

NEW AND EMERGING FORMS OF CORRUPTION AND EFFECTIVE COUNTERMEASURES

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I. OVERVIEW

Corruption is a complex problem that impacts the world, even rich or poor countries. Corruption slows the economy, creates social injustice, undermines investment and exacerbates poverty. For the Royal Government of Cambodia (RGC), good governance is the key needed to achieve sustainable economic development and ensure equity and social justice. Good governance requires active participation with strong commitment, responsibility and transparency from all concerned stakeholders. The RGC always considers corruption as obstacles to economic development, the rule of law, democracy, social stability, as well as the main cause of poverty.

A. Institutional Framework

On 17 April 2010, the Anti-Corruption Law (ACL) was promulgated, and the Anti-Corruption Institution (ACI) was established. 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 the fight against corruption, while the Anti-Corruption Unit (ACU) has the role of the implementing body to independently undertake its duties.

The ACL was based on the Code of Criminal Procedure 2007 and the Criminal Code 2009 of Cambodia. 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 are fundamental to social development and poverty reduction.

B. The Highlights of the Anti-Corruption Law

1. The Investigative Power of the ACU

- a. Exclusive power to investigate all corruption offences.¹
- b. In the course of the investigation if other offences are found related to the corruption case being investigated, the Judicial Police Officers (OPJ) of ACU are empowered to investigate the new offences to the final stage.
- c. The ACU can investigate all criminal offences if ordered by the court.
- d. In the framework of these investigations, the President of the ACU, or the officially assigned representative thereof, has the duty to lead, coordinate and control the mission of the ACU's OPJ on behalf of the Prosecutor till the stage of arresting the suspect.²

2. Privileges of the ACU³

If there is a clear lead on a corruption offence, the ACU is empowered to:

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¹ Anti-Corruption Law, 17 Apr. 2010, art. 22.

² Anti-Corruption Law, 17 Apr. 2010, art. 22.

³ Anti-Corruption Law, 17 Apr. 2010, art. 27.

- a. Check and put under observation the bank accounts or other accounts that are viewed as bank accounts.
- b. Check and order the provision or copy of authentic documents or individual documents, or all related banking, financial and commercial documents.
- c. Monitor, oversee, eavesdrop, record sound and take photos, and engage in phone tapping.
- d. Check documents and documents stored in the electronic system.
- e. Conduct an operation with a view to collect flagrant evidence.

The ACU has its own custody room and is authorized to keep suspects in custody at any place, for example a hotel room, wherever appropriate. In addition, the ACU can request competent institutions to keep any suspect arrested by the ACU in custody.⁴

The President of the ACU is empowered to command public authorities, government officials, citizens who hold public office through election as well as units of the private sector concerned, namely financial institutions, to cooperate with officials of the ACU in the work of investigation.⁵ In a criminal case related to corruption, the court receiving the case shall conduct a speedy trial.⁶

C. International Legal Framework

As we are living in a globalized world, countries are connected, and cooperation between countries is crucial. In order to perform its duty, the ACU has been working closely with national, regional and international organizations to share information and help each other.

In terms of international cooperation, the ACU has been a full member of the following anti-corruption institutions and international instruments, namely (i) The ADB/OECD Anti-Corruption Initiative on 5 March 2003; (ii) The United Nations Convention against Transnational Organized Crime (UNTOC) on 12 December 2005; (iii) The International Association of Anti-Corruption Authorities (IAACA) since 2006; (iv) The 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; and (vii) The International Anti-Corruption Academy (IACA) on 14 December 2013. Regarding bilateral cooperation, the ACU signed an MoU on anti-corruption with the State Inspectorate and Anti-Corruption Agency of Laos (15 Nov 2013) and the National Anti-Corruption Commission of Thailand (3 Sep. 2014).

II. NEW AND EMERGING CORRUPTION AND ITS PRINCIPAL CAUSES

A. New and Emerging Forms of Corruption

Despite good anti-corruption laws and commitments, corruption in the region is still a problem and continues to weaken the society, economy and justice. Cambodia is also experiencing this situation. The ACU, as the implementation body for fighting against corruption, has worked responsibly and transparently until it gained support and recognition from the public. Corruption in the form of abuse of power refers to an act committed by public servants or citizens in the exercise of their duty or in the course of exercising their duty such as taking action to hinder law enforcement in order to take any illegal advantage, and the acts of misappropriation of public funds, which is committed by a public official by demanding or

⁴ Art. 26 of the Anti-Corruption Law.

⁵ Art. 29 of the Anti-Corruption Law.

⁶ Art. 30 of the Anti-Corruption Law.

receiving of any sum known not to be due, or known to exceed the due amount. These have been recognized as emerging forms of corruption in the country. The two cases below are examples of the two forms.

B. Case Study #1 (Abuse of Power)

- The ACU received complaints regarding the irregularities committed by Mr. LBB demanding unofficial payment, so the ACU started to collect information and evidence with regard to the matter. After receiving additional information that Mr. LBB demanded illegal money that amounted to US\$ 100,000 from one company, the ACU arranged an operation to collect information and evidence on the spot, arresting three people (Mr. LBB,⁷ Mr. CVV and Mr. TBB) in a restaurant, while the latter were receiving US\$45,000 from the victim, in addition to the previous US\$5,000 (a few days before), in total US\$50,000.⁸
- Based on the investigation, the ACU also found the previous transactions committed by Mr. LBB, who demanded illegal payment from Mr. CT in the amount of US\$20,000 and from Mr. CHL in the amount of US\$12,000.
- Through our search at his office, the ACU found that since 2016 until the day of arrest, Mr. LBB demanded illegal money involved in over 140 cases which amounted to about US\$ 384,997. We also found his cash in the drawer amounted to US\$21,587. Mr. LBR used the money generated from these illegal acts (384,997+20,000+12,000= US\$416,997) to buy two houses, one plot of land (plus construction of a swallow's nest) and two vehicles which in total amounted to around US\$ 421,500.
- After being sent to court, the three offenders were charged. First Mr. LBB with extortion, abuse of power and money-laundering (Art. 592-593 of the Criminal Code, Art. 35 of the Anti-Corruption Law, Art. 29-30 the new Law on Anti-Money Laundering and Combating the Financing of Terrorism), while the other two (Mr. TBB and CVV) were charged with extortion and abuse of power (Arts. 592-593 of the Criminal Code, Art. 35 of the Anti-Corruption Law).

C. Case Study #2 (Misappropriation of Public Funds)

During the Covid-19 pandemic, the health sector in every country struggled to survive. Cambodia also experienced that difficult time. The high demand of staff in the health sector, especially for Covid-19 patients, sharply increased almost beyond capacity. The government immediately issued the policy to encourage and incentivize people to work in the health sector by giving the opportunity to the qualified medical staff who are working as volunteers to become permanent staff without taking any exam if they agreed to work with doctors who were taking care of Covid-19 patients both at home or in the hospital. Two officers of the provincial health department committed corruption. After receiving the information about the policy from the ministry, those two officers forced their staff members in the province to pay money to them if they wanted to be selected as permanent staff. The two officers believed they would not be noticed as the government was focused strongly on fighting against Covid-19 more than anything else, and most parts of the country were in lockdown as people worked remotely from home. But the ACU received complaints from victims, and we started to collect information

⁷ He overcharged the official payment for permission of the construction of solar power.

⁸ He demanded extra money in return for his services.

and evidence with regard to the matter. The ACU arranged an operation to collect information and evidence on the spot and arrested two offenders. The amount of \$854,000 has been recovered from the two detainees and returned back to the victims. The ACU found that money was collected from 129 qualified medical staff members. The two officers were charged with “misappropriation of public funds”.

D. Principle Causes of Corruption

Since established, the ACU has performed its job with responsibly and transparency. Corruption has been considered as a complicated offence. The two parties, the giver and the taker of the bribery, both end up happy. Corruption cases demand strong evidence and good investigation. There are several causes of corruption that we should take into account:

- People have little knowledge about the corruption laws, and some people cannot differentiate between a gift and bribery. In the Asian context, especially for Cambodian people, giving a gift to anyone who provided a service for them is wrongly thought of as a thank you.
- Corruption is still a new context for some people. Based on the complaints to the ACU, we have seen that many of the complaints are unrelated to corruption. But because of the people’s trust and the good reputation of the ACU, it was considered as one of their first options for reporting possible crime.
- As a developing country, we understand that low monthly earnings are one of the main reasons which some people use as their excuse to commit corruption.
- When we are talking about corruption, we also take the loopholes of the system into consideration. When the service provider and the service receiver have more chances to meet in person, the rate of corruption also increases. As a developing country, the digitalization of the public services has been seen as a key to reducing corruption.

III. BEST PRACTICES FOR TACKLING CORRUPTION IN THE CAMBODIAN CONTEXT

Even though there is a long way to go, the ACU in Cambodia can be considered as a new anti-corruption body compared to those other in regions, but it has been significantly recognized and trusted by the Cambodian people. Following its own strategy and policy, the ACU has focused on education, prevention and law enforcement in combating corruption.

A. Education and Dissemination Activities

1. Law Dissemination

With its knowledge on anti-corruption laws (ACL), the ACU has set out its action plan and successfully disseminated the ACL to a total of 652 targets and **921,747 participants** from 2012-2022.

2. Education on Anti-Corruption

Regarding education, the ACU in collaboration with Ministry of Education Youth and Sport have also launched an education programme on anti-corruption:

- High school level (grades: 10,11,12): implemented 2014-2015,

- Secondary school level (grades: 7,8,9): implemented 2015-2016,
- We are in the process of collecting data for university and vocational training textbooks.

3. Anti-Corruption Day

Cambodia has organized the National-International Anti-Corruption Day (9 December) from 2011 to the present.

B. Prevention Activities

1. Public Services Work 2012-2021

The ACU has participated with the concerned ministry to review, launch and adjust an inter-ministerial joint declaration (*Joint Prakas*) on the public service delivery, penalties and incentives with a total of 22 institutions, and 118 *prakas*.

2. The Signing of MOUs

A total 105 MOUs were signed, as well as with more than 1,000 companies and more than 30 private higher learning institutions. The main objective of the MOU is to ensure that the company will not become involved in any corruption, but the company will be the partner of the ACU for reporting any corruption committed by any public servant.

C. Obstruction Activities

The ACU has participated in observing the procurement and examination processes. From 2012-2021, the ACU observed public procurements with a total 308 procurement entities, totalling 5,019 projects. Prior to these observations, procurement was considered as one of the high-risk sectors. Regarding the examination process, the ACU observed high school entrance exams every year since 2014, as well as exams for the recruitment of civil servants.

D. Law Enforcement

An effective complaint and response system is important for fighting corruption. Corruption complaints are accepted through a 24/7 complaint system by telephone, white boxes, e-mail and direct complaints made at the ACU office. The complaint system is, thus, easy to use and implement. Complaints will be analysed only one to three days after they have been made, and we have breakfast meetings every morning to discuss the received complaints. We also allow the complainer to join the meeting if they agree.

It is also important to have an effective investigation process. There must be a fast response to the complaint for collecting the evidence or investigating the case. Officials must work closely with the Ministry of Justice to ensure that the judge will set the corruption case to a speedy trial. A clear witness-protection mechanism should be established to encourage people to report corruption cases. Finally, it is important to build up good collaboration with important institutions such as the FIU, tax department, customs department, telecom companies, land registration, vehicle registration body etc.

IV. CHALLENGES AND OBSTACLES POSED TO INVESTIGATION

The ACU of Cambodia does face challenges in investigation of corruption cases. Actually, before the suspect has been sent to court, the investigator has done much work. But the evidence stage is always hard and complicated. Anonymous complaints typically point only to a person or case but rarely include evidence. So, in these cases, it takes the investigator a very long time to gather the information or evidence.

The ACU is also facing difficulty in doing computer forensics in order to obtain evidence. In some cases, the main evidence must be retrieved from an electronic storage device. In addition, the slow response from the relevant entities in sharing the information of the suspect is also considered as one of the problems that always delays the process of the investigation.

V. CONCLUSION

From the time that the Anti-Corruption Unit was established in 2010 to the present, the ACU, with the strong support of the Royal Government of Cambodia, has been recognized and trusted by most people and became one of the first options of the people as a law enforcement agency. The ACU will continue to perform its job with utmost care, responsibly and transparency. The ACU is also ready to work together with all anti-corruption agencies and stakeholders to quickly respond to all kinds of challenges, especially new and emerging forms of corruption.