities, Mr Braun also recognised that Bitcoin poses a systemic challenge to national and international monetary and financial systems. The Lao Central Bank has warned commercial banks, businesses and members of the public against the use of cryptocurrencies. Mr Braun recommended that authorities facing cryptocurrency financed criminal activities seek adequate technical assistance and legal advice when it comes to the seizure and management of this new kind of asset.

Professor Stefan Braum

University of Luxembourg

“Criminal Policy and Prevention of Crime”



Prof. Stefan Braum considered the role that criminal policy can play in crime prevention; a question that philosophers and criminal lawyers have debated for centuries. He examined four different traditional approaches to criminal policy and the relative merits and failures of each approach in preventing crime and in maintaining peaceful societies. Good criminal policy depends on the purpose and objective of criminal law, which must be formulated in a generally valid and reasonable manner.

The traditional “negative general prevention theory” is based on persuasion, restraint or psychological deterrence. Prof. Braum argued that as many other factors have impacts over social behaviour, it cannot be empirically proven that “deterrence” works, i.e. that people refrain from committing crimes because of the threat

of punishment. Under the “positive general prevention theory”, criminal law is established as a stabiliser of the legal system in general. Criminal policy aims to ensure that the state and society function well and that social order is maintained. Violations are corruptive acts; they are not stabilising so must be punished. The problem with this theory is that it aims at society not individuals; it dispenses with empirically demonstrative consequences.

In “negative special prevention theory”, the state policy is to imprison offenders in order to make society safer. The consequence of this is overcrowded prisons due to a high incarceration rate, which is an expensive and unsustainable outcome. With “positive special prevention theory”, criminal law and punishment legitimise themselves by trying to reintegrate the offender into society. The problem is that prisoners become institutionalised in a prison society so will have great difficulty in being reintegrated into free society. In an ideal world there would be a balance between the two but in reality, this is impossible.

In conclusion, Prof. Braum posits that traditional forms of crime prevention have generally failed. There has been a huge enlargement of criminal law “a flood of laws” but these do not fight the real problems that come from socio-economic and societal inequalities. Criminal law should be limited to the essentials. Crime prevention policies must look not only at criminal law but at social and economic policies which guarantee equal rights for all citizens and a functioning, independent and therefore just judiciary.



Mock Trial



The 2020 National Conference featured two mock trials sessions, adding a practical focus on criminal procedure. Professor Stefan Braum, University of Luxembourg, introduced the mock trials and explained that a mock trial follows the procedure of a real case trial in order to demonstrate correct judicial procedure and the role of the actors in court.



The actors (from left to right):
Me Max Muller, the defence lawyer, is an attorney at the Kaufhold & Reveillaud law firm in Luxembourg.
Dr Hajer Roudi, the judge, is an Associate Professor in Rouen University, France.

Dr Perrine Simon, the court clerk, is the Liaison Officer for the University of Luxembourg with the Institute for Legal Support and Technical Assistance, Vientiane, Lao PDR.

Dr Lawrence Siry, the public prosecutor, is a former defence attorney from New York, now a lecturer in criminal law at Liverpool Hope University in the United Kingdom.

Case n°1: Danchanh Phouthasay – Drug trafficking /money laundering

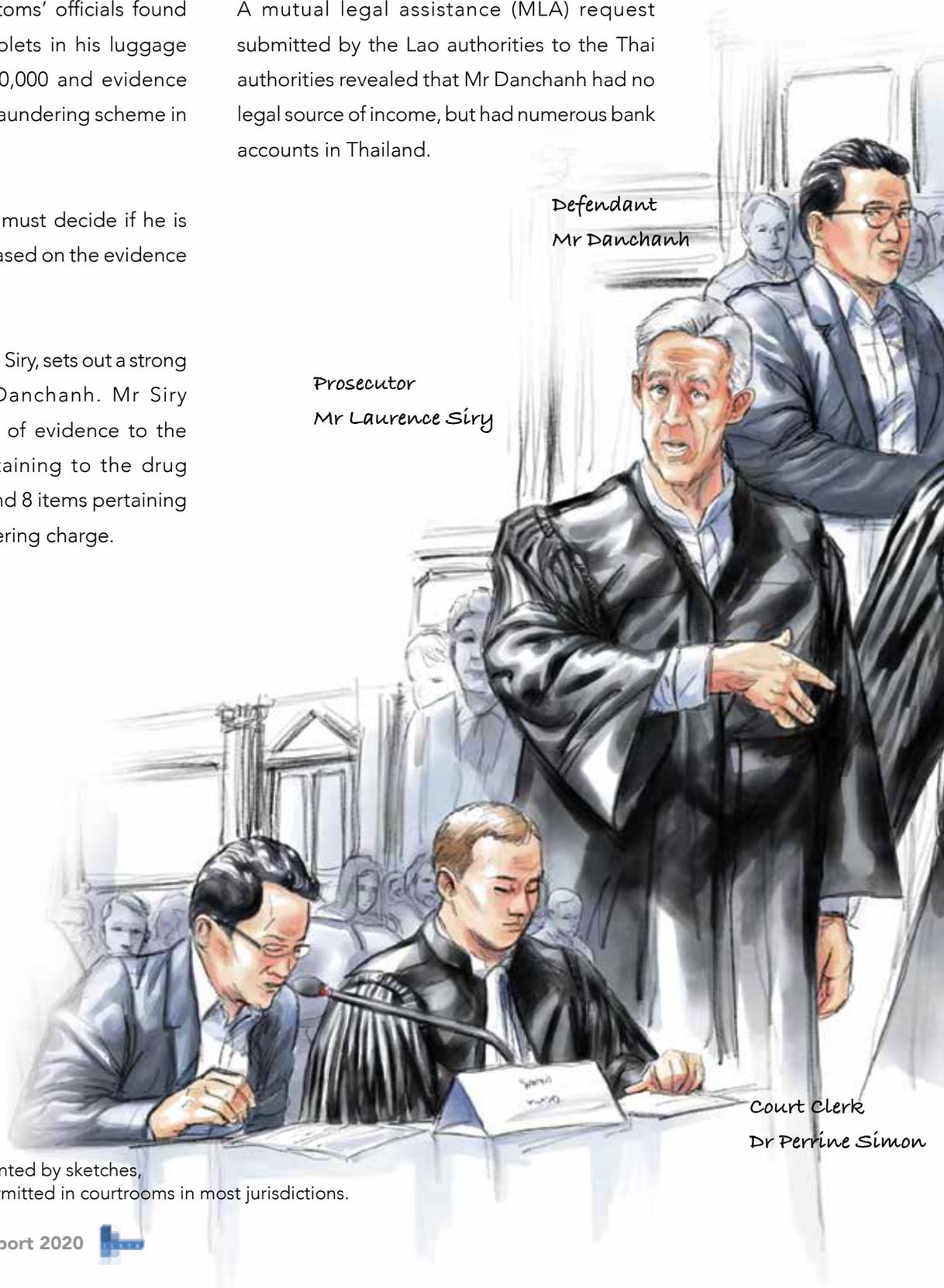
Mr Danchanh Phouthasay stands accused of drug trafficking and money laundering in contravention of Article 315 and Article 130 of the Lao Penal Code. He was arrested at the Lao-Thai Friendship Bridge on July 4th 2019, when customs' officials found 500 crystal meth tablets in his luggage along with USD\$500,000 and evidence indicating a money laundering scheme in Thailand.

Judge Hajer Roudi must decide if he is guilty or not guilty based on the evidence presented in court.

Prosecutor, Lawrence Siry, sets out a strong case against Mr Danchanh. Mr Siry submitted 11 items of evidence to the court: 3 items pertaining to the drug trafficking charge; and 8 items pertaining to the money laundering charge.

Me Max Muller, the defence attorney, questioned the reliability of the national laboratory that tested the drugs and found evidence of crystal meth.

A mutual legal assistance (MLA) request submitted by the Lao authorities to the Thai authorities revealed that Mr Danchanh had no legal source of income, but had numerous bank accounts in Thailand.



Defendant
Mr Danchanh

Prosecutor
Mr Lawrence Siry

Court Clerk
Dr Perrine Simon

The actors are represented by sketches, as cameras are not permitted in courtrooms in most jurisdictions.

Mr Siry claims that receipts found in Mr Danchanh's wallet show that the defendant made cash purchases of jewellery and diamond rings as well as a Porsche Cayenne worth \$94,000, yet by his own admission, Mr Danchanh does not make enough money to feed his family.

Watch the video of the trial here to see how the trial concludes:

<https://www.youtube.com/watch?v=9n229AkvBBw>



*Defence Counsel
Me Max Muller*



Judge Hajer Rouidi

Case n°2: Noy Sengsavong – Human trafficking / prostitution

Ms Noy Sengsavong is charged with prostitution in a neighbouring country, under Article 260 of the Lao Penal Code. Noy spent one year working in a Karaoke Bar in Thailand as a waitress and prostitute, where she contracted HIV and Hepatitis C.

She is now sick and unable to work. Noy reported her situation to the police in Savannakhet some months after her return in the hope of receiving compensation for her situation.

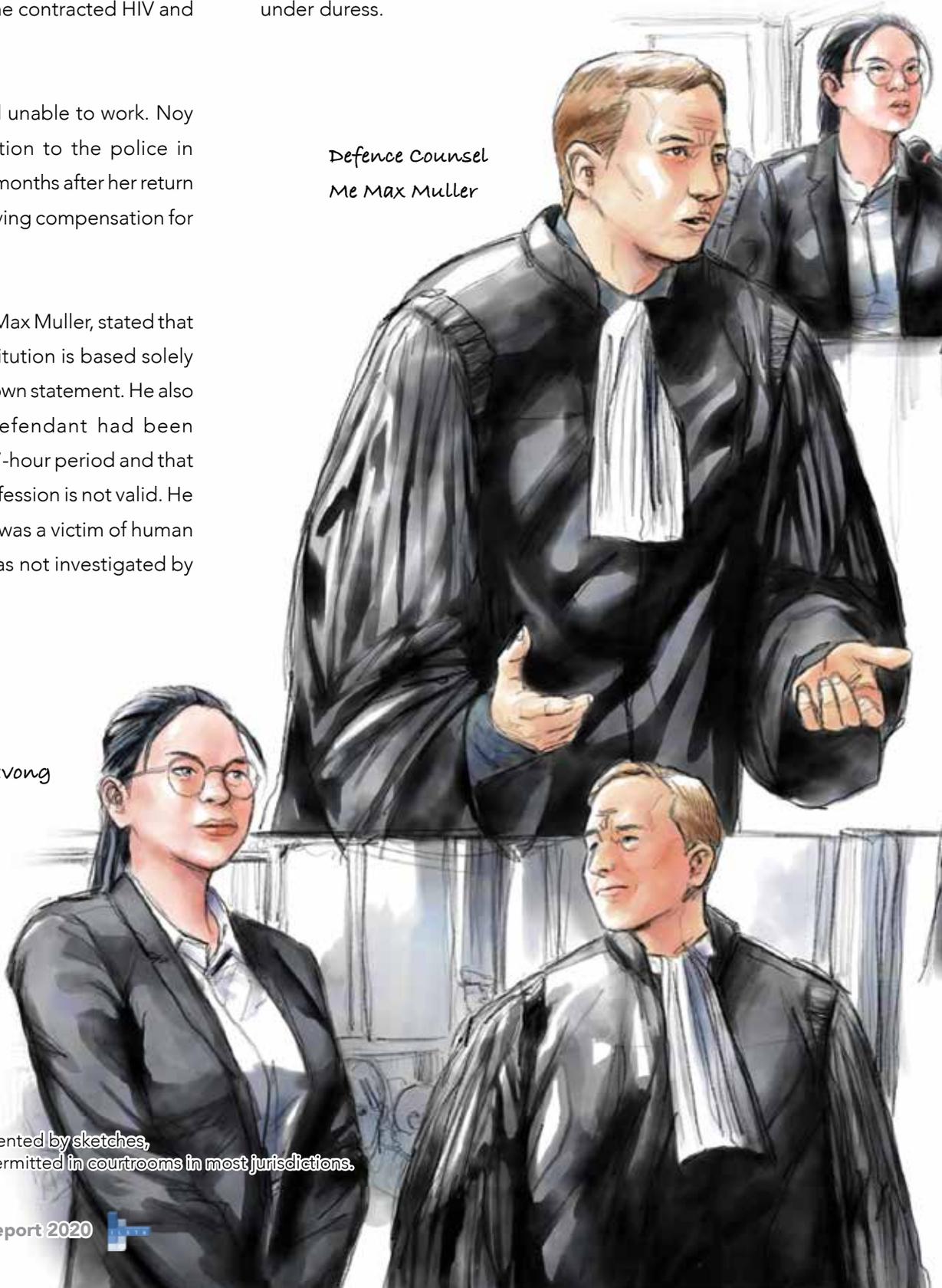
In her defence, Me Max Muller, stated that the charge of prostitution is based solely on the defendant's own statement. He also stated that the defendant had been interviewed over a 7-hour period and that the "so-called" confession is not valid. He stated that Ms Noy was a victim of human trafficking, which was not investigated by the police.

The prosecution argued that Ms Noy voluntarily worked at the Karaoke Bar and the fact that she had money to pay for her return indicated that she was not there under duress.

*Defence Counsel
Me Max Muller*

*Defendant
Ms Noy Sengsavong*

The actors are represented by sketches, as cameras are not permitted in courtrooms in most jurisdictions.



In delivering her judgement, Judge Hajer quoted Article 36 of the Criminal Procedure Law, which states that if there is no binding evidence beyond a confession, then the defendant must be released.



Watch the full trial

here: <https://www.youtube.com/watch?v=OrLoSxu-AFw>



Prosecutor
Mr Laurence Siry

Judge
Hajer Rouidi

Dr Perrine Simon

University of Luxembourg & Institute for Legal Support and Technical Assistance

“The importance of evidence in criminal proceedings”



Dr Simon stated that evidence is central to criminal proceedings, as is the existence of an offence and to identify the offender. Issues of proof are crucial because of the “presumption of innocence”, which is a guiding principle of criminal procedure. In Lao PDR, this principle is evident in the Lao Law on Criminal Procedure (Article 15), and the ratification of the International Covenant on Civil and Political Rights, as well as the UN Declaration of Human Rights. This presumption of innocence underpins the burden of proof, which lies with the investigators, to prove beyond doubt that an offence has occurred, and that the accused committed the offence. Where the evidence is insufficient, there arises doubt as to the guilt of the accused, such that he/she cannot be convicted by the Court.

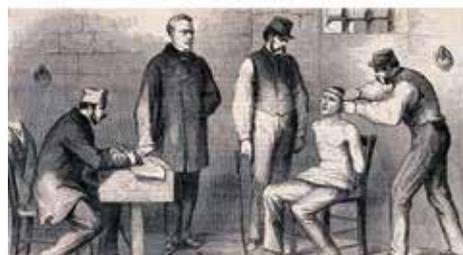
The burden of proof in a criminal case lies with the police, prosecutors and the Courts, in terms of evidence gathering and assessment. Dr Simon then addressed the object of proof. In determining which offence has been committed, the prosecutor must ensure there is

evidence to support an accusation. For some offences, evidence of an act (actus rea) alone is sufficient, but many offences also require the prosecution to prove criminal intent (mens rea).

The different types of evidence, and their subsequent reliability were then detailed including: physical evidence, documentary evidence, testimony, and confession. Dr Perrine observed that in the Lao Law on Criminal Procedure (Article 36), convictions cannot be based on confession alone but must be supported by other types of reliable evidence. This relates to the issue of admissibility of evidence, which moves beyond the type of evidence to also encompass how that evidence was acquired. Investigators must respect the rights of the individual in the evidence gathering process. Evidence gathering activities must only be undertaken if necessity is established. The dignity of the subject of the investigation must also be safeguarded throughout. For example, evidence acquired through the use of physical and psychological violence perpetrated during an investigation will render that evidence as inadmissible in court.

In closing, Dr Simon re-iterated that all evidence must be sufficient to characterise the offence committed and the perpetrator/s of the offence, as well as being reliable and admissible, in order for that evidence to form the basis of a criminal prosecution.

PROHIBITION OF TORTURE, CRUAL TREATMENT AND EVIDENCE



Lao law on criminal procedure, 2017, article 36:
“Even though the accused person or defendant has confessed to their offense, such confession shall be officially used as evidence only if there is some other binding evidence has been discovered respectively” (par. 2).
“All confession from the accused person or defendant will be rejected if there is some involvement of deception, force, threatening, beating, or other action, which are prohibited by laws” (par. 3).

The evidence to be reliable and admissible cannot have been obtained by violence.

The judge ensures that no evidence gathered under torture, inhuman or degrading treatment can be admissible.

Confessions in this case cannot serve as an element to prove the guilt of the accused.



Mr Ric Power

Institute for Legal Support and Technical Assistance

“Counter Financing of Terrorism (CFT) and the UN Framework”



Mr Ric Power presented the international standards for countering the financing of terrorism (CFT). Many of the devastating terrorist attacks of recent years e.g. the bombing of the London Underground in 2005; the night club attack in Paris in 2015, were carried out by small numbers of terrorists often for relatively small amounts of money. 75% of terrorist plots in Europe between 1994-2013 were estimated to cost less than USD 10,000. For “Lone Wolf” attacks, where there is a single attacker, often armed only with a vehicle, gun or knife, the cost is often much less. Financing of terrorism is very current

– in just the last three months of 2019, there were 33 terrorist attacks around the world killing 651 people.

Terrorist groups, like other organisations and businesses, need funding to survive. The funding comes from legitimate and illegitimate sources. Terrorist groups use these funds for training, propaganda, recruitment, operations, purchasing weapons and vehicles, and for salaries and compensation for survivors and dependents. Common sources of terrorist funding come from private donations; from the abuse or misuse of non-profit organisations; extortion; kidnapping for ransom; legitimate commercial enterprises; and state sponsorship. Increasingly in recent years, terrorist funding is coming from social media, crowd-funding, virtual currencies, and internet-based payment services.

Depriving terrorist groups of funds is the most effective way of closing them down. Countries therefore need to enforce the international CFT framework, which consists of the UN Security Council Resolutions on the freezing of assets, arms embargoes and travel bans, as well as the 40 Recommendations of the Financial Action Task Force (FATF). The FATF recommendations, which are compulsory worldwide, include both technical requirements and the effectiveness ratings. Mr Power emphasised the importance of cooperation between organisations to ensure compliance. This involves a clear national risk assessment followed by implementation. There must be a “whole of country” response to the implementation of international standards so a clear communication strategy reaching out to all sectors and reporting entities is vital. All countries have a duty to be vigilant, as lax enforcement will make a country a soft target not just for organised criminal groups but for groups looking to finance terrorism using either the formal or informal financial sector.



Closing remarks

Mr Chanthy Polivanh

Director General of the Criminal Case Inspection Department,
Office of the Supreme People's Prosecutor



Mr Chanthy expressed his appreciation to all of the participants for their active participation over the three days of the conference. He stated that the conference was very useful in capacity strengthening on combating organised crime, especially in combating money laundering. He stressed the importance of building effective coordination mechanisms with other relevant organisations both nationally and internationally in combating transnational criminal activities, in particular the sharing of information and evidence through mutual legal assistance.

Mr Chanthy encouraged all participants to apply the information and knowledge gained from the conference into the actual implementation of their tasks. He thanked the conference organizing committee for its efforts in ensuring that the 2020 conference was an outstanding success.

Conference Recommendations

- This conference continues as an annual meeting for capacity building and sharing lessons learned; the 5th edition is scheduled for February 2021.
- Develop capacity for all the provincial officials for the combating of organised transnational crime;
- Disseminate knowledge on money laundering, mutual legal assistance and evidence in criminal proceedings to the authorities in the provinces;
- Support the dissemination and capacity building of the Penal Code, Criminal Procedure Law and other relevant legislation;
- Strengthen the data collection and elaborate an analysis on organised crime networks and potential threats;
- Support closer coordinating and monitoring of all the relevant agencies, both domestic and international in combating transnational crime;
- Disseminate and create more awareness of the lessons learned from this conference across the nation.

Prize for Legal Knowledge Quiz

Winners:

Mr Xaiphon Sisouphan,

Lao National Commission for Drug Control and Supervision, Vientiane Capital

All attendees at the conference took part in a legal knowledge quiz, which tested their knowledge on themes and topics of the conference, such as mutual legal assistance, money laundering, human trafficking, wildlife crime and corruption amongst other.



Pictured from left to right, Mr Xaiphon Sisouphan receiving his prize from H.E. Mr Sam Schreiner, Charge d’Affaires of the Embassy of Luxembourg in Laos, Mr Chanthy Pholivanh, Director General of the Criminal Case Inspection Department, OSPP, and Mr Richard Philippart, President of ILSTA.

Conference photos









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