

CH-6

**TREATY
BETWEEN
THE KINGDOM OF CAMBODIA
AND
THE PEOPLE'S REPUBLIC OF CHINA
ON
EXTRADITION**

The Kingdom of Cambodia and The People's Republic of China (hereinafter referred to as "the Contracting Parties"),
Desirous of promoting, on the basis of mutual respect for sovereignty, equality and mutual benefit, the effective cooperation between the two countries in the suppression of crime by concluding a treaty on extradition,
Have agreed as follows:

Article 1

Obligation to Extradition

The Contracting Parties, in accordance with the provisions of this Treaty, undertake to extradite to each other, persons found in the territory of one of the Contracting Parties who are wanted for prosecution, trial or for the imposition or execution of punishment in the territory of the other Party for an extraditable offense.

Article 2

Extraditable Offenses

1. For the purposes of this Treaty, extraditable offenses are offenses 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 to imprisonment or other form of detention by a court of the Requesting Party for any extraditable offense, extradition shall be granted only if a period of at least six months in the sentence remains to be served.
3. For the purpose of this Article, in determining whether an offense is an offense against the laws of both Parties, it shall not matter whether the laws of the Contracting Parties place the conduct constituting the offense within the same category of offense or denominate the offense by the same terminology.
4. When extradition has been granted with respect to an extraditable offense, it may also be granted in respect of any other offense specified in the extradition request that meets all the other requirements for extradition except for periods of penalty or detention order 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 offense for which the request for extradition is made by the Requesting Party as a political offense. Reference

to a political offense 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 a 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 offense for which the request for extradition is made is, under the law of the Requesting Party, exclusively a military offense;
4. The prosecution or the execution of punishment for the offense 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 offense, 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 for his or her defense and he or she has not had or will not have the opportunity to have the case retried in his or her presence.

Article 4

Grounds for Discretionary Refusal

Extradition may be refused under this Treaty in any of the following circumstances:

1. The Requested Party in accordance with its law has jurisdiction over the

offense for which the request for extradition is made and shall institute proceedings against the person sought;

2. The Requested Party is in the process of proceedings against the person sought in respect of the same offense;

3. In exceptional cases, the Requested Party while also taking into account the seriousness of the offense and the interests of the Requesting Party deems that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian consideration;

4. If the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the territory of the Requesting Party by an extraordinary or ad hoc court or tribunal.

Article 5

Extradition of Nationals

1. Each Contracting Party shall have the right to refuse extradition of its own nationals.

2. If extradition is not granted pursuant to paragraph 1 of this article, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authority for prosecution. For this purpose, the Requesting Party shall submit documents and evidence relating to the case to the Requested Party.

3. Notwithstanding paragraph 2 of this article, the Requested Party shall not be required to submit the case to its competent authority for prosecution if the Requested Party has no jurisdiction over the offense.

Article 6

Channels of Communication

For the purposes of this Treaty, the Contracting Parties shall communicate through the diplomatic channels, unless otherwise provided for in this Treaty.

Article 7

Request for Extradition and Required Documents

1. A request for extradition shall be made in writing and shall be accompanied by the followings:
 - (a) documents, statements or other evidence sufficient to describe the identity and probable location of the person sought;
 - (b) a statement of the facts of the case;
 - (c) the provisions of the law describing the essential elements and the designation of the offense for which extradition is requested;
 - (d) the provisions of the law describing the punishment for the offense; and
 - (e) the provisions of the law describing any time limit on the prosecution or the execution of punishment for the offense, if any.
2. A request for the extradition relating to a person sought for prosecution shall also be accompanied by:
 - (a) a copy of the warrant of arrest issued by a judge or other competent authority of the Requesting Party; and
 - (b) such evidence as would justify that person's arrest and committal for trial, including evidence establishing that the person sought is the person to whom the warrant of arrest refers.
3. When the request for extradition relates to a person found guilty, in addition to the items required by paragraph 1 of this Article, it shall be

accompanied by:

- (a) a copy of the judgment by a court of the Requesting Party;
- (b) evidence providing that the person sought is the person to whom the judgment refers;
- (c) a statement showing to what extent the sentence has been carried out; and
- (d) a statement as to the legal means available to the person to prepare his or her defense or to have the case retried in his or her presence, if the person has been convicted of an offense in his or her absence.

4. All the documents to be presented by the Requesting Party pursuant to the provisions of this Treaty shall be officially signed or sealed and shall be accompanied by translation in the language of the Requested Party or the English language.

Article 8

Additional Information

If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within such time as it specifies. If the Requesting Party fails to submit additional information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a fresh request for the same purpose.

Article 9

Provisional Arrest

1. In case of urgency, one Contracting Party may request the other Contracting Party to take provisional arrest against the person sought. Such request may be submitted in writing through the diplomatic channels or through the International Criminal Police Organization (INTERPOL).
2. The request shall contain: a description of the person sought; the location of that person, if known; a brief statement of the facts of the case; a statement of the existence of a warrant of arrest or judgment against that person, as referred to in Article 7; and a statement that a request for extradition of the person sought will follow.
3. The Requesting Party shall be notified without delay of the result of its request.
4. Provisional arrest shall be terminated if, within a period of sixty days after the arrest of the person sought, the competent authority of the Requested Party has not received the formal request for extradition and the supporting documents required by Article 7. The present paragraph does not preclude the possibility of the conditional release of the person prior to the expiration of the sixty days in the event that the Requested Party learns of any grounds for a mandatory or discretionary refusal or if the Requesting Party revokes its request for extradition.
5. The termination of provisional arrest pursuant to paragraph 4 of this Article shall not prejudice the extradition of the person sought if the extradition request and the supporting documents mentioned in Article 7 are delivered at a later date.

Article 10

Decision on the Request

1. The Requested Party shall deal with the request for extradition pursuant to procedures provided by its own law, and shall promptly communicate its decision to the Requesting Party through the diplomatic channels.
2. Reasons shall be given for any complete or partial refusal of the request.

Article 11

Surrender of the Person Sought

1. If the extradition has been granted, the Requested Party and the Requesting Party shall decide through consultation on the implementation of the extradition. For this purpose, the Requested Party shall inform the Requesting Party of the length of the time for which the person sought was detained prior to the surrender.
2. The Requesting Party shall be considered as renouncing request for extradition if it does not accept the person sought within fifteen days after the date on which the implementation of the extradition has been agreed, unless otherwise provided for in paragraph 3 of this Article. The Requested Party shall set that person at liberty immediately and may refuse extradition for the same offense.
3. If one Contracting Party fails to surrender or accept the person sought within the agreed period for reasons beyond its control, the other Party shall be notified. The Contracting Parties shall decide through consultation on the implementation of the extradition again, and the provisions of paragraph 2 of this Article shall apply.

Article 12

Postponed and Temporary Surrender

1. When the person sought is being proceeded against or is serving a sentence in the Requested Party for an offense other than that for which extradition is requested, the Requested Party may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of any postponement.

2. To the extent permitted by its law, where a person has been found extraditable, the Requested Party may temporarily surrender the person sought for the purpose of prosecution to the Requesting Party in accordance with conditions to be determined between the Contracting Parties. A person who is returned to the Requested Party following a temporary surrender may be finally surrendered to the Requesting Party to serve any sentence imposed, in accordance with the provisions of this Treaty.

Article 13 .

Requests for Extradition Made by Several States

If requests for extradition of the same person are made by one Contracting Party and one or more third States, the Requested Party may determine priority of any of these requests.

Article 14

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 an offense other than that

for which extradition has been granted, nor 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 that person for an offense 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 offense concerned.

2. These stipulations shall not apply to offenses committed after extradition.

Article 15

Handing over of Property

1. The Requested Party shall, insofar as its law permits and at the request of the Requesting Party, seize and upon the granting of the extradition hand over property:

- (a) which may be required as evidence; or
- (b) which has been acquired as a result of the offense.

2. The property mentioned in paragraph 1 of this Article shall be handed over if extradition, having been granted, cannot be carried out due to the death, disappearance or escape of the person claimed.

3. When the said property is liable to seizure or confiscation in the territory of the Requested Party, the Requested Party may, in connection with pending

criminal proceedings, temporarily retain it or hand it over on the condition that it be returned.

4. Any right which the Requested Party or any State or individual may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested Party at its request as soon as possible after the trial.

Article 16

Transit

1. When a person is to be extradited to a Contracting Party from a third State through the territory of the other Contracting Party, the former Contracting Party shall request the latter to permit the transit. No such authorization is required where air transportation is used and no landing is scheduled on the territory of the other Contracting Party.

2. The Requested Party shall grant the request for transit made by the other Contracting Party, provided that it is not against its law.

Article 17

Notification of Result

The Requesting Party shall notify in time the Requested Party of the information relating to the prosecution against, the trial of and the execution of punishment upon person sought or the re-extradition of that person to third State.

Article 18

Assistance and Expenses

1. The Requested Party shall appear on behalf of the Requesting Party and conduct and carry out any proceedings arising from a request for extradition.
2. Costs of extradition shall be at the expense of the Party where they have been incurred. Expenses of air transportation and transit in connection with the extradition of the person shall be borne by the Requesting Party.

Article 19

Relationship with Multilateral Conventions

This Treaty shall not affect any right enjoyed and any obligation assumed by the Contracting Parties under any multilateral convention.

Article 20

Settlement of Disputes

Any dispute arising from the implementation or interpretation of this Treaty shall be settled through consultation or negotiation.

Article 21

Amendment

This Treaty may be amended upon request by either Contracting Party. Any amendment which has been agreed to by the Contracting Parties through diplomatic consultation shall come into force on the date to be mutually agreed upon and shall form an integral part of this Treaty.

Article 22

Ratification, Entry into Force and Duration

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Phnom Penh. This Treaty shall enter into force thirty days after the date of the exchange of the instruments of ratification.
2. Either Contracting Party may terminate this Treaty by giving written notice to the other Contracting Party through the diplomatic channels. This Treaty will remain in force until six months after the date on which the other Contracting Party receives such notice. The termination of this Treaty shall not prejudice any extradition proceedings commenced prior to the termination.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective States, have signed this Treaty.

DONE in duplicate at Beijing on this Ninth day of February, 1999, in the Khmer, Chinese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Kingdom of Cambodia



For the People's Republic of China

