

NEW AND EMERGING FORMS OF CORRUPTION IN CAMBODIA

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I. INTRODUCTION

I am pleased to be nominated by the Ministry of Justice of the Kingdom of Cambodia to attend this 16th Regional Seminar on Good Governance for Southeast Asian Countries under the theme “*New and Emerging Forms of Corruption and the Effective Countermeasures*” upon the invitation of UNAFEI (United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders). In fact, corruption does exist in Cambodia. Corruption has caused damage, affected the quality of life, and distorted the market. Corruption may also lead to terrorism, organized crimes, and unfair competition. Therefore, the combating of actions defined as “corruption” is the commitment of the Cambodian Government and the relevant stakeholders. I believe that today’s seminar will further broaden knowledge about corruption in each country and further enhance the comprehension of the challenges in the investigation, prosecution and trial of corruption cases, as well as further strengthen the inter-agencies and international cooperation.

To exchange experiences, to understand the challenges and obstacles in the process of investigation, prosecution, and collection of evidence, and to find the effective measures in combating the new forms of corruption, I would like to raise two cases occurring in Cambodia as follows:

II. CASE NO. 1¹

A. Facts

Between April and May of 2019, the representative of a Solar Company engaged with X, an official of Pursat Casdatral Department to inquire about the application for solar construction. The representative of the company has provided the land title to X. On 26 July 2019 at 11 am, X has guided the representative of the company to meet Y who is the superior of X at Y’s office to discuss the service fee for the construction of a solar factory. Y and X have calculated the fee for the transfer of land title which amounts to USD 75,000 (seventy-five thousand) and the fee for the application for a construction permit which amounts to USD 25,000 (twenty-five thousand). The meeting between the representative of the company and X was arranged by A. On 27 July 2019 at 8 am, Y told X and A to meet the representative of the company at Moha Leap restaurant in room no. VIP8. Y was also present in that room. The representative of the company handed over the cash amounting to US 45,000 (forty-five thousand) to Y, and Y gave this cash for X to count. A was outside guarding the room, promising the company’s representative that he would watch out here. Shortly after, the Anti-Corruption Unit (ACU) intervened in this *flagrante delicto* case and arrested X, Y, and A for further questioning and taking other measures as provided by law.

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¹ Criminal case file No. 4930 dated 30th July 2019 of Prosecution attached to Phnom Penh Court of First Instance; Criminal judgement No. 157 "្រ្រ្រ្រ ្រ្រ", 27 February 2020 of Trial Judge of Phnom Penh Court of First Instance.

B. Procedures

The ACU arrested X, Y, and A and sought the property suspected as the proceeds of crime. On 30 July 2019, the ACU brought X, Y, and A before the Prosecution Office attached to the Phnom Penh Court of First Instance. The prosecution charged X and A for “misappropriation of public funds” and Y for “*misappropriation of public funds*”, “*abuse of power*” and “*money laundering*”. The prosecution and request for the confiscation of property were conducted in parallel with the inculpatory statement of the ACU, the judicial police in this case. X, Y, and A were detained the next day. In the judicial investigation process, the investigating judge ordered to freeze Y’s property. The public hearing of the three accused took place on 6 February 2020 and continued on 7 February 2020. The bench, consisting of three judges of the Phnom Penh Court of First Instance issued judgment no. 157 “*ក្រុង*” dated 27 March 2022 but dropped the charge on “*abuse of power*” for X and A.

C. Penalty and Law

For the act conducted in Pursat province on 26 and 27 July 2019, X and A were sentenced to 2-years-and-6-months’ imprisonment on the charge of “*misappropriation of public funds*” per Article 592 and Article 593 of the Cambodian Criminal Code.

For the act committed in Pursat from 2016 until 26 and 27 July 2019, Y was sentenced to 8 years’ imprisonment and was ordered to pay a monetary fine in the amount of Riels 8,000.000 (eighty million) on the charge of “*misappropriation of public funds*”, “*abuse of power*” and “*money laundering*” per Article 592 and Article 593 of the Cambodian Criminal Code, Article 35(2) of the Law on Anti-Corruption and Article 3(new) and Article 29(2)(new) of the Law on the Amendment of Article 3, Article 29 and Article 30 of the Law on Anti-Money Laundering and the Combating of the Financing of Terrorism.

D. Enforcement of the Judgment

The judgment above became final on 2 July 2020. The property of Y, such as a house, three plots of land, two cars, and cash in the amount of USD 17,529 and Riels 16,250,000, was confiscated as public property.

E. Challenges and Obstacles

In fact, in each country, public services come in many forms, from small to large, and some are complex, and require collaboration with national and sub-national ministries and institutions. Completing public service applications is often a bit of a hassle for civilians due to a lack of comprehensive understanding of a particular public service, and, therefore, public service applicants and public service providers often have to pay extra or overpay in order to achieve the desired results or needs. The Royal Government has the Anti-Corruption Unit as its secretary body, striving to prevent all forms of corruption by using various methods. However, the above offences are very difficult to suppress and find evidence to charge the perpetrators. Bribery is similar to the above facts, sometimes from service users and sometimes from public service providers. Due to the lack of cooperation from the victims, the repression was met with real obstacles. In fact, in court, I have never had a victim submit an application or file a complaint for corruption against anyone. I would like to share the above forms of public service corruption with ASEAN countries and together find effective ways to prevent and suppress them.

III. CASE NO. 2 ²**A. Facts**

On 22 October 2021 at 10:15 am, the Police Commissioner of Koh Kong province, under the facilitation of the representative of the Prosecution Office attached to the Koh Kong Provincial Court of First Instance, led a team comprising an Anti-Drug Crime Force, Srea Ambel District Police Inspectorate, a special intervention force, and a border police battalion no. 269 and cracked down on a case of illegal drug possession, transportation, and trafficking of narcotic substances in Chom Kar Krom Village, Srea Ambel Commune, Srea Ambel District, Koh Kong Province. During the crackdown, a total of 7 people along with other exhibits, including 10 boxes of white powder (heroin) weighing 212.40 kg, one Toyota Highlander, two different types of boats, 7 mobile phones, and various cards, were arrested or seized. After the initial inquiry with the suspects, the authorities continued to inspect the boats and another house on Steung Meas Street, Village no. 3, Au Tres Commune, Steung Hav District, Sihanouk Province; however, no new evidence was found. Then, the authorities confiscated the white powder to test with a TruNarc scanning machine and MakiTest and found that the confiscated white powder is indeed heroin. Consequently, the authorities forwarded this case to the Prosecution Office attached to Koh Kong Provincial Court of First Instance for further legal proceedings.

B. The Prosecution and Confiscation

Regarding the above-mentioned case, 9 people were prosecuted for illegal drug possession, transportation, and trafficking of narcotic substances as well as for money-laundering as per the Order no. 34 អ.ប/អ.ជ dated 7 March 2022 of the Prosecution Office attached to the Koh Kong Provincial Court of First Instance. The identities of the above 9 people are as follows:

1. Name: SangSing Bramuch, called Lag, Male, 55 years old, Thai national
2. Name: Si Thavnoyar, called Yar, Male, 55 years old, Thai national
3. Name: Horn Phanna, called Anna, Female, 32 years old, Khmer national
4. Name: Pich Kong, called Rim, Male, 39 years old, Khmer national
5. Name: Ros Sithanh, Male, 46 years old, Khmer national
6. Name: Nov Chanthou, called Chhit, Male, 46 years old, Khmer national
7. Name: Sav Nak, Male, 43 years old, Khmer national
8. Name: CHAT SUWAN THEERAPHAT, called Auo, Male, Thai national
9. Name: SIRISAK CHATSUWAN, called Piyai, Male, Thai national

However, the Koh Kong Provincial Court of First Instance held a public hearing on 15 July 2022 and on the same day issued judgment number 67 “ង”², where:

1. Name: SangSing Bramuch, called Lag, Male, 55 years old, Thai national
2. Name: Si Thavnoyar, called Yar, Male, 55 years old, Thai national
3. Name: Horn Phanna, called Anna, Female, 32 years old, Khmer national
4. Name: CHAT SUWAN THEERAPHAT, called Auo, Male, Thai national
5. Name: SIRISAK CHATSUWAN, called Piyai, Male, Thai national

were sentenced to 3 years' imprisonment for a money-laundering offence committed in Koh Kong Province in 2021 pursuant to Article 38 of the Law on Anti-Money Laundering and

² Criminal case file No. 55 dated 24th February 2022 of Prosecution attached to Koh Kong Court of First Instance.
+ Criminal judgment No. 67 "ង" dated 15th July 2022 of Trial Judge of Koh Kong Court of First Instance.

Combating the Financing of Terrorism. However, the remaining four suspects were not convicted of a money-laundering offence.

The significant assets confiscated as public property include a vehicle, a ferry, a boat, a motorbike, and cash of about USD 45,982 (forty-five thousand nine hundred eighty-two).

C. Challenges and Obstacles

Regarding the above cases, it was very challenging for the Cambodian authorities to trace the assets being the proceeds of crime from the offence committed by the criminal in the past and which have been hidden overseas. Moreover, there were Thai nationals among the arrested suspects which required regional and international cooperation for evidence collection. However, international cooperation in criminal cases must follow international law and conventions which consume a substantial amount of time and thus affect the judicial investigation. The duration of provisional detention has also been clearly determined under the law which forces the court to close the investigation prematurely even though in some cases, the masterminds or the criminals could not be identified and convicted, for instance, in the case of SIRISAK CHATSUWAN, called PHAI YA.

IV. FURTHER COMMENTS

In the meantime, I notice that recently the Cambodian government is strongly committed to cracking³ down and tackling crimes including drugs, human trafficking, labour exploitation, online scams, illegal gambling, corruption, customs, and environmental offences in order to trace and implement the Law on Anti-Money Laundering⁴ and Combating the Financing of Terrorism where many adhoc working groups have been established continuously. Furthermore, all courts at all levels throughout the country have been prompted to investigate, prosecute, freeze and confiscate the assets of criminals consecutively.

From my point of view, combating corruption in Cambodia should start with the educational campaigns educating the local people and the strengthening of work productivity of the public and private institutions as well as the strengthening of law enforcement. The mechanisms established by the Cambodian government as mentioned above have also tremendously helped to diminish the new forms of corruption. On the other hand, the advancement of technology is another concern that might hinder the prevention of new forms of corruption, which are occurring globally.

³ Instruction No. 768 សង្ខេប dated 09th September 2022 of the Cambodian Government.

⁴ Decision No. 04 ក្រយ.សសជ/22 dated 18th January 2022 of the Ministry of Justice; Decision No. 001 សសជ/ក្រសហ dated 21st January 2022 of the Cambodian Government.