

CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION

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I. OVERVIEW

A. Legal Aspects

The Royal Government of Cambodia (RGC) has a strong commitment to combating corruption. Prioritized policies and programmes on anti-corruption are clearly specified in the Rectangular Strategy Phase I, Phase II and Phase III¹ considering good governance as a core angle, and anti-corruption is one of the priorities set. The RGC has supported and endeavoured to have the Anti-Corruption Law adopted along with other relevant laws and regulations for curbing corruption in Cambodia.

On 17th April 2010, the Anti-Corruption Law (ACL) was promulgated, and the law is based on the Code of Criminal Procedure 2007 and the Criminal Code 2009. The ACL has the purpose to promote the effectiveness of all forms of service delivery and to strengthen good governance and the rule of law as well as to maintain integrity and justice which is fundamental to social development and poverty reduction. However, fighting against corruption really needs the participation and support from all stakeholders both from the private and public sectors as well as international cooperation.

To be a truly independent institution, the Anti-Corruption Law was amended and promulgated on 1st August 2011, allowing the Anti-Corruption Institution (ACI)² to have an independent budget separated from the budget of the Office of Council of Ministers, aiming to ensure that the institution can carry out its mandate effectively. It also provides the President of the National Council Against Corruption (NCAC) the right to structure and nominate officials from the deputy director of the department down upon the request made by the President of the ACU.

In 2012, the Public Procurement Law was promulgated, clearly stating some corruption offences as well as to give absolute competency to the ACU to investigate and file corruption related cases in court.

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¹ The Rectangular Strategy (RS) is a dynamic document that lays out the political commitment to a socioeconomic development process in the coming five years (2013-2018). The RS has undergone three changes in the last decade to keep up with the times.

² The Anti-Corruption Institution (ACI) was established by the Anti-Corruption Law, which was promulgated on the 17th April 2010.

B. Institutional Framework and Strategy

The Anti-Corruption Institution (ACI) was established by the Anti-Corruption Law, which was promulgated on the 17th April 2010. The Anti-Corruption Institution has two bodies: the National Council Against Corruption (NCAC), which plays the role as an advisory body, giving advice, recommendations and setting out the strategies on fighting corruption, while the Anti-Corruption Unit (ACU) plays the role of an implementing body to independently undertake its duties.

In order to succeed in curbing corruption, the NCAC set out a roadmap for the ACU in fulfilling its mission to bring more crucial achievements in the five identified areas, namely education, prevention and obstruction, law enforcement, national and international cooperation, and good governance and internal control.

Based on the strategic plan of the 2nd mandate of the NCAC (2015-2020), the ACU has set out its action plan to focus on the three intertwined approaches: Education, Prevention and Obstruction, and Law Enforcement, which have been supported and encouraged by the government with the participation from the concerned authorities at all levels, the private sector, media, academia and civil society.

II. MEASURES FOR COMBATING CORRUPTION

Combating corruption in Cambodia has been undertaken through education, prevention and law enforcement with participation and support from the public and international cooperation.³ Samdech Akka Moha Sena Padei Techo HUN SEN, Prime Minister of the Royal Government of Cambodia, said that “Combating corruption is to make people not to wish to corrupt, cannot corrupt and dare not to corrupt”.

A. Education

The Anti-Corruption Unit (ACU) has spent many of its resources, budget, time and ideas to provide education and to disseminate the anti-corruption law to civil servants, the private sector, civil society, as well as the general public across the country in order to raise awareness about the law, about what corruption is, and the negative impacts of corruption, aiming to make sure that the whole society begins to accept the new mind-set and perspective in order that they all will jointly fight against corruption, which is a common enemy for all of us.

The education and dissemination tasks have been conducted through various means such as the dissemination of the Anti-Corruption Law directly at the workplace, stipulating the 9th of December as National Anti-Corruption Day, and setting out policies and anti-corruption education programmes aiming to instil younger generations with the consciousness, clean mind-set, and the feeling of disgust for corruption, love of justice, integrity, abiding by laws, respecting themselves and others as they are the bamboo shoots and the future leaders of Cambodia.

³ Anti-corruption law, 17 April 2010, art. 2.

B. Prevention and Obstruction

Prevention and obstruction refer to the eradication of opportunities and possibilities that lead to corruption. Various regulations and mechanisms have been established to prevent corruption from being committed.

Prevention and obstruction of corruption have been conducted through many forms such as (i) declaration of assets and liabilities (ii) direct observation at bidding, public procurement, and fee bargaining at ministries and institutions as well as joining in the observation at the recruitment examination of a new cadre of officials at public institutions and high school national examination (iii) signing Memorandums of Understanding (MOU) on anti-corruption cooperation between the ACU and private national and international companies as well as compiling and publishing a "Guidebook on Anti-Corruption Program for Business in Cambodia", which is available for the private sector to be widely used as a supporting document and guidance and (iv) revising the standard of public services fees.

The ACU has also focused on the support, promotion for the exchanges of views and ideas as well as to strengthen career development aiming to work even closer with the private sector through the joint commitment and agreement under a form of signing Memoranda of Understanding (MOU) on anti-corruption cooperation between the ACU and private national and international companies. As a result, so far the ACU has signed 23 MoUs with private national and international companies. This has been used as an example in an effort to jointly fight against corruption and encourage the practice of clean business in Cambodia.

In order to maintain the integrity, ethical behaviour and legal compliance of the leaders and officials of the ACU as a whole, two internal bodies were established: the Disciplinary and Internal Control Council and the Internal Investigation Body. The Disciplinary and Internal Control Council is mandated to ensure that each official had strictly complied with discipline, integrity, transparency and having to avoid all forms of conflicts of interest set in the guidelines. In the process of the preparation of the internal regulations, disciplinary standards and internal control, the council has set out principle guidelines on the prevention of conflicts of interest, gift receiving, hospitality, and dining out with all concerned parties. In addition, the Internal Investigation Body is directly governed by the president of the ACU, and its duty is to observe and investigate the performance of officials of the ACU.

C. Law Enforcement Measures: Powers and Privileges of the Anti-corruption Unit (ACU)

In the framework of law enforcement, the ACU holds a meeting every morning to study, analyse, and take action against all complaints filed with the Unit. The complainant is allowed to attend the meeting, and defend their individual complaint. The mechanism has tremendous won the support from stakeholders, especially the complainant, due to the efficiency and effectiveness of service delivery. Simultaneously, the meeting has been used as a venue and as an opportunity to train the officials of the ACU, aiming to enhance their skills of complaint analysis, information collection and investigation techniques.

1. Investigative Power of the Anti-Corruption Unit

The ACU has exclusive power to investigate corruption offences.⁴ Officials of the Anti-Corruption Unit who are accredited as judicial police officials take charge of investigating corruption offences. If, during the course of a corruption offence investigation, different offences are found whose facts are related to the offence being investigated by the Anti-Corruption Unit, officials of the Anti-Corruption Unit may continue the investigation of the offences to the final stage. The Anti-Corruption Unit cannot investigate offences other than corruption unless the Unit is ordered by the court to do so.⁵ In the framework of these investigations, the President of the Anti-Corruption Unit or the officially assigned representative has the duty to lead, coordinate and control the mission of those officials playing the role on behalf of the prosecutor until reaching the point of arresting a suspect. After the arrest, the prosecutor exercises his power as stated in the Code of Criminal Procedure.

At the end of each investigation, the Anti-Corruption Unit shall submit all facts and relevant documents about the case to the prosecutor for further action in conformity with the provisions of the Code of Criminal Procedure.

2. Special Privileges of the Anti-Corruption Unit

The President of the Anti-Corruption Unit can ask the concerned authority to suspend all functions of any individual who is substantially proven to be involved in a corruption offence. If the suspect flees to a foreign country, the President of the Anti-Corruption Unit can ask the competent authority to seek extradition in accordance with the provisions in force.

3. Privileges of the Anti-Corruption Unit Related to Investigation⁶

If there is a clear hint of a corruption offence, the ACU is empowered to:

- (i) Check and put under observation the bank accounts or other accounts which are described to be the same bank accounts.
- (ii) Check and order the provision or copying of authentic documents or individual documents, or all banking, financial and commercial related documents.
- (iii) Monitor, oversee, eavesdrop, record sound and take photos, and engage in wiretapping.
- (iv) Check documents and documents stored in the electronic system.
- (v) Conduct operations aimed at collecting real evidence.

The above measures will not be considered as violations of professional secrets. Bank secrecy is not sufficient justification for failing to provide evidence related to corruption offences in the provisions of the Law on Anti-Corruption.

⁴ Anti-Corruption Law, 17 April 2010, art. 22 and Public Procurement Law, 14 January 2012, art. 73.

⁵ Anti-Corruption Law, 17 April 2010, art. 22.

⁶ Anti-Corruption Law, 17 April 2010, art. 27.

4. Privileges of the Anti-Corruption Unit Related to Freezing an Individual's Assets

Upon the request by the President of the Anti-Corruption Unit, the Royal Government may order the General Prosecutor attached to the Appeals Court or Prosecutor attached to the Municipal or Provincial Court of First Instance to freeze the assets of individuals who commit corruption offences. Those above-mentioned assets include the funds received or any form of assets belonging to the offender.⁷

5. Privileges of the Anti-Corruption Unit in Cooperation with Public Authority

The President of the Anti-Corruption Unit may order public authorities, government officials, citizens who hold public office through election, as well as units concerned in the private sector, namely financial institutions, to cooperate with officials of the Anti-Corruption Unit in the work of investigation. The President of the Anti-Corruption Unit may also ask the national and international institutions to cooperate in forensic examinations linked to the work of investigation.

6. Protection of the Complainant, Witness and Relevant Persons

Complainants, witnesses and relevant persons who provide information related to corruption are protected by law and by the Anti-Corruption Unit. The Department of Security is in charge of providing all kinds of protection to the above-mentioned persons when necessary and in accordance with the order made by the management of the ACU. The office of intervention and witness protection under the Department of Security is in charge of protecting the witnesses, complainants and any persons providing information related to corruption, and this office can cooperate with the other relevant armed forces if necessary, when carrying out their mission to protect witnesses and complainants.

D. Regulation Relating to Forfeiture and Repatriation of Proceeds of Corruption

1. Forfeiture

When a person is found guilty of corruption, the court will confiscate all his/her corruption proceeds including property, material, instruments derived from corrupt acts, and the proceeds will be transformed into state property. If the above seized asset is transferred or changed into a form of property different from the original asset nature, this transformed asset will become the subject of seizure at the place where it is located. If the corruption proceeds increase in value or result in more benefits or other advantages, all of these benefits and advantages will be seized as well. If the corruption proceeds disappear or lose value, the court may order the payment of the value equivalent to the original cost of those proceeds of corruption.⁸

2. Repatriation of the Proceeds of Corruption

If assets and corruption proceeds are found to have been kept in foreign states, the competent authority of the Kingdom of Cambodia shall take measures to claim those assets and proceeds and repatriate them to Cambodia through means of international cooperation. The Kingdom of Cambodia shall cooperate with other countries who request the repatriation of corruption proceeds that are kept in Cambodia.

⁷ Anti-Corruption Law, 17 April 2010, art. 28.

⁸ Anti-Corruption Law, 17 April 2010, art. 48.

III. INTERNATIONAL COOPERATION

A. Bilateral and Multilateral Cooperation

Public participation and support and international cooperation are crucial to succeed in fighting against corruption. In order to perform its duty, the ACU can cooperate with national, regional and international organizations in order to combat trans-border corruption offences.⁹

1. Multilateral Cooperation

In order to raise up and strengthen the efforts of prevention and obstruction, and investigation, as well as the facilitation and support of international cooperation, capacity building and Mutual Legal Assistance (MLA) in prevention and combating corruption, the ACU has been a full member of institutions or international instruments concerning anti-corruption as follows:

- (i) The ADB/OECD Anti-Corruption Initiative on 5 March 2003
- (ii) United Nations Convention Against Transnational Organized Crime (UNTOC) on 12 December 2005
- (iii) International Association of Anti-Corruption Authorities (IAACA) since 2006
- (iv) United Nations Convention Against Corruption (UNCAC) on 5 September 2007
- (v) South East Asia Parties Against Corruption (SEA-PAC) on 11 September 2007
- (vi) ASEAN Mutual Legal Assistance in Criminal Matters on 26 January 2010
- (vii) International Anti-Corruption Academy (IACA) on 14 December 2013

In 2014, the ACU also organized two major international conferences in Phnom Penh and Siem Reap in collaboration with the Asian Development Bank, the Organization for Economic Cooperation and Development (ADB/OECD) and the United Nations Office on Drugs and Crime (UNODC), with the participation of hundreds of experts and practitioners from around the world.

2. Bilateral Cooperation

The ACU signed Memoranda of Understanding on anti-corruption with the State Inspectorate and Anti-Corruption Agencies of the Lao People's Democratic Republic (15 November 2013) and the National Anti-Corruption Commission of the Kingdom of Thailand (3 September 2014). The MoUs focus on promoting and developing international cooperation in the prevention of and fight against corruption through the efficient and effective sharing and exchange of information, intelligence, experience, knowledge, and best practices. In addition, the ACU collaborated with the CPIB, Singapore to organize two important trainings for its officials of the ACU on the topic of financial investigation and computer forensics.

⁹ Anti-Corruption Law, 17 April 2010, art. 2 and art. 13.

The ACU also signed a Memorandum of Understanding on the exchange of financial information with the Cambodian Financial Intelligence Unit (CAFIU) of the National Bank of Cambodia (26 December 2014).

B. Mutual Legal Assistance (MLA)

Regarding MLA in the case of corruption offences, the court authority of the Kingdom of Cambodia may delegate power to the competent court authority of any foreign state and may also obtain power from a court authority of any foreign state, in order to:

- Collect evidence/proof or answer/respond through court means,
- Provide information about court documents,
- Search, arrest and confiscate,
- Examine objects and the crime scene,
- Provide information and exhibits,
- Issue original process-verbal or its authentic copies and dossier, including bank statements, cash transactions, records of concerned institutions, records of concerned companies and business activity records, as well as authentic and private documents;
- Identify or provide expert witnesses and others, including detainees who agree to assist in the investigation or participate in the legal proceedings;
- Identify or seek resources, property, equipment, and materials that derive from the offence;
- Place under temporary hold the products and properties obtained from corruption offences as well as equipment, materials being used or kept for committing offences;
- Enforce orders of confiscation, seizure or repatriation of products, properties, equipment, material derived from an offence;
- Order confiscation of all objects as stated above;
- Inform about criminal charges;
- Interrogate the accused based on criminal procedure;
- Identify witnesses and suspects.¹⁰

In addition, reciprocity is also used in practice in MLA proceedings in case of the absence of international treaties.

Cambodian domestic law does not clearly provide for the transmission of information relating to criminal matters without prior request. However, the exchange of information is frequently practiced in relations between the Financial Intelligence Unit and the police and their foreign counterparts. Mutual Legal Assistance will not be refused solely on the grounds of bank secrecy or on the grounds that the offence is also considered to involve fiscal matters.

In implementing Mutual Legal Assistance, the Cambodian Ministry of Justice has communicated with five countries so far: Belgium, Peru, France, Germany and Sweden. In practice, if the case is related to corruption, then it is under the competence of the Anti-Corruption Unit only.

¹⁰ Anti-Corruption Law, 17 April 2010, art. 51-53.

Between 2012 and 2014, Cambodia received 42 requests for MLA in criminal matters and 36 requests in civil cases from countries including the US, the UK and EU member states. Between 2012 and 2013, Cambodia sent 27 requests in criminal cases and 34 in civil cases.¹¹

1. Formal Channels for MLA

The formal procedure and mechanism for MLA is clearly stated in bilateral or multilateral treaties or agreements as well as Cambodian domestic regulations currently in force. Up to now, Cambodia is a state party to the ASEAN Mutual Legal Assistance Treaty in Criminal Matters (AMLAT) and South East Asia Parties Against Corruption (SEA-PAC). Furthermore, the Ministry of Justice of Cambodia is currently drafting the Mutual Legal Assistance Law.

Regarding the regulations in place, the procedure of MLA in Cambodia, the written requests and related documents from foreign states have to be submitted to the Ministry of Foreign Affairs and International Cooperation (MFA) in Khmer or in English. The Cambodian MFA will forward the request to the Ministry of Justice (MOJ) playing the role as the central authority. The MOJ then will send the request and related documents to the Court of Appeal to decide on further action. This similar legal process would also apply to the case of a request for repatriation of the assets or the arrest of suspects.

2. Informal Channels of MLA

Informal procedure of MLA is particularly applied based on SEA-PAC and the MOU between the ACU and State Inspectorate and Anti-Corruption Authority (SIAA) of Lao PDR (15 November 2013) and the MOU between the ACU and the National Anti-Corruption Commission (NACC) of the Kingdom of Thailand (3 September 2014).

In practice, when MLA is needed, the anti-corruption agency of a foreign state can directly send informal requests to the ACU. Upon receiving the request, the ACU will undertake measures based on the actual case. Where there is a request for MLA, the ACU provides the following assistance:

- Prior to a formal request for MLA, once receiving a request from any party the ACU assists to provide intelligence in the investigation.
- The ACU then helps gather information and puts the suspects under surveillance.
- Once the formal request for MLA is made, the ACU will help facilitate the formal request.

Regarding informal MLA, the ACU collaborated with the Corruption Eradication Commission of Indonesia (KPK) and the Corrupt Practices Investigation Bureau (CPIB) of Singapore to exchange information through focal persons nominated by each agency. As a result of collaboration between the ACU and the KPK, the suspect was arrested and sent back to Indonesia. In addition, the ACU and the CPIB have cooperated for the exchange of information and support for the court procedure, information gathering and evidence collection, and obtaining interviews and recorded statements so that the CPIB could use the evidence legally in the court proceeding.

¹¹ Draft country report on UNCAC review implementation in Cambodia, 2 December 2015, p. 176.

C. Extradition

The extradition conditions and procedures are stipulated in the Code of Criminal Procedure 2009 (article 566-595), Law on Anti-Corruption (article 50), extradition treaties with five countries (China, Lao People's Democratic Republic, Republic of Korea, Thailand and Viet Nam) and the principle of reciprocity. At the present time, Cambodia is in the process of negotiating extradition treaties with Malaysia, Indonesia, France and Russia. In corruption cases, if the suspect flees to a foreign country, the President of the Anti-Corruption Unit may request the competent authority to undertake extradition in accordance with the provisions in force.¹²

In extradition matters, Cambodia generally requires some conditions such as dual criminality, a two-year minimum penalty, that the extradition request is not connected with a political offence, etc. The extradition treaties of Cambodia stipulate as mandatory grounds for refusal of extradition the institution of criminal proceedings against a person sought on account of sex, race, religion, nationality or political opinion, a political offence, a Cambodian national, etc.¹³

The extradition procedure is a mixed judicial-executive procedure. A decision on extradition is made by the Investigation Chamber of the Phnom Penh Court of Appeal.¹⁴ If the Investigation Chamber grants the extradition request, the Minister of Justice shall propose that the Royal Government issues a sub-decree ordering the extradition of the wanted person.¹⁵

Cambodia has handled 12 extradition cases since 2009 involving, inter alia, Russia, Germany and Israel. None of these requests were related to corruption offences. All extradition requests were granted except one where the person sought by another country also had Cambodian (dual) citizenship.¹⁶

IV. UNCAC IMPLEMENTATION

A. UNCAC Review

Within the international framework, the ACU is a state party to the United Nations Convention Against Corruption (UNCAC), setting the significant international standards on anti-corruption work and setting up a mechanism to review the implementation of UNCAC for all state parties. Under this mechanism, Cambodia having the ACU as the key institution, prepared a self-assessment checklist which is very detailed and comprehensive about the implementation of UNCAC review in Cambodia, with the participation from all stakeholders including the legislative, executive and legal and judicial bodies, the private sector, civil society organizations, development partners and academia. Cambodia shall be reviewed by the UN together with two other state parties (Myanmar and Togo). According to the request of the UNODC, the ACU nominated its representative to present and share experience in preparing the UNCAC review and self-assessment checklist completion to Myanmar.

¹² Anti-Corruption Law, 17 April 2010, art. 26.2.

¹³ Code of Criminal Procedure 10 August 2007, art. 569-577.

¹⁴ Code of Criminal Procedure, 10 August 2007, art. 586.

¹⁵ Code of Criminal Procedure, 10 August 2007, art. 586-589.

¹⁶ Draft country report on UNCAC review implementation in Cambodia, 2 December 2015, p. 153.

Cambodia also assigned its experts to review the implementation of the Convention of three countries including Malta (Europe), Palau (Asia) and Saudi Arabia (Middle East).

B. Drafting of the Witness Protection and Whistle Blower Protection Law

The ACU is drafting the Law on Witness Protection and the Law on Whistle Blower Protection. It is very important to consult with the existing legal framework, policy, programme, best practices and technical assistance. In the process of drafting the laws, the ACU has enthusiastically and openly cooperated with stakeholders including the Office of the High Commissioner for Human Rights (OHCHR Cambodia), Transparency International Cambodia (TI Cambodia) and Samrith Law firm from the first stage to gather input.

In addition, the content of the draft laws will cover relocation to a foreign country, which requires international cooperation for the successful enforcement of the laws. Thus, international cooperation is very crucial to achieve the draft as well as implement the laws especially for capacity building and relocation in a foreign country.

V. CHALLENGES

It has been more than five years since the establishment of the Anti-Corruption Unit. The ACU has tried its best to implement the Anti-Corruption Law and related regulations in the fight against corruption. However, on the way to building its fundamental ground, there are many challenges, as follows:

- Deep expertise in each area is limited while corruption is becoming much more complicated and sophisticated. So capacity building in the field of legal, forensic, investigation, etc. is really important in fighting against corruption.
- The limitation of technical equipment is a big challenge in evidence collection and investigation.
- Most defence lawyers do not use their professionalism appropriately in their defence before the court. Often, they violate the law, abuse the power, divert an issue into making compensation, and destroy the case files and facts.
- There is social support to help facilitate the work of fighting against corruption. However, there are some other groups who try to take advantage of this, and they are still reluctant and continue to obstruct the anti-corruption movement by all means.

VI. CONCLUSION

Although the Anti-Corruption Law provides the Anti-Corruption Unit with the power and privilege to investigate corruption offences and the independence to execute its duties, there are many obstacles along the way. Curbing corruption is a very difficult task as people who are involved in corruption are intelligent, knowledgeable and powerful. Therefore, professional staff are required to deal with these cases. Expertise in the field of investigation, forensic science, law, accounting, procurement, education, etc. are required for the officials to work in certain posts. It is also required to formulate a system of integrity that applies to all staff.

Moreover, in the context of globalization, international cooperation is very crucial and a key to succeed in curbing corruption, which is complicated, trying to ensure that there is no haven for corrupt offenders. International cooperation has been used as a means for creating networks for law enforcement authorities to work closely, particularly in the field of sharing experiences, knowledge, intelligence information, identifying offenders, MLA, extradition and prosecution.

In this regard, the Anti-Corruption Unit requires adequate resources and budget from the government to implement its five-year Strategic Plan (2015-2020) and five-year Action Plan (2015-2020) effectively. It also requires the participation of the public, development partners and civil society. The ACU is still willing to open international cooperation to all stakeholders regionally and internally.