

CAMBODIA'S INTERNATIONAL COOPERATION IN COMBATING CORRUPTION

Mao Vitou *

I. OVERVIEW

Identifying and mitigating criminal offences through a comprehensive approach across the financial and criminal justice sectors are key components of credible national strategies to address risks posed by serious and organized criminals, and they contribute to sustainable development through prevention and mitigation of crimes and reduction of illicit financial flows. Among other crimes, corruption is a phenomenon that affects virtually every country in the world. Corruption not only causes serious damage to public resources but also undermines democratic institutions, slows economic development and contributes to the instability of governments. A sound anti-corruption strategy requires a strong legal sector to help with the investigation, prosecution, conviction and disruption of serious and organized criminal networks and effective international cooperation. Mutual legal assistance in criminal matters (MLA) – a mechanism of international cooperation – is a process by which States seek and provide assistance in gathering evidence for use in criminal cases. Extradition is the formal process whereby a State requests the enforced return of a person accused or convicted of a crime to stand trial or serve a sentence in the requesting State.

Within the framework of legal cooperation in the field of criminal justice, the Kingdom of Cambodia has signed bilateral and multilateral treaties with many countries, especially treaties related to extradition, transfer of prisoners and mutual legal assistance (MLA). In the field of international legal assistance, which is an important form of international cooperation, the Kingdom of Cambodia has signed a multilateral treaty within the framework of ASEAN – the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. The Kingdom of Cambodia has signed criminal law and bilateral treaties with four (4) countries, including the Republic of Korea, the Socialist Republic of Viet Nam, the Republic of India and the Russian Federation. At the same time, the Kingdom of Cambodia has received requests for legal assistance from many countries that do not have treaties or agreements with the Kingdom of Cambodia, but on the principle of reciprocity, the Kingdom of Cambodia has agreed to provide assistance because it is important to cooperate in the fight against crime, especially transnational crime as well as corruption. To ensure that all Cambodian authorities cooperate to fight the crime of corruption, the Law on Anti-Corruption sets forth some articles for Cambodia to request and receive legal assistance from foreign countries. Then, Cambodia enacted the Law on Mutual Legal Assistance in Criminal Matters (MLA Law) in June 2020, which not only establishes a clear internal procedure but also complements the Code of Criminal Procedure to ensure the implementation of the treaty, not only on mutual legal assistance in criminal matters but also on establishing a legal basis that serves to strengthen and expand legal cooperation in the criminal field with foreign countries based on the principles of respect for sovereignty and mutual interests.

* Legal Officer, Ministry of Justice, Cambodia.

II. CAMBODIA'S EXPERIENCE

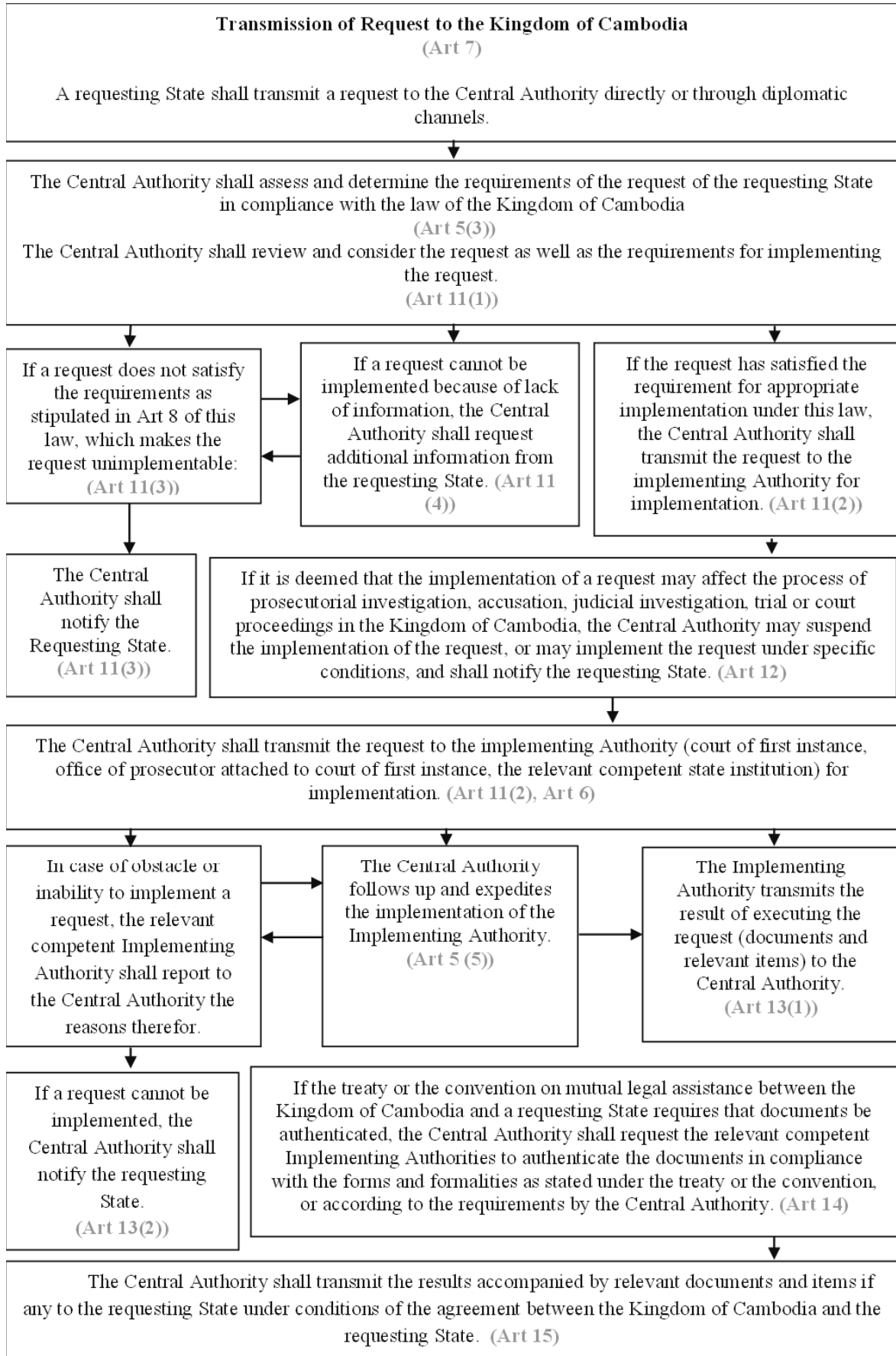
Before 2020, there was no basic law setting forth a comprehensive basis for mutual legal assistance in criminal matters. Cambodia has some separate laws which provide specific articles in making and providing legal assistance in particular fields. Relating to legal assistance in corruption cases, the Law on Anti-Corruption, article 51, stipulates some types of assistance such as (1) obtaining testimony or answers in court, (2) service of process (court documents etc.), (3) search, seizure and confiscation, (4) inspection of objects and places, (5) providing information and exhibits, (6) providing a copy of the original log file or a certified copy of the original commercial and authentic documents, (7) presentation or providing of witnesses, experts or others, including detainees, who may assist in the investigation or consent to participate in the proceedings. Besides domestic law, MLA requests can be made based on the United Nations Convention against Transnational Organized Crime (UNTOC), the United Nations Convention against Corruption (UNCAC), the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters and bilateral treaties. Cambodia also received requests from foreign countries based on the principle of reciprocity.

III. CURRENT SITUATION IN CAMBODIA

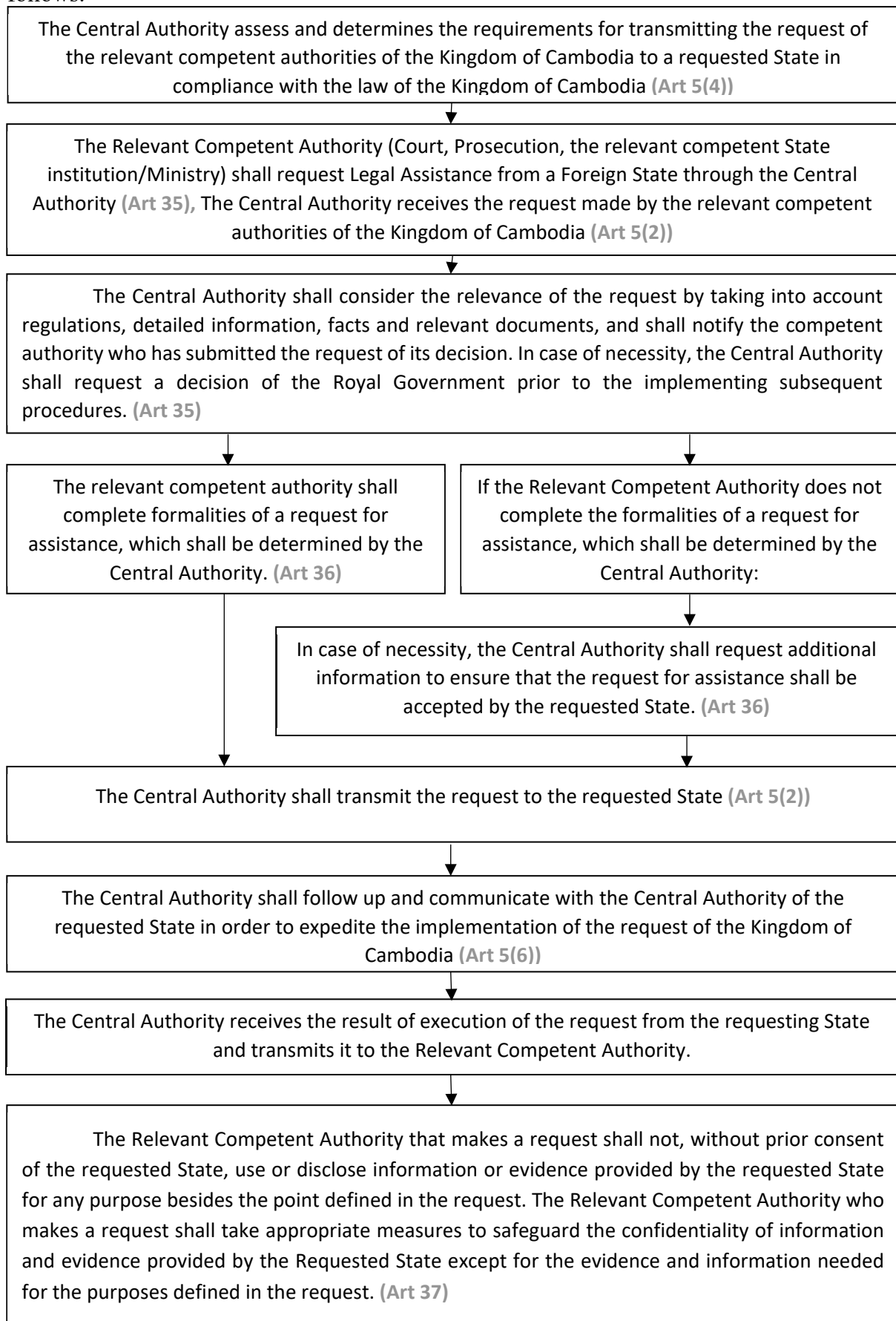
The MLA Law of Cambodia (2020) defines mutual legal assistance in criminal matters between the Kingdom of Cambodia and a Foreign State with respect to proceedings related to criminal offences as well as freezing, seizure and confiscation of property for the purpose of strengthening and extending international cooperation. This law applies to legal assistance in criminal matters to be provided to all requesting States even if they do not have any agreement with the Kingdom of Cambodia and to those seeking legal assistance in criminal matters even if they do not have any agreement with the Kingdom of Cambodia.

The MLA Law sets forth some types of legal assistance in criminal matters including in corruption cases such as (1) obtaining evidence or statements from witnesses, (2) searches and seizures, (3) providing evidence before a court, (4) providing information controlled by the Kingdom of Cambodia, (5) serving court documents, (6) transferring a detained person for giving evidence, (7) identifying a location of a person, (8) identifying the location of property, (9) taking measures on a request related to freezing, seizure or confiscation of property and (10) obtaining evidence from financial institutions.

The MLA law also stipulates the process of receiving foreign requests to Cambodia as follows:



In order to make MLA requests to foreign countries, the MLA law sets a process as follows:



For foreign countries which seek to request legal assistance from Cambodia, a request shall include the following information:

1. Name(s) of the authority/ies conducting a prosecutorial investigation, accusation, judicial investigation, trial or implementation of the criminal proceeding related to the request, such as detailed information of individual(s) capable of responding to enquiries related to the request;
2. A description of characteristics of the criminal case, including a summary of facts, name(s) of the offence and penalties to be applied, accompanied by relevant legal texts; and
3. A description of the purpose of the request for assistance and types of assistance sought. The Central Authority may request the requesting State to give additional and relevant information and documents if it deems the information and documents included in the request is insufficient.
4. A request and documents related to the request shall be made in writing in Khmer and in English.

The Ministry of Justice of the Kingdom of Cambodia is the Central Authority. Presently, the department of mutual legal assistance in criminal matters and extradition is the assistant department to deal with the requests of mutual legal assistance in criminal matters of the Ministry of Justice. For the purpose of executing the MLA requests from foreign countries effectively and expeditiously, the Ministry of Justice has developed internal guidelines to consider the following key points:

- A. Relation between the Kingdom of Cambodia and the requesting States: Prioritization shall be considered on requests from states having bilateral agreements relating to mutual legal assistance in criminal matters with the Kingdom of Cambodia, states providing mutual legal assistances to the Kingdom of Cambodia based on reciprocity, states having extensive cooperation with the Kingdom of Cambodia, states that are signatories to agreements related to mutual legal assistance in criminal matters together with the Kingdom of Cambodia, such as the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters, states bordering the Kingdom of Cambodia, regional states together with the Kingdom of Cambodia, etc.
- B. Type of Offence: Requests shall be prioritized based on the seriousness of the offences in affecting public order, such as offences involving the abuse of women or children, human trafficking offences, transnational offences, money-laundering offences, drug offences.
- C. Level of Complexity of the Request: Requests shall be prioritized based on the complexity of the request, that is, those that are simple and do not require a great amount of time to understand.
- D. Deadline for Implementation of Requests: Requests shall be prioritized if they set necessary and appropriate implementation deadlines.

Relating to requests for mutual legal assistance in criminal matters, Cambodia rarely receives requests for assistance in corruption cases in comparison to other types of legal assistance cases. However, most corruption cases are related to identifying and obtaining evidence of bank accounts, identifying property or obtaining testimony of persons or witnesses involved in a corruption case.

IV. CHALLENGE

Despite the fact that Cambodia has a national law that provides a broad legal basis for international cooperation in Mutual Legal Assistance in Criminal Matters, there are many other tasks that need to be strengthened and developed. Cambodia is in the process of forming a clear internal procedure in order to facilitate the expeditious execution of requests for legal assistance. After adoption of the MLA law, the number of requests for mutual legal assistance and the number of departmental staff have increased. However, the number of staff is still not enough to deal with all requests expeditiously. Moreover, further trainings for new officials supporting the work process of the Central Authority are in progress. At the same time, different languages and internal legal procedures are challenges to the department, particularly complex requests, as an issue in executing requests which require a long time and many agencies to complete. The Covid-19 pandemic has added further challenges to the work process and execution time.