

EFFECTIVE INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION IN CAMBODIA

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Globalization has presented not only enormous benefits, but also challenges for tracking down transborder crime; corruption is among the notorious criminal cases. According to the IMF, some countries have made progress in fighting corruption over the past two decades, and if all countries were to reduce the cost of corruption, global GDP would increase by 1.25 per cent, equivalent to 1 trillion USD in tax revenue. Combating corruption globally has become more integrated and interconnected, and the essential remedy has to be from the international cooperation dimension.

Cambodia, as part of regional and international integration, has increasingly played an important role in the international community, especially in the joint effort in combating corruption. Cambodia became a State party of UNCAC in 2007, and the Anti-Corruption Law (ACL) was promulgated in 2011. Upon the promulgation of the ACL, the Anti-Corruption Unit (ACU) of Cambodia was established and works collaboratively with foreign anti-corruption agencies, state institutions, international organizations and the private sector. Collaboration provides enormous benefits through access to wider support, best practices and experiences regionally and from the international community. The ACL expressed clearly the exclusive power of the ACU in anti-corruption matters and as the sole agency empowered to enforce the Anti-Corruption Law. Following the establishment of the ACU, a three-pronged approach has been the focus, namely education, prevention and law enforcement, and international cooperation. Among the three-pronged approach, international cooperation has always played an important role in fighting corruption in the Kingdom.

The year 2020 is the third term¹ of the National Anti-Corruption Council (NACC). In the coming of the third term, the NACC set up the National Anti-Corruption Strategic Plan 2020-2025, focusing on Education, Prevention and Obstruction, Law Enforcement (Policy, Law and Regulation), National and International Cooperation, Asset Recovery and Strengthening Institutional Capacity, Integrity, Monitoring and Evaluation of Implementation of the Strategic Plan.

I. THE NATIONAL STRATEGY AGAINST CORRUPTION PHASE III (2020-2025)

A. The Differences between the Strategic Plan 2015-2020 and the Strategic Plan 2020-2025

- Providing a forum for stakeholders to directly implement the relevant activities highlighted in the action plan, and

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¹ Article 7 of Anti-Corruption Law of Cambodia.

- Providing the opportunity to participate in monitoring and evaluation of some certain activities set out in the strategic plan.

B. Stakeholder Involvement

The strategic plan 2020-2025 set out the participation of the National Assembly, Senate, the public sector, the private sector, civil society, the media, academia, and the general public. Each stakeholder has a role to play with the ACU:

- a. **Ministry of Education:** Anti-corruption education is embedded in school curriculums from primary school to university. They are part of long-term strategies to change both perceptions and behaviour.
- b. **Ministry of Civil Service:** guidelines on conflicts of interest, code of conduct, etc.
- c. **Ministry of Economy and Finance:** Public procurement
- d. **Ministry of Civil Society:** Community anti-corruption education
- e. **Private Sector:** MOUs, Dialogue to promote clean business.

II. ANTI-CORRUPTION STRATEGIC PLAN 2020-2025

The Anti-Corruption Strategic Plan, phase III (2020-2025) is developed with active involvement from leaders and officials at all levels of the ACU and a number of relevant stakeholders, including the National Assembly, the Senate, the public and private sectors, civil society, media, education sectors and experts from UNODC. The inputs were synthesized into the Strategic Plan before it was submitted to the NCAC for review, discussion and approval. The focuses of the third phase are:

A. Education

- Aim at raising awareness on anti-corruption
 - Promote anti-corruption in formal education
 - Promote anti-corruption in public and private institutions.
- Promote participation in anti-corruption:
 - Collaborate with stakeholders in disseminating anti-corruption information.

B. Prevention and Obstruction

- Promote good governance and good service delivery
 - Promote adherence to codes of ethics and codes of conduct in public institutions
- Promote clean business in the private sector
 - Promote clean operation of business.
 - Organize dialogue between ACU and the private sector: Dialogues/consultation, audiences, and solutions for challenges in businesses. Create new initiatives for expansion of participation in anti-corruption efforts.
- Promote effectiveness of public procurement
 - Participate to observe implementation of public procurements in procurement units.
- Enhance effectiveness of asset and liabilities declaration.

C. Law Enforcement

- Improve information collection, investigation, and case referral
 - Expand scope of receiving complaints
- Build up professional skills for law enforcement officials

- Capacity-building: forensic skills, witness and reporting person protection, money-laundering, asset recovery, etc.
- Expand and strengthen cooperation with national and international institutions on anti-money-laundering activities, detection and recovery of assets and related proceeds of crimes

D. Policy, Law and Regulation

- a. Promote implementation of recommendations from two review cycles of UNCAC in Cambodia
- b. Build capacity on policies and legislation related to anti-corruption and money-laundering by collaborating with national and international partners
- c. Develop codes of conduct for public officials.

E. National–International Cooperation and Asset Recovery

- Strengthen partnership on anti-corruption works within the national framework
 - Cooperation between the Anti-Corruption Unit with:
 - Law enforcement agencies and relevant institutions
 - Ministry of Economics and Finance, Ministry of Civil Service
 - Civil Society Organizations
 - National Assembly and Senate.
- Expand relations with anti-corruption agencies in and outside the region
- Promote cooperation and coordination on anti-money-laundering activities and asset recovery.

F. Strengthening Institutional Capacity, Integrity, Monitoring and Evaluation of Implementation of the Strategic Plan

- Strengthen capacities, resources and integrity of anti-corruption institutions
 - Improve knowledge and capacity of ACU officials
 - Enhance infrastructure of technical tools and ICT
 - Strengthen implementation of internal regulations and integrity
 - Establish municipal–provincial anti-corruption offices.
- Enhance integrity and capacity in combating corruption in state institutions
 - Promote knowledge or capacity to anti-corruption focal points on education, prevention and obstruction efforts
 - Strengthen integrity and the combating corruption in state institutions.
- Strengthen monitoring and evaluation on implementation of the ACU’s strategic plan
 - Report to the National Council Against Corruption
 - Report to the public
 - Report to the head of the Royal Government.

III. THE PROMULGATION OF THREE KEY LAWS AND THE WAY FORWARD

A. Law on Anti-Money-Laundering and Combating the Financing of Terrorism (AML/CFT) (27 June 2020)

- The Law is designed to fight AML/CFT by identifying preventative measures and cracking down on criminal cases inflicted in the Kingdom’s territory.

- Introduced significant changes relating to the customers' due diligence measures, obligations of government ministries and inspection institutions, and penalty provisions.
- The severity of penalties has been elevated.
 - The new law on Anti-Money-Laundering and Combating the Financing of Terrorism (New AML Law) was promulgated by the Royal Kram No. NS/RKM/0620/021, dated 27 June 2020. This law consists of 9 Chapters and 47 Articles, aiming at setting up measures against money-laundering and the financing of terrorism.
 - The New AML was implemented to replace the following:
 - o Law on Anti-Money-Laundering and Combating the Financing of Terrorism, dated 24 June 2007
 - o Law on Amendment of Article 3, Article 29 and Article 30 of the Law on Anti-Money-Laundering and Combating the Financing of Terrorism, dated 3 June 2013, introducing significant changes relating to customer due diligence measures, obligations of government ministries and inspection institutions, and penalty provisions.

IV. LAW ON COMBATING THE FINANCING OF PROLIFERATION OF WEAPONS OF MASS DESTRUCTION (27 JUNE 2020)

- List out procedures for freezing and seizing assets and establishing a number of new criminal offences.
- Law on combating the financing of proliferation of weapons of mass destruction was promulgated by the Royal Kram No. NS/RKM/062/019 dated 27 June 2020. This law consists of 8 Chapters and 24 Articles stipulating procedures for freezing and seizing assets and establishing a number of new criminal offences.
- Criminal offences under this law include the violation on the decision to freeze assets or transfer the assets, violation of reporting obligations, which will be subject to imprisonment of up to 15 years and fines of KHR 2 hundred million (approximately USD 50,000).

V. LAW ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (MLA) (27 JUNE 2020)

The Law on Mutual Legal Assistance in Criminal Matters was promulgated on 27 June 2020. The law set out requirements and procedures for Cambodian authorities to process legal assistance requests in the criminal sector from other nations. The assistance provided under the law can be in the form of freezing, retention, or confiscation of assets related to criminal activities. The Law applies where there is no pre-existing agreement on the matter.

The Ministry of Justice is the central authority that is responsible for any formal communication with respect to providing mutual legal assistance provided under this law. These communications are limited to the following:

- Collection of evidence and testimonies,
- Search and retention,
- Evidence presentation in court,
- Disclosure of information under the purview of Cambodia,

- Liaisons of court documents,
- Transfer of detained person for evidence discovery,
- Location identification,
- Asset identification,
- Execution of requested freeze, retention, or confiscation of assets, and
- Confiscation of evidentiary equipment from financial institutions.

VI. ACU ACTION PLAN ALIGNED WITH UNCAC

The ACU cooperates with national, regional and international organizations to combat cross-border corruption. Within the national framework, the ACU and national institutions work closely to combat corruption through capacity-building, preparation of legal instruments, as well as working in the field of education, obstruction and prevention, and law enforcement.

The ACU represents the Kingdom serving as the representative body to the United Nations Convention Against Corruption (UNCAC) and had undergone two rounds of review mechanism of the UNCAC in 2015 and 2020.

VII. MUTUAL LEGAL ASSISTANCE

This law defines mutual legal assistance in criminal matters between the Kingdom of Cambodia and a Foreign State with respect to proceedings related to criminal offences as well as freezing, seizure and confiscation of property for the purpose of strengthening and extending international cooperation. This law shall apply for legal assistance in criminal matters and is to be provided to all requesting States even if they do not have any agreement with the Kingdom of Cambodia and shall apply to legal assistance in criminal matters received from all requested States even if they do not have any agreement with the Kingdom of Cambodia.

The scope of this law shall not be applicable to mutual legal assistance in criminal matters carried out in accordance with a bilateral or multilateral treaty or a convention which has been ratified by the Kingdom of Cambodia.

The internal procedure for executing the requests for mutual assistance as stipulated under this law shall cover all cases of mutual legal assistance in criminal matters including mutual legal assistance in criminal matters implemented in accordance with a bilateral or multilateral treaty or a convention which has been ratified by the Kingdom of Cambodia, except other provisions specified under the treaty or convention, or any other laws of the Kingdom of Cambodia.

This law shall not prevent the making or receiving of requests related to mutual legal assistance in criminal matters or cooperation between the Kingdom of Cambodia and a Foreign State through other lawful means.

A. Article 39 – Conditions for Requesting a Person to Testify or to Assist with Investigation

The relevant competent authority shall make a request to a requested State through the Central Authority to temporarily transfer a detained person or to send other persons who are in the requested State to give testimony or to assist with judicial investigation in court proceedings of the Kingdom of Cambodia under conditions that:

1. A criminal case has already commenced in the Kingdom of Cambodia; and
2. The detained person or the other persons can give evidence that is useful for the court proceedings, and consents to give testimony or to assist a judicial investigation in the Cambodian court proceedings.

Upon receiving a detained person from a requested State to give testimony in Cambodian court proceedings or to give assistance related to a judicial investigation, the detention of the person in the Kingdom of Cambodia shall be made in accordance with the requirements of the agreement with the requested State, or as determined by the Central Authority.

The acceptance and detention of a detained person shall be made in accordance with the law of the Kingdom of Cambodia.

VIII. ACU'S PRACTICE

With regard to bilateral cooperation on Mutual Legal Assistance (MLA), a request from a foreign State must be referred to the Ministry of Foreign Affairs and International Cooperation (MFA.IC). MFA.IC then forwards the request to the Ministry of Justice (MoJ). The MoJ then sends the request to the Court of Appeal to decide further actions. The similar process would also apply for the case of the request for repatriation of the assets or arrest of the suspects. In the area of MLA, the ACU provides assistance as follows:

- Prior to the formal MLA request, once receiving the request from the party, the ACU assists to provide intelligence in investigation.
- The ACU then helps in gathering information and puts the suspects under surveillance.
- Once the formal request for MLA is made, the ACU will help provide information, commence surveillance and search for the targets in the investigation stage, and such a request could be sent directly to the ACU. The ACU is pleased to undertake the task with the expectation that the requesting party will accept a similar request by the ACU.

The ACU is interested in broadening cooperation in the form of bilateral and multilateral agreements. The ACU has signed MoUs with the NACC of the Kingdom of Thailand and with the Government Inspection Authority of Lao PDR, and it has played an active role as a member of the ASEAN-PAC and UNCAC. Through bilateral and multilateral agreements, the ACU cooperates with foreign counterparts in area of capacity-building, exchange of experience and official visits, and sharing of information and intelligence in corruption investigations.

IX. OTHER FACILITATIVE EFFORTS OF THE ACU

Cambodia investigated 140 money-laundering cases as of June and 22 cases were sent to courts. Assets have been frozen in some cases and five have gone to trial, according to an announcement by the Ministry of Information on Thursday, 8 October 2020 under the AML/CFT. Cambodia strongly strengthens the capacity of judicial police officers, identifies criminals, seizes illegal goods and manages the work that goes into stopping crimes, detaining offenders and freezing laundered money.

In relation to money-laundering, with collaboration and recommendation of the APG, the World Bank Group, and FIU, the ACU has revised internal legal instruments establishing two additional bureaus, namely the Anti-Money-Laundering Bureau and the Interpol Bureau.

A. The Anti-Money-Laundering Bureau

- Conducts the investigation on money-laundering offences;
- Investigates, searches and identifies proceeds of the money-laundering crimes for the procedural paperwork and other proofs for the President of the ACU to conduct the process of capturing, freezing and seizing in accordance with applicable procedures;
- Enhances day-to-day anti-money-laundering capacity-building for officials;
- Participates in the implementation and the updating of Standard Operating Procedures (SOP);
- Provides support to other specialized officers during criminal investigations;
- Serves as assistant for cooperation between national and international institutions involved with anti-money-laundering efforts as necessary;
- Collects, compiles and keeps records of information, lessons, best practices and data related to anti-money-laundering;
- Fulfils other duties for the efficiency and effectiveness of anti-money-laundering efforts under its competency as assigned by the Director of Department, Director-General and the President of the ACU.

B. The Interpol Bureau

- Proposes to the President of the ACU regarding the appointment of ACU representing officers for both confidential and open-work communications with Interpol and is entitled to receive Official Documents (Orders) from Interpol;
- Manages any documents and orders sent to the ACU by Interpol;
- Proposes to the President of the ACU regarding the ACU representatives to participate in Interpol's regional and international-level meetings, conferences and workshops;
- Serves as assistant to the President of the ACU in coordinating and cooperating with domestic authorities such as the Ministry of Justice, Ministry of Foreign Affairs and International Cooperation, Cambodian National Police and the Royal Gendarmerie;
- Prepares Interpol reports regularly for submission to the ACU President;
- Fulfils other duties as assigned by the Director of Department, Director-General and the President of the ACU.