

ENHANCING INVESTIGATIVE ABILITY IN CORRUPTION CASES

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I. MEASURES FOR ENHANCING INVESTIGATIVE ABILITY IN CORRUPTION CASES

Every country in the world is affected by corruption. It undermines democratic institutions, slows economic development and contributes to the instability of governments. The Royal Government of Cambodia is one such government in which corruption continues to be systematic and linked with a number of issues.

Fighting corruption is prioritized by the Royal Government of Cambodia, as mentioned in its *Rectangular Strategy in 2003* where *Good Governance* is the core element and combating corruption is in the first angle. Moreover, *Samdech* HUN Sen, the Prime Minister of Cambodia, stated that the key thrust of the Royal Government of Cambodia's strategy to fight corruption is to take concrete actions that attack the roots of corruption. Nevertheless, there are only three articles, prescribed in the criminal law act in 1992 — under the United Nations Transitional Authority in Cambodia — related to corruption (embezzlement, bribe taking and bribe giving).

Until 17 April 2010, the anti-corruption law was promulgated by the King. This leads to the quotation of Prime Minister HUN Sen who stressed that fighting corruption is to make it so that each individual does not want to, cannot and dares not to engage in corruption.

The Anti-Corruption Institution is a body that was established under the new law. This body is composed of the Anti-Corruption Council and the Anti-Corruption Unit (ACU). Regarding the investigation of corruption cases, Cambodia has started to implement two measures: TECHO Operation and Open-up investigation in each ministry.

A. TECHO Operation

The TECHO Operation refers to the fixation of public service fees for each ministry. The official public service fees are designed in the table format that is posted in public places as public information. Every ministry and public institution is bound to publish the official fee for their public service activities (1). The obvious advantage of that operation is the guaranty of revenue collection (2).

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1. Getting All Ministries Engaged

(i) *Facilitating Investigation*

The opportunity for corruption has been reduced since the public has been informed about the official fees for public services, and, thus, the public participate actively in combating corruption. However, there are some people who bribe to accelerate the processing of their documents. In this regard, the other officials and people concerned join hands in the investigation. For instance, in the company registration process, one applicant can claim that another one who submitted the application later received the certificate sooner. The first applicant can prove the date using the receipt as evidence. In such cases, it may be a group of officials who take bribes to accelerate the process. By making the processing of public services more transparent, applicants are able to look at each other's activities and hold public officials accountable. In addition to improving investigation with the help of the public, we can also strengthen the ability of officials to resist bribery.

(ii) *Reduction in corruption cases*

The TECHO Operation has been working very well. It always reminds the officials not to take extra fees or unofficial fees from applicants. Step by step, the number of corruption cases has been reduced steadily. This operation greatly facilitates investigation through the comparison between the official fees disseminated and the unofficial fees demanded by the officials.

2. Ensuring the Collection of Revenue

Before the so called TECHO Operation, the collection of revenue was an issue for the State. This means the State was not able to govern the amount of revenue collected. Fees depended on each ministry or institution. It is hard to express that the State lost its power in terms of collecting taxes. Without the TECHO Operation, the Anti-Corruption Unit (ACU) could hardly accomplish its work. This Unit was inactive and the investigations were limited. The reason is that ACU did not know about the public service fees to be paid. Since the TECHO Operation has been in place, there have been many MOUs, or Joint *Prakas*, between each ministry and the Ministry of Economics and Finance regarding the fees collected for the State.

B. Opportunity for Investigation

1. Posting of ACU Officials in the Ministries

Some of the duties of the ACU are to monitor, investigate, check, and do research as well as propose measures related to corrupt practices in ministries, institutions, and public and private units, in conformity with the procedures in force. Accordingly, some officials of the ACU are bound to investigate directly and thoroughly each department of all ministries. This option facilitates the investigators in accomplishing their mission. They work closely with the departments concerned. These cases are not complicated to investigate since the ACU officials know the identities of the suspects and witnesses, which allows our investigators to discover cases *in flagrante delicto*.

2. Complaint System

Concerned people have many ways to make their complaints to the ACU or offices in the Capital or to branch offices in all provinces of the Kingdom of Cambodia. From our experiences,

there are (i) six ways to report corruption offences, and (ii) considering the contents of those complaints, many of them are quite related to corruption cases. .

(i) Forms of complaints made

To start with, complainants can contact the ACU directly by phone (1282) or email: info@acu.gov.kh or complaint@acu.gov.kh. Secondly, they hand deliver complaint letters to the ACU. Moreover, there are many white boxes on the public streets for receiving any complaints. In addition, they can send their complaints through the post office. Finally, they can submit complaints via the ACU's website. The guidelines on reporting corruption and complaints are available to the public and can be downloaded at www.acu.gov.kh. However the guidelines are only in the Khmer language. In addition, the complaint procedure and decision-making process are currently in draft form, but we expect them to be finalized soon.

(ii) The analysis of those complaints

Even though there are many complaints made, most of them are not related to corruption offences. They are mostly about politics or do not fall within the competency of the ACU. In addition, some complaints are discovered to be false after the investigation. For instance, there was a case in which the mayor was accused of taking money for free official documents from the villagers. However, we found that the mayor was innocent after officials of the ACU interviewed most of the villagers. In this regard, the villagers defended the mayor and complimented his hard work. In this case, it was about a political issue where the opposition wanted to accuse the government of wrongdoing. Thus, the investigation was closed. In some cases, there are complaints made by officials of NGOs who accuse project managers of embezzlement. Accordingly, the ACU cannot start an investigation since these cases are not within the scope the Anti-Corruption Law, even though Article 3 provides that this law is applicable to all forms of corruption in all sections and at all levels throughout the Kingdom of Cambodia which occur after the law took effect. Based on the interpretation of this article, it is not within the competency of the ACU. The ACU can only inform the donor about the alleged embezzlement.

II. MECHANISM, PROCEDURE AND HUMAN RESOURCES

A. Mechanism and Procedure

Mechanism and procedure are main points related to the investigation of corruption cases and will be described below.

1. Mechanism

(i) Interview

There are many skills and tactics to interview both suspects and witnesses successfully. To start with, it is important to note that cooperation from the witnesses is crucial. On the other hand, the suspects never tell the truth and manipulate the situation. Then, from our experience there are two kinds of questions: closed questions and open questions. Accordingly, interviewers use these tactics to make the witnesses comfortable and to make them feel that their identity is secure. Moreover, building the witnesses' confidence and trust in the ACU is indispensable. Some witnesses refuse to tell the truth. The reason is that they think they will be accused as well. For example, in the case of the head of the anti-drug unit who participated in drug trafficking, there

is no official who would dare to report his offence because they are the ones who take the bribes on his behalf and manipulate the documents. If they didn't follow his instructions, they would lose their positions. Concerning the suspects, the interviewers try to convince the suspect to confess in exchange for the ACU's report to Court that the suspect/witness cooperated in the investigation.

(ii) Covert techniques

According to Article 25 of Anti-Corruption Law, the court can order the ACU to undertake forensic inquiries in order to facilitate the work of the court. The Department of Investigation and Intelligence and the Department of Technology and Forensics are part of the ACU. Covert techniques fall under its responsibility. A group of undercover agents disguise themselves particularly as taxi drivers, small ice-cream sellers, or beggars in order to be as close as possible to suspects. In this connection, it is noted that the suspects disguise themselves as well. For instance, they change their clothes when they leave home, and get into another car to change clothes again. In these cases, they change their transportation often as well from their locations to their destinations. The official of this department usually convinces a person close to the suspect to provide as much information as possible and to identify the suspect. Collecting and preserving evidence is crucial to their activities. It is interesting to note that the Chairman, deputy chairpersons of the Anti-Corruption Unit and some officials of ACUs are legally entitled to the status of judicial police officials in order to perform their duties in accordance with the provisions in the Code of Criminal Procedure (Article 23).

(iii) Search and seizure

In cases where there is some clear evidence of a corruption offence, the ACU (under Article 27) can:

- Check and put under observation the bank accounts or other accounts which are described to be the same as bank accounts.
- Check and order the provision or copying of authentic documents or individual documents, or all bank, financial and commercial documents.
- Monitor, oversee, eavesdrop, record sound, take photos, and engage in wiretapping.
- Check documents and documents stored on electronic systems
- Conduct operations aimed at collecting real evidence.

The seizure shall be implemented in accordance with the Code of Criminal Procedure.

2. Procedure

(i) Role of the prosecutor

There are no special prosecutors, courts or judges for corruption cases. Investigations are overseen by the ACU in partnership with the police and other law-enforcement agencies. The Royal Prosecutor leads and coordinates the operations of all judicial police agents and judicial

police officers within his territorial jurisdiction. The Royal Prosecutor shall exercise all authority designated in this code and delegate it to the judicial police officers for investigative action. He may visit the investigation site and give useful instructions to the judicial police officers. He can inspect a judicial police unit at any time. He can participate in interviews and can examine witnesses.

(ii) Preparation for trial by the prosecutor

After the arrest, the prosecutor exercises his power as stated in the Code of Criminal Procedure (Article 25).

B. Human Resources

1. How to Recruit

The officials of the Anti-corruption Unit are appointed, transferred or assigned to work for the Unit and the contractual officials. These officials have to follow the provisions of the law and legal norms in force. The Chairperson of the Anti-Corruption Unit can recruit local or international experts, specialists or researchers, on a voluntary or contractual basis, to provide technical expertise on anti-corruption (Article 14).

2. Training Mechanism and Curricula for Investigation

(i) Curricula

The curricula focus mostly on all offences related to corruption prescribed in the Criminal Code and the power of investigation of the ACU stated in the Code of Criminal Procedure. For instance, from 1st January to May 2012, the ACU held a seminar on the dissemination of the Anti-Corruption Law at 18 universities and 9 districts. 10,110 participants attended the seminars. Furthermore, from 7 November to 16 December 2011, the ACU conducted a nationwide campaign on Anti-Corruption Law dissemination. There were 9,967 officers from relevant ministries and institutions who attended the seminar. National Anti-Corruption Day in Cambodia is 9 December. In 2011, the ACU, with support from DANIDA and Pact Cambodia, organized a public concert to raise public awareness on the negative effects and prevention of corruption.

III. CONCLUSION

To sum up, Cambodia is ready to combat corruption offences. The Anti-Corruption Law promulgated on 17 April 2010 contains fundamental rules used in corruption cases. Furthermore, TECHO Operation is an additional measure to strengthen the ability in fighting corruption in Cambodia. With all mentioned measures, mechanisms, procedures and human resources, we are optimistic that the corruption offences will be steadily reduced.

ENHANCING INVESTIGATIVE ABILITY IN CORRUPTION CASES

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I. OVERVIEW

Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption takes place in all human societies and in all walks of life.

Cambodia is also experiencing this social phenomenon. The Royal Government of Cambodia (RGC) does not turn a blind eye to this problem. The RGC is strongly committed to fighting corruption, formulating a separate anti-corruption law, and empowering an independent anti-corruption mechanism.

II. BACKGROUND

The Royal Government of Cambodia has paid great attention to combating corruption since the UN-organized General Elections in 1993. In 1992, Cambodia adopted the Criminal Law Act in which three of its articles were related to corruption, namely Embezzlement, Acceptance of Bribery and Proffering of Bribes. In 1999, an anti-corruption mechanism was first established in Cambodia. It was called the *Anti-Corruption Activities Unit*. In 2006, the RGC established the Anti-Corruption Unit, ACU.

On 17 April 2010, the Anti-Corruption Law was promulgated by the King. The new law required the establishment of an Anti-Corruption Council and Anti-Corruption Unit (ACU). Since its creation, the ACU has been implementing three intertwined approaches: Education and Prevention, Law Enforcement, and International Cooperation.

In its effort to combat corruption, the RGC has carried out the Rectangular Strategy since the first to the third mandate of the fifth legislation, focusing on multi-sectorial reforms for the sake of social development and justice. The RGC continues to view fighting corruption as a priority, as mentioned in the *Rectangular Strategy* where *Good Governance* is the core element and *fighting corruption* is the first angle.

III. ENHANCING INVESTIGATIVE ABILITY IN CORRUPTION CASES

A. Agencies and Organizations Responsible for Investigating Corruption Cases

Article 22, “Officials Competent to Investigate Corruption Offences”, of the Anti-Corruption Law stipulates that:

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- The President, Vice Presidents and officials of the Anti-Corruption Unit who are appointed as judicial police officers are empowered to investigate corruption offences as stipulated in this Law and those in the Penal Code.
- Other units that are aware of corruption offences as stipulated in the Anti-Corruption Law and those stated in the Penal Code shall make corruption complaints to the ACU or its branch offices in the municipalities or provinces.

B. The Outline of Investigative Procedures

Article 25, “ACU’s Investigative Authority”, of the Anti-Corruption Law stipulates that:

- The ACU officials who are appointed as judicial police officers shall carry out investigation of corruption offences in compliance with the provisions of the Code of Criminal Procedure and the provisions in this Law.
- Officials of the Anti-Corruption Unit who are appointed as judicial police officers take charge of investigating corruption offences. If, during the investigation of a corruption offence, a different offence is found with facts related to the offence being investigated by the Anti-Corruption Unit, officials of Anti-Corruption Unit can continue the investigation of the offence to the end of the proceedings.
- The Anti-Corruption Unit is not entitled to launch its own investigation into any offence except corruption offences, unless there is a court order.
- The court is entitled to issue an order to the Anti-Corruption Unit to undertake forensic inquiries in order to facilitate the court’s judgement.
- In the framework of these investigations and contradictory to Article 85 (Authority of Judicial Police Officers in Enquiry of Flagrante Delicto Cases), Article 91 (Searches), Article 94 (Order to Appear in Inquiry of Flagrante Delicto Cases) and the Article 114 (Order to Appear in Preliminary Investigation) of the Penal Procedure Code, the President or an officially assigned representative of the ACU has the duty to lead, coordinate and control the mission of those officers on behalf of the prosecutor until a suspect is arrested.
- After the arrest, the prosecutor shall exercise his/her power as stated in the provisions of the Penal Procedure Code.
- At the end of each investigation, the Anti-Corruption Unit shall submit all facts to the prosecutor for further action in conformity with the provisions of the Penal Procedure Code.

C. Agencies and Organizations Responsible for Interrogating

Paragraphs 1, 3, and 4 of Article 72, “Police Record”, of the Penal Procedure Code stipulate that:

- Every complaint received by judicial police officers requires the establishment of a written record.
- The record of the complaint shall mention the following:

- The names and status of the judicial police officers
- The units of the judicial police officers and
- The date.
- Each page shall be signed by a judicial police officer and by the complainant.

Currently, the ACU has a total of 90 judicial police officers. Article 23 of the Anti-Corruption Law, “Appointment of Anti-corruption Unit officials as judicial police”, stipulates that:

- The President and Vice Presidents of the Anti-Corruption Unit are legally entitled to status as judicial police officers in order to perform their duties.
- Officials of the Anti-Corruption Unit may be entitled to status as judicial police officers pursuant to the provisions stated in the Penal Procedure Code.
- The ACU President takes charge of preparing the list of the ACU officials who are entitled to status as judicial police officers through *Prakas* of the Minister of Justice.

D. Specific Methods for Good Interrogation

- If intelligence is working well, it is best to collect all relevant documents for accusation as much as possible before making the decision to open an investigation.
- Prepare questions beforehand for interrogating witnesses or suspects.
- Get all related documents and evidence ready before an interrogation.
- Never ask open questions.
- Use no violent means to receive answers from witnesses or suspects.

E. Importance of Confessions of Suspects in Investigation as Evidence at Trial

- Once the suspect provides a confession during the investigation process, the judicial police shall seek more evidence to verify the suspect’s confession before filing a court case.
- The suspect’s confession during the investigation stage of the judicial police can be revealed in front of the judge for considering the reduction of penalty.

F. Outline of Systems to Facilitate Witness Cooperation

Paragraphs 7 and 8 of Article 13, “Duties of Anti-corruption Unit”, of the Anti-Corruption Law stipulate that the ACU has the duties to:

- Keep absolute confidentiality to protect sources of corruption-related information
- Take necessary measures to keep corruption whistleblowers secured.

The Anti-Corruption Unit can meet and talk to complainants or whistleblowers at their location or talk to them on the phone in the event that they find it uncomfortable to come to the ACU compound.

G. Outline of Searches and Confiscations

1. Searches

- Paragraph 5 of Article 25, “Investigative Authority of Anti-corruption Unit”, stipulates that:
 - In the framework of these investigations and contradictory to Article 85 (Authority of Judicial Police Officers in Enquiry of Flagrate Delicto Cases), Article 91 (Searches), Article 94 (Order to Appear in Inquiry of Flagrate Delicto Cases) and the Article 114 (Order to Appear in Preliminary Investigation) of the Penal Procedure Code, the President or an officially assigned representative of the ACU has the duty to lead, coordinate and control the mission of those officers on behalf of the prosecutor until a suspect is arrested.

2. Confiscation

- Article 48, “Confiscation”, of the Anti-Corruption Law stipulates that:
 - When a person is found guilty of corruption, the court shall confiscate all his/her corruption proceeds including property, material, and instruments which were the outcome of the corrupt act, and they shall become the property of the state.
 - If the aforementioned confiscated asset is transformed into an asset different from its original nature, this transformed asset shall also become the subject of confiscation at the place where it is located.
 - If the corruption proceeds produce other benefits or advantages, all of these benefits and advantages will also be confiscated.
 - If the corruption proceeds dissolve or lose value, the court may order a settlement of the original value of the proceeds.
- Article 49, “Repatriation of the Proceeds of Corruption”, of the Anti-Corruption Law states that:
 - In case asset and corruption proceeds are found and kept in foreign states, the competent authority of the Kingdom of Cambodia shall take measures to claim that asset and [repatriate the] proceeds back to Cambodia through means of international cooperation. The Kingdom of Cambodia shall also cooperate with other countries that request the repatriation of corruption proceeds that are kept in Cambodia.

H. The Outline of the Public Reporting and Complaint System

- The ACU publicly informs those who wish to file a corruption complaint or report corruption-related information. They can accordingly:
 - Write a letter and place it in an ACU white box
 - Write a letter and post it to the ACU P.O Box by writing *Box No. 626 or Anti-Corruption Unit* on the envelop without stamps
 - Send an electronic mail to complaint@acu.gov.kh
 - Visit the ACU during the office hours at #54, Norodom Blvd, Sangkat Phsar Thmei III, Khan Daun Penh, Phnom Penh or
 - Call the ACU hotline at 1282

I. The Outline of Preparation for Trial by Prosecutors

Paragraphs 1 and 2 of Article 40, “Processing of Criminal Proceedings”, of the Penal Procedure Code stipulate that:

- The Prosecutor shall consider the written complaint and protests that have been received personally by him or submitted by judicial police officers.
- The Prosecutor can decide to either hold a file without processing or to conduct proceedings against the offenders. Before making the decision, the Prosecutor can conduct preliminary investigations or order supplemental investigations.

IV. CONCLUSION

Though Cambodia has enjoyed full peace for only a short time, the Royal Government of Cambodia, under the clear-sighted leadership of Prime Minister Samdech Techo Hun Sen, has made remarkable progress in all fields, especially in enhancing Cambodia’s prestige in the international arena.

The RGC is strongly committed to strengthening good governance and fighting corruption. Fighting corruption is a key to ensure equitable division of social resources and attracting foreign investment. Cambodia continues to cooperate closely with the international community, especially SEAPAC members, to combat corruption. Despite many challenges, the ACU continues to work untiringly to promote integrity, transparency, accountability and prosperity in Cambodian society.